



TASMANIA

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**GOVERNMENT PRICES OVERSIGHT ACT 1995**


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**No. 48 of 1995**


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## GOVERNMENT PRICES OVERSIGHT ACT 1995

No. 48 of 1995

**AN ACT to establish the Government Prices Oversight Commission, to provide for investigations into the pricing policies of certain Government Agencies and Government Business Enterprises that are monopoly, or near monopoly, providers of services and goods in Tasmania, to provide for the setting of maximum prices chargeable by such Government Agencies and Government Business Enterprises in respect of the supply of those services and goods, and to provide for related matters**

**[Royal Assent 22 September 1995]**

**B**E it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

### **PART 1**

#### **PRELIMINARY**

##### **Short title**

**1**—This Act may be cited as the *Government Prices Oversight Act 1995*.

**Commencement**

2—This Act commences on 1 January 1996.

**Interpretation**

3—In this Act, unless the contrary intention appears—

“**Agency**” means an Agency within the meaning of the *Tasmanian State Service Act 1984*, other than such an Agency that is also a Government Business Enterprise;

“**amend**” means—

(a) omit any matter; or

(b) insert or add any matter; or

(c) omit any matter and substitute any other matter;

“**Assistant Commissioner**” means a person appointed as an Assistant Commissioner under section 15 (1) (b);

“**Cabinet record**” means a record which—

(a) is referred to in section 24 (1) of the *Freedom of Information Act 1991*; and

(b) contains exempt information, within the meaning of that Act, to which that section applies;

“**Commission**” means the Government Prices Oversight Commission established by section 9;

“**Commissioner**” means the person appointed as the Commissioner under section 15 (1) (a);

“**community service obligation**” means—

- (a) in respect of a monopoly provider that is a Government Business Enterprise, a community service obligation within the meaning of the *Government Business Enterprises Act 1995*; and
- (b) in respect of a monopoly provider that is an Agency, a function, service or concession performed, provided or allowed, or proposed to be performed, provided or allowed, by the monopoly provider which, in the opinion of the Commission, would not be performed, provided or allowed if the monopoly provider were a business in the private sector acting in accordance with sound commercial practice;

“**contract**” includes agreement and arrangement;

“**contravene**” includes fail to comply with;

“**dividend**” has the same meaning as in the *Government Business Enterprises Act 1995*;

“**draft report**” means a report provided under section 34;

“**employee**” means a person whose services are made available to the Commission under section 19 (1) or (2);

“**enactment**” means an Act, order or other instrument of a legislative character;

“**final report**” means a report provided under section 35;

“**function**” includes duty;

“**Government Business Enterprise**” has the same meaning as in the *Government Business Enterprises Act 1995*;

“**Head of an Agency**” has the same meaning as in the *Tasmanian State Service Act 1984*;

“**member**” means a member of the Commission as specified in section 15 (3);

“**ministerial charter**” has the same meaning as in the *Government Business Enterprises Act 1995*;

“**monopoly provider**” means—

- (a) a body specified in column 1 of Parts 1 and 2 of Schedule 1; and
- (b) a Government Business Enterprise or Agency which provides a monopoly service;

“**monopoly service**” means a service declared under section 6 to be a monopoly service;

“**Portfolio Act**” means, in respect of a monopoly provider which is a Government Business Enterprise or an Agency that is a statutory authority, the enactment by or under which that Government Business Enterprise or Agency is established or continued together with any other enactment which is incorporated with or required to be read as one with that enactment;

“**Portfolio Minister**”—

(a) in respect of an Agency, means the Minister administering the Agency; and

(b) in respect of a Government Business Enterprise, has the same meaning as in the *Government Business Enterprises Act 1995*;

“**price**” includes charge and tariff;

“**pricing policies**” includes policies relating to the level or structure of prices for services;

“**service**” includes—

(a) the supply of water, electricity or gas; and

(b) the provision of public transport; and

(c) the making available for use of facilities of any kind; and

(d) the conferring of rights, benefits or privileges for which a price is payable in the form of a tribute, levy or similar exaction; and

(e) the supply or provision of any other good or service declared under section 5 to be a service—

but does not include anything for which a State charge is payable;

“**State charge**” means—

(a) a tax, or duty, imposed for the public revenue purposes of the State; and

(b) a payment, in the form of a royalty, payable to the Crown or a Government Business Enterprise for the exclusive right to access and market a natural resource—

but does not include a contribution payable under section 4 of the *Hydro-Electric Commission (Contributions) Act 1980*;



“**statutory authority**” means an incorporated or unincorporated body which is established, constituted or continued by or under an Act or under the royal prerogative, being a body which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister of the Crown or another statutory authority;

“**supply**” includes provide;

“**tax equivalent**” means an income tax equivalent, or sales tax equivalent, within the meaning of the *Government Business Enterprises Act 1995*;

“**terms of reference**” means the terms of reference contained in a requirement made under section 24.

### Maximum prices defined

4—Maximum prices may be expressed in one or more of the following terms:—

- (a) maximum prices or the maximum rate of increase or the minimum rate of decrease in maximum prices;
- (b) average prices or average rates of increase or decrease in such average prices;
- (c) pricing policies or principles;
- (d) by reference to a general price index, the cost of production, revenue, a rate of return on assets or any other factor;
- (e) by reference to quantity, location or period of supply of the monopoly service;
- (f) any other terms the Commission or the Minister, as the case requires, considers appropriate.

### Declaration of service

5—By notice published in the *Gazette*, the Minister may declare the supply of a good or service to be a service.

**Declaration of monopoly service**

6—(1) By notice published in the *Gazette*, the Minister may declare a service supplied by a Government Business Enterprise or Agency to be a monopoly service if—

- (a) the Minister is satisfied that it is a service for which—
  - (i) there are no other suppliers to provide competition in the relevant market; and
  - (ii) there is no contestable market by potential suppliers in the short term; and
- (b) the Portfolio Minister has agreed to the making of the declaration.

(2) The Minister must make a declaration under subsection (1) in respect of each monopoly provider specified in Schedule 1 before the date specified in that Schedule opposite that monopoly provider.

**Act binds Crown**

7—This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

**Inconsistency between this Act and another Act**

8—If a provision of this Act is inconsistent with a provision of a Portfolio Act or any other Act, the provision of this Act prevails and the provision of the Portfolio Act or other Act is, to the extent of the inconsistency, invalid except where the Portfolio Act or other Act expressly provides otherwise.

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**PART 2****GOVERNMENT PRICES OVERSIGHT COMMISSION*****Division 1—Government Prices Oversight Commission*****The Government Prices Oversight Commission**

**9**—(1) The Government Prices Oversight Commission is established.

(2) The Commission—

- (a) is a body corporate with perpetual succession; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

**Functions of Commission**

**10**—The Commission has the following functions:—

- (a) the conduct of investigations as provided in Part 3;
- (b) the provision of a final report in respect of each investigation;
- (c) other functions imposed on the Commission under this or any other Act;
- (d) such other functions as are prescribed.

**Powers of Commission generally**

**11**—The Commission has the following powers:—

- (a) to enter into contracts;
- (b) to appoint agents, attorneys and consultants;
- (c) to act as a consultant or agent;
- (d) to set charges, terms and conditions relating to the performance and exercise of its functions and powers;
- (e) to do all other things it is authorised to do under this or any other Act;
- (f) to do all things necessary or convenient to be done in connection with, incidental to or related to the performance and exercise of its functions and powers.

**Power to publish guidelines**

12—The Commission may publish guidelines relating to the performance and exercise of its functions and powers.

**Delegation**

13—(1) The Commission may delegate to the Commissioner or an Assistant Commissioner any of its functions or powers under this or any other Act, other than this power of delegation.

(2) The Commission may delegate to an employee any of its functions or powers under this or any other Act, other than—

- (a) this power of delegation; and
- (b) its function of providing a final report; and
- (c) its function of approving a determination or amendment relating to prices under section 39.

**Commission not subject to Ministerial control**

14—Except as otherwise provided by or under this or any other Act, the Commission is not subject to the control or direction of the Minister or the Portfolio Minister in respect of an investigation or report under this Act.

***Division 2—Membership of Commission*****Members of Commission**

15—(1) On the recommendation of the Minister, the Governor may appoint—

- (a) a person to be the Commissioner; and
- (b) one or more persons to be Assistant Commissioners.

(2) An instrument of appointment of an Assistant Commissioner is to specify the monopoly provider in respect of which the appointment is made.

(3) The Commissioner and Assistant Commissioners are members of the Commission.

(4) The Minister must not make a recommendation for an appointment of a person as Commissioner unless—

- (a) the Minister is satisfied that the person has knowledge of, or experience in, industry, commerce, economics, law or public administration; and
- (b) a majority of the Ministers of the Crown approve the making of the recommendation.

(5) The Minister must not make a recommendation for an appointment of a person as Assistant Commissioner unless—

- (a) the Minister is satisfied that the person—
  - (i) has knowledge of the activities of the monopoly provider in respect of which the appointment is to be made; and
  - (ii) has experience in industry, commerce, economics, law or public administration; and
- (b) the Portfolio Minister agrees to the making of the recommendation.

(6) Schedule 2 has effect with respect to the members.

### **Constitution of Commission**

**16—(1)** For the purposes of conducting and reporting on an investigation into the pricing policies of a monopoly provider specified in Part 1 of Schedule 1 in respect of a monopoly service and all related matters, the Commission is constituted by not less than 2 members, being—

- (a) the Commissioner; and
- (b) all Assistant Commissioners appointed in respect of that monopoly provider.

(2) For the purposes of conducting and reporting on an investigation into the pricing policies of a monopoly provider which is not specified in Part 1 of Schedule 1 in respect of a monopoly service and all related matters, the Commission is constituted by—

- (a) the Commissioner; and
- (b) if one or more Assistant Commissioners are appointed in respect of that monopoly provider, all the Assistant Commissioners so appointed.

(3) For any purpose not referred to in subsection (1) or (2), the Commission is constituted by the Commissioner.

(4) Schedule 3 has effect with respect to the meetings of the Commission when it is constituted by more than one member.

### **Acting Commissioner**

**17—(1)** For the purposes of this section—

(a) the Commissioner is absent if he or she—

(i) is absent from duty; or

(ii) is disqualified under section 18 (1) (b) from taking part in a consideration of, or the making of a decision in relation to, any matter; or

(iii) is otherwise unable to perform the functions of the office of Commissioner; and

(b) there is a vacancy in the office of Commissioner if the Commissioner has completed the term of his or her appointment, died, resigned or been removed from office and the next Commissioner has not yet been appointed under section 15.

(2) On the recommendation of the Minister, the Governor—

(a) may appoint a person to act as Commissioner during any or every period during which the Commissioner is absent; or

(b) may appoint a person to act as Commissioner for the period, not exceeding 6 months, specified in the instrument of appointment if there is a vacancy in the office of Commissioner.

(3) The Minister must not make a recommendation for an appointment of a person to act as Commissioner unless—

(a) the Minister is satisfied that the person has knowledge of, or experience in, industry, commerce, economics, law or public administration; and

(b) the majority of the Ministers of the Crown agree to the making of the recommendation.

(4) The appointment of a person under subsection (2) is subject to, and has effect in accordance with, the terms and conditions (including remuneration and allowances) specified in the instrument of appointment.

(5) If a vacancy occurs in the office of Commissioner while a person appointed under subsection (2) (a) is acting as Commissioner, that person may continue to act as Commissioner until the first of the following things happens:—

- (a) the period of 6 months after the day on which the vacancy occurs ends; or
- (b) the Governor appoints a Commissioner under section 15.

(6) Anything done by or in relation to a person purporting to act as Commissioner is not invalid merely because—

- (a) there is a defect or irregularity in relation to the appointment of that person; or
- (b) the occasion for the appointment of that person has not arisen; or
- (c) the appointment of that person has ceased to have effect; or
- (d) the occasion for that person to act as Commissioner has not arisen or has ceased.

(7) While a person is acting as Commissioner, that person is taken to be the Commissioner.

### **Conflict of interest**

**18—(1)** If a member has a direct or indirect interest (pecuniary or otherwise) in, or holds an office or property whereby duties are or might be created that conflict or might reasonably be expected to conflict with the performance and exercise of his or her functions or powers in relation to, a matter being or about to be considered by the Commission, that member—

- (a) must notify the Minister and the Portfolio Minister, in writing, of that interest or the holding of that office or property as soon as practicable after the relevant facts have come to the member's knowledge; and
- (b) must not take part in any consideration of, or the making of a decision in relation to, that matter unless the Minister and the Portfolio Minister approve otherwise, in writing.

Penalty: Fine not exceeding 50 penalty units.

(2) Subsection (1) does not apply in respect of an interest that consists only of the receipt of a service that—

- (a) is also available to members of the public; and
- (b) is made available on the same terms as apply to members of the public.

(3) The Minister must make a recommendation under section 15 for the appointment of another Assistant Commissioner in respect of a monopoly provider specified in Part 1 of Schedule 1 if—

- (a) an Assistant Commissioner is disqualified under subsection (1) (b); and
- (b) immediately before the disqualification the Commission was constituted only by the Commissioner and the Assistant Commissioner who is disqualified.

(4) During the disqualification under subsection (1) (b) of an Assistant Commissioner who was appointed in respect of a monopoly provider specified in Part 1 of Schedule 1, the Commission is constituted as follows:—

- (a) by the Commissioner and one or more new Assistant Commissioners appointed under section 15 on the recommendation of the Minister made as required by subsection (3) of this section if, immediately before the disqualification, the Commission was constituted only by the Commissioner and the Assistant Commissioner who is disqualified;
- (b) by the Commissioner and the remaining Assistant Commissioners who are not disqualified if, immediately before the disqualification, the Commission was constituted by the Commissioner, the Assistant Commissioner who is disqualified and one or more other Assistant Commissioners.

(5) During the disqualification under subsection (1) (b) of an Assistant Commissioner who was appointed in respect of a monopoly provider that is not specified in Part 1 of Schedule 1, the Commission is constituted by the Commissioner and the remaining Assistant Commissioners who are not disqualified (if any).

(6) A contravention of subsection (1) does not invalidate any act or decision of the Commission.



*Division 3—Staff, assistance and facilities***Staff of Commission**

19—(1) The Commission may arrange with the Secretary of the Department for the services of persons employed in the Department to be made available to enable the Commission to perform and exercise its functions and powers.

(2) On the written request of the Commission, the Secretary of the Department may arrange with a Head of an Agency for the services of a person employed in that Agency, or with an employer for the services of a person employed by that employer, to be made available to the Commission for the purpose of enabling the Commission to perform and exercise its functions and powers.

(3) An employee, within the meaning of the *Tasmanian State Service Act 1984*, made available under subsection (1) or (2) may serve the Commission in conjunction with his or her position or office under that Act.

(4) All expenses associated with the use by the Commission of the services of a person referred to in subsection (1) or (2) are to be met by the Commission.

**Assistance and facilities**

20—(1) The Commission may arrange with one or more of the following persons to provide assistance to it to enable it to perform and exercise its functions and powers:—

(a) a Head of an Agency;

(b) a Government Business Enterprise if the Minister and the Minister administering that Government Business Enterprise approve in writing;

(c) a body, or the governing authority of a body, that has price-fixing functions or functions similar to those of the Commission.

(2) The Commission may make arrangements with one or more of the following persons for facilities to be provided to it to enable it to perform and exercise its functions and powers:—

(a) the Secretary of the Department;

- (b) a Head of an Agency;
- (c) a Government Business Enterprise.

#### *Division 4—Finances of Commission*

#### **Funds**

- 21—(1)** The funds of the Commission consist of—
- (a) all money received by it in the course of performing its functions and exercising its powers, other than money received under section 23; and
  - (b) money appropriated by Parliament for the purposes of the Commission; and
  - (c) all other money received by it from any other source.
- (2)** The funds of the Commission are to be applied—
- (a) in the payment or discharge of the expenses, charges and obligations incurred or undertaken by the Commission in the performance of its functions and the exercise of its powers; and
  - (b) in the payment of the remuneration and allowances of the Commissioner and Assistant Commissioners; and
  - (c) in meeting the expenses incurred by the Commission in respect of—
    - (i) the use of the services of persons referred to in section 19 (1) or (2); and
    - (ii) the assistance provided under section 20 (1); and
    - (iii) the use of facilities referred to in section 20 (2); and
  - (d) in the payment of allowances and expenses under section 29 (2); and
  - (e) in any other manner authorised or required under this or any other Act.

#### **Bank accounts**

- 22—(1)** The Commission may open and maintain such bank accounts as it considers necessary.

(2) Subject to section 23 (3), any money received by the Commission is to be paid into a bank account established under subsection (1).

### Costs of investigations

23—(1) A monopoly provider that supplies a monopoly service which is the subject of an investigation is liable for the whole or part of the reasonable expenses incurred by the Commission arising from the conduct and reporting of that investigation (including expenses incurred in making a final report available to the public) as jointly determined by the Minister and Portfolio Minister by written notice provided to the Commission and the monopoly provider.

(2) The Commission may recover the expenses referred to in subsection (1) as a debt due to it in a court of competent jurisdiction.

(3) Money received by the Commission from a monopoly provider in respect of the expenses referred to in subsection (1) is to be paid into the Consolidated Fund within 7 days after receiving it.

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## PART 3

### INVESTIGATIONS

#### *Division 1—Commencing an investigation*

#### Requirement to investigate

24—(1) In this section—

“initial requirement day” means—

- (a) in the case of a monopoly provider specified in Schedule 1 and a prescribed monopoly service, the day specified in column 2 of that Schedule opposite that monopoly provider; and

- (b) in the case of a monopoly provider and a service declared to be a monopoly service under section 6 which is not a prescribed monopoly service, the day on which the period of 3 months after the declaration takes effect ends;

**“prescribed monopoly service”** means a service provided by a monopoly provider specified in Schedule 1 which is declared under section 6 to be a monopoly service before the day specified in column 2 of that Schedule opposite that monopoly provider.

(2) The Minister, in writing provided to the Commission, must require the Commission to conduct an investigation into the pricing policies of a monopoly provider specified in Schedule 1 in respect of any prescribed monopoly service supplied by the monopoly provider and specified in the requirement—

- (a) on or before the initial requirement day; and  
(b) within 3 years after last making a requirement under this section.

(3) On or before the initial requirement day, the Minister, in writing provided to the Commission, must require the Commission to conduct an investigation into the pricing policies of a monopoly provider (whether or not specified in Schedule 1) in respect of any monopoly service specified in the requirement and which is not a prescribed monopoly service.

(4) At any time, in writing provided to the Commission, the Minister may require the Commission to conduct an investigation into the pricing policies of a monopoly provider (whether or not specified in Schedule 1) in respect of any monopoly service specified in the requirement.

(5) A requirement under subsection (2), (3) or (4)—

- (a) must contain the terms of reference for the investigation; and  
(b) may be made in respect of one or more monopoly providers and one or more monopoly services; and  
(c) may specify a contract or class of contract the terms of which the Commission must not investigate in relation to prices or publish to any person.

(6) The Minister may amend, by written notice provided to the Commission and the monopoly provider, a requirement under subsection (2), (3) or (4) if the Commission has not made a final report in respect of the investigation.

(7) Before providing a requirement under subsection (2), (3) or (4) or amending a requirement under subsection (6), the Minister must first obtain the agreement of the Portfolio Minister to the provision or amendment of the requirement.

(8) The Commission must comply with a requirement, or an amended requirement, made under this section.

### Terms of reference

25—The terms of reference must—

- (a) broadly describe the functions and other activities of the monopoly provider; and
- (b) specify the pricing policies and the monopoly service or part of a monopoly service to be investigated; and
- (c) specify the date by which the Commission must provide its final report in respect of the investigation; and
- (d) specify the matters not referred to in section 31 which the Commission must take into account when conducting the investigation; and
- (e) if the Minister and the Portfolio Minister consider it appropriate, specify which of the matters referred to in paragraph (d) are to be considered by the Commission to be of more importance than any other such matters; and
- (f) require the Commission to make a recommendation in relation to appropriate maximum prices to be chargeable in respect of the monopoly service supplied by the monopoly provider during a period of 3 years after the completion of the final report; and
- (g) specify whether the Commission must make a draft report in respect of the investigation available during the conduct of the investigation.

**Notice of investigation**

26—(1) On receipt of a requirement to conduct an investigation, the Commission must give notice of the investigation—

- (a) in writing provided to the monopoly provider; and
- (b) in daily newspapers published and circulating generally in Tasmania as the Commission considers appropriate.

(2) A notice—

(a) must specify—

- (i) the purpose of the investigation; and
- (ii) the period during which the investigation is to be held; and
- (iii) the period within which, and the form in which, submissions may be made to the Commission; and
- (iv) whether any hearings are to be held; and
- (v) the matters that the Commission would like submissions to address; and

(b) must include the terms of reference.

(3) If the Minister amends a requirement to conduct an investigation, the Commission must give notice of that amendment—

- (a) in writing provided to the monopoly provider; and
- (b) in daily newspapers published and circulating generally in Tasmania as the Commission considers appropriate.

***Division 2—Conduct of investigation*****Conduct of investigation**

27—(1) The Commission must conduct an investigation in accordance with a requirement provided under section 24 and the terms of reference.

(2) Subject to this Act, the Commission may conduct an investigation in such manner as it considers appropriate and, in particular, may—

- (a) receive written and oral submissions; and

- (b) consult with any person; and
- (c) hold hearings and seminars; and
- (d) conduct workshops; and
- (e) determine whether any person wishing to appear before the Commission may be represented by another person.

(3) In conducting an investigation, the Commission is not bound by rules of evidence but may inform itself of any matter in any manner it considers appropriate.

### Hearings

**28**—(1) Before holding a hearing, the Commission must give reasonable notice of the hearing in daily newspapers published and circulating generally in Tasmania as the Commission considers appropriate.

(2) The notice of a hearing must specify—

- (a) the purpose of the hearing; and
- (b) the time and place at which the hearing is to be held.

(3) A hearing is to be held in public.

(4) Notwithstanding subsection (3), if the Commission is satisfied that it would be in the public interest to do so or that evidence to be presented is, or is likely to be, of a confidential or commercially sensitive nature, the Commission must—

- (a) direct that a hearing or part of a hearing is to take place in private and give directions as to the persons who may be present; and
- (b) give directions prohibiting or restricting the publication of evidence given or documents produced at the hearing.

(5) A person must not contravene a direction given under subsection (4) (b).

Penalty: Fine not exceeding 100 penalty units or a term of imprisonment not exceeding 6 months, or both.

(6) The *Freedom of Information Act 1991* does not apply in respect of—

- (a) evidence and documents in respect of which a direction under subsection (4) (b) has been made; and
- (b) records of the giving or production of such evidence and documents.

### **Requiring person to give evidence or provide document**

**29—(1)** For the purposes of an investigation, the Commission may require a person, by written notice provided to the person, to do any one or more of the following:—

- (a) attend before the Commission and answer questions which, in the opinion of the Commission, are relevant to the investigation;
- (b) provide to the Commission, in the manner specified in the notice, any document specified in the notice which is in the person's possession or control and which, in the opinion of the Commission, is relevant to the investigation;
- (c) provide to the Commission, in the manner specified in the notice, any other information specified in the notice which, in the opinion of the Commission, is relevant to the investigation.

(2) A person who attends before the Commission under a requirement referred to in subsection (1) (a) may, at the Commission's discretion, be paid by the Commission—

- (a) the prescribed allowances and expenses; or
- (b) if the regulations do not prescribe any allowances and expenses, such allowances and expenses as the Minister determines by notice published in the *Gazette*.

(3) Notwithstanding subsection (1), the Commission may not require a person—

- (a) to answer a question, or provide information, if to do so would require the person to divulge information contained in or relating to a Cabinet record; or
- (b) to provide to the Commission a Cabinet record.



**Use of documents or other information****30—(1) The Commission—**

- (a) may examine, take possession of, make copies of and take extracts from any document provided under a requirement referred to in section 29 (1) (b) or (c); and
- (b) may retain that document for so long as is necessary for the purposes of the investigation; and
- (c) must allow a person who would be entitled to inspect the document if it were not in the possession of the Commission to inspect it, make a copy of it or take an extract from it at any reasonable time.

(2) The Commission may give directions prohibiting or restricting the publication of any answer, document or other information provided to it under a requirement referred to in section 29 (1), a part of any such answer, document or other information or a copy of or extract from any such answer, document, other information or part.

(3) A person must not contravene a direction given under subsection (2).

Penalty: Fine not exceeding 100 penalty units or a term of imprisonment not exceeding 6 months, or both.

(4) The *Freedom of Information Act 1991* does not apply in respect of—

- (a) any answer, document, other information or part of any answer, document or other information in respect of which a direction under subsection (2) has been given; and
- (b) records relating to the production of any such answer, document, other information or part.

(5) The Commission may make any answer, document or other information provided to it under a requirement referred to in section 29 (1) or part of any such answer, document or other information available to any person as the Commission considers appropriate except where—

- (a) a direction in respect of the answer, document, other information or part has been given under subsection (2) and its provision to that person would contravene the direction; or
- (b) the answer, document, other information or part contains information which is exempt information under the *Freedom of Information Act 1991*.

### **Matters to be considered**

**31**—In an investigation, the Commission must consider the following:—

- (a) the cost of supplying or providing the monopoly service;
- (b) any interstate or international benchmarks for prices, costs, revenues and return on assets in bodies supplying a service similar to the monopoly service;
- (c) the need to protect consumers from the adverse effects of the exercise of monopoly power by a monopoly provider in relation to prices, pricing policies and standards of service in respect of the supply of the monopoly service;
- (d) where appropriate, the need for a reasonable return to the State (including the payment of dividends) on the assets of a monopoly provider;
- (e) the need for efficiency in the supply of the monopoly service for the purpose of benefiting the public interest through a reduction in the cost of supplying the monopoly service;
- (f) the effects of inflation;
- (g) the need for the monopoly provider to be financially viable;
- (h) the impact on pricing policies of any borrowing, capital, dividend and tax equivalent obligations of the monopoly provider, including obligations to renew or increase assets;

- (i) any ministerial charter that applies to the monopoly provider;
- (j) any community service obligations of the monopoly provider;
- (k) the quality of the supply of the monopoly service;
- (l) the matters set out in the terms of reference;
- (m) any other matter the Commission considers relevant.

### Limitations on investigation and reporting

32—(1) In this section, “**contestable customer**” and “**electricity entity**” have the same meanings as in the *Electricity Supply Industry Act 1995*.

(2) The Commission must not investigate—

- (a) the terms of a contract, or the terms of a contract which is a member of a class of contracts, if that investigation is prohibited by the requirement to investigate under section 24; or
- (b) the terms of a contract entered into by an electricity entity with a contestable customer under section 40 of the *Electricity Supply Industry Act 1995*.

(3) Except as authorised or required by law, the Commission, a member or an employee must not publish or otherwise divulge a document, part of a document or other information that came into its, his or her possession as a result of the Commission performing or exercising its functions or powers if that document, part or information is or contains—

- (a) a contract or the terms of a contract referred to in subsection (2) (a) or (b); or
- (b) information which, if published, could cause damage to the commercial interests of a monopoly provider.

(4) The *Freedom of Information Act 1991* does not apply in respect of—

- (a) a document, part of a document or information the publication of which is prohibited by subsection (3); and
- (b) records of the giving, production or obtaining of that document, part of a document or information.

**Offences**

**33**—(1) A person must not—

- (a) fail to comply with a requirement made under section 29 (1); or
- (b) provide to the Commission oral or written information or a document that the person knows or believes to be false or misleading in a material particular without informing the Commission of that knowledge or belief; or
- (c) hinder, obstruct or interfere with the Commission, the Commissioner, an Assistant Commissioner or any other person in the performance and exercise of its, his or her functions and powers under this Act; or
- (d) take, or threaten to take, any action that detrimentally affects the employment of another person because that person has assisted, is assisting or intends to assist the Commission in an investigation.

Penalty: Fine not exceeding 500 penalty units or a term of imprisonment not exceeding 6 months, or both.

(2) Notwithstanding subsection (1), a person is not required to comply with a requirement made under section 29 (1) if to do so would tend to incriminate him or her.

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**PART 4****ACTION FOLLOWING INVESTIGATION****Draft report**

**34**—(1) If the terms of reference requires that a draft report be made available, the Commission must, at an appropriate time during an investigation—

- (a) provide a copy of the draft report to the Minister, the Portfolio Minister and the monopoly provider specified in the terms of reference; and
- (b) make copies of the draft report available for purchase by the public.

(2) Even though this Act or the terms of reference does not require the Commission to make a draft report available—

(a) the Commission may—

- (i) provide a copy of a draft report to the Minister, the Portfolio Minister and the monopoly provider to which the investigation relates; and
- (ii) make copies of that draft report available for purchase by the public if the Minister and the Portfolio Minister agree in writing; and

(b) the Commission must provide a copy of a draft report to the Minister, the Portfolio Minister and the monopoly provider if the Minister and Portfolio Minister, jointly, require it to do so by written notice provided to the Commission.

(3) A draft report must not contain any matter that is not supported by every member that constitutes the Commission in respect of the monopoly provider supplying the monopoly service which is the subject of the investigation.

(4) If a draft report is provided or made available to any person, the Commission must—

- (a) allow persons to whom the draft report has been provided or made available to make submissions in respect of the report to the Commission; and
- (b) take any such submissions into consideration before making a final report.

### Final report

35—(1) The Commission must, by the date specified in the terms of reference—

- (a) prepare a final report in respect of the investigation; and
- (b) provide a copy of the final report to the Minister, the Portfolio Minister and the monopoly provider supplying the monopoly service which is the subject of the investigation.

(2) The final report must—

- (a) be consistent with this Act and the terms of reference; and

- (b) make a recommendation in relation to the appropriate maximum prices chargeable by the monopoly provider in respect of the monopoly service which is the subject of the investigation during the period of 3 years after completion of the report; and
  - (c) include any views or statements of a member that are contrary to the views and statements of the Commission.
- (3) Within 20 sitting days after receiving a final report, the Portfolio Minister must lay a copy of the final report before each House of Parliament.
- (4) The Commission must ensure that copies of a final report are available for purchase by members of the public—
- (a) as soon as practicable after it is laid before a House of Parliament; or
  - (b) if a copy of the final report cannot be laid before either House of Parliament within 30 days after it is received by the Portfolio Minister because neither House is sitting, within that 30 day period.

#### Order made in certain cases after final report

36—(1) In this section—

“prescribed monopoly provider” means—

- (a) a monopoly provider providing a monopoly service in respect of which—
  - (i) the Portfolio Act, or an Act other than this Act, requires or authorises the setting of prices or maximum prices by a statutory rule to which section 47 (3) of the *Acts Interpretation Act 1931* applies (whether by virtue of that Act or another Act); or
  - (ii) an order has been made under subsection (2); or
- (b) a monopoly provider declared to be a prescribed monopoly provider by the Minister and the Portfolio Minister, jointly, by notice published in the *Gazette*—

but does not include a monopoly provider which has been declared under subsection (7) not to be a prescribed monopoly provider;

“statutory rule” has the same meaning as in the *Rules Publication Act 1953*.

(2) Within 60 days after receiving a copy of a final report in respect of a monopoly service supplied by a prescribed monopoly provider, the Portfolio Minister must—

- (a) provide a copy of the recommendations contained in the final report to each Minister of the Crown; and
  - (b) taking into consideration those recommendations and any comments received from any Minister of the Crown and the monopoly provider in relation to those recommendations, make an order specifying the maximum prices which may be charged by the prescribed monopoly provider in respect of that monopoly service during the period of 3 years after the order takes effect.
- (3) An order under subsection (2)—
- (a) must repeal, rescind, revoke or amend any other statutory rule that prescribes, or relates to the setting or determination of, the price chargeable by the prescribed monopoly provider for the monopoly service in respect of which the order is made to ensure that the only statutory rule setting or determining, or relating to the setting or determination of, the maximum price chargeable is the order itself; and
  - (b) must amend an Act, other than this Act, that requires or authorises the prescribing, setting or determination, by statutory rule, of the price or maximum price chargeable by the monopoly provider for the monopoly service in respect of which the order is made to remove that requirement or authorisation from that Act; and
  - (c) takes effect on the 61st day after notification of its making is published in the *Gazette*.

(4) Section 47 (3), (3A), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* applies to an order under subsection (2) as if it were regulations within the meaning of that Act.

(5) The Treasurer may not, under section 3 (2) of the *Subordinate Legislation Act 1992*, declare an order under subsection (2) of this section to be subordinate legislation for the purposes of that Act.

(6) An order under subsection (2) may be amended at any time even though an investigation with respect to the monopoly service to which the order relates has not been conducted since the making of the order.

(7) At any time, the Minister and the Portfolio Minister jointly, by notice published in the *Gazette*, may declare that a monopoly provider referred to in paragraph (a) or (b) of the definition of “prescribed monopoly provider” in subsection (1) is not a prescribed monopoly provider.

### **Action by monopoly provider following order under section 36**

37—After an order under section 36 (2) in respect of a monopoly service is made but before the day on which it takes effect, the monopoly provider to which the order relates must—

- (a) determine the price to be charged for, and pricing policy to be applicable to, the monopoly service on and after that day; and
- (b) obtain an approval for that price and pricing policy under section 39.

### **Action by Portfolio Minister where no order is made**

38—Within 60 days after receiving a copy of a final report in respect of a monopoly service supplied by a monopoly provider that is not a prescribed monopoly provider within the meaning of section 36, the Portfolio Minister must—

- (a) provide a copy of the recommendations contained in the final report to each Minister of the Crown; and
- (b) taking into consideration those recommendations and any comments received from any Minister of the Crown and the monopoly provider in relation to those recommendations, determine the maximum prices which may be charged by the monopoly provider in respect of that monopoly service during the period of 3 years after the making of that determination; and
- (c) take such action as is necessary to ensure that the monopoly provider acts in accordance with that determination.



## Monitoring of prices

**39**—(1) If an order in respect of a monopoly service has been made under section 36 (2), the monopoly provider must not determine or amend its prices for the monopoly service or its pricing policies in respect of the monopoly service except where it has the written approval of the Commission to do so.

(2) The Commission—

- (a) must approve the determination or amendment by a monopoly provider of its prices for a monopoly service or its pricing policies in respect of a monopoly service if it is satisfied that the prices or policies as determined or amended would be consistent with the order made under section 36 (2) in respect of the monopoly service; and
- (b) must not approve such a determination or amendment unless it is so satisfied.

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## PART 5

### MISCELLANEOUS

## Annual report

**40**—(1) In respect of each financial year the Commission must prepare a report which includes—

- (a) a report on the performance and exercise of the Commission's functions and powers; and
- (b) the financial statements of the Commission; and
- (c) the Auditor-General's report on those financial statements; and
- (d) any information the Minister requires by written notice provided to the Commission to be included; and
- (e) any other information the Commission considers appropriate to be included.

(2) The financial statements included in the annual report must—

- (a) be prepared and certified as specified in a direction given under subsection (3); and
- (b) present fairly—
  - (i) the financial transactions of the Commission during the financial year to which the report relates; and
  - (ii) the state of affairs of the Commission at the end of that financial year; and
- (c) comply with any other direction given under subsection (3).

(3) The Minister may give written directions to the Commission in respect of the form, contents, preparation, certification and provision of its financial statements.

(4) Directions under subsection (3) may adopt, wholly or partly, with or without modification and either specifically or by reference, any of the Treasurer's Instructions made under the *Financial Management and Audit Act 1990*.

(5) The Commission must provide a copy of the annual report to the Minister so as to enable it to be tabled in accordance with section 41.

(6) The annual report may be combined with a report made under section 33AB of the *Tasmanian State Service Act 1984*.

### Tabling of annual report

**41—(1)** By 30 November in each year the Minister must cause a copy of the annual report to be laid before each House of Parliament.

(2) If the Minister is unable to comply with subsection (1) because a House of Parliament is not sitting on 30 November in any year, the Minister must—

- (a) on or before that day, provide copies of the annual report to the clerk of that House; and
- (b) on or before that day, make copies of the annual report available for purchase by the public; and
- (c) within the first 7 sitting days after that day, cause copies of the annual report to be laid before that House.

### Service of documents

42—A document is effectively provided, served or given to the Commission if it is—

- (a) left at, or sent by post to, the Department or the office or address of the Commission; or
- (b) sent by way of facsimile transmission to the facsimile number of the Department or the Commission.

### Amendment of Schedule 1

43—(1) The Governor, by order, may—

- (a) repeal Schedule 1; or
- (b) repeal Schedule 1 and substitute another Schedule for it; or
- (c) amend Schedule 1.

(2) Section 47 (3), (3A), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* applies to an order under this section as if the order were regulations within the meaning of that Act.

(3) The Treasurer may not, under section 3 (2) of the *Subordinate Legislation Act 1992*, declare an order under this section to be subordinate legislation for the purposes of that Act.

### Regulations

44—(1) The Governor may make regulations for the purposes of this Act.

(2) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

(3) The regulations may—

- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
- (b) in respect of such an offence, provide for the imposition of a fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

(4) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Minister.

(5) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(6) A provision referred to in subsection (5) may take effect on and from the day on which this Act commences or a later day.

### **Administration of Act**

**45**—Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990*—

- (a) the administration of this Act is assigned to the Treasurer; and
  - (b) the Department responsible to the Treasurer in relation to the administration of this Act is the Department of Treasury and Finance.
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**SCHEDULE 1**

Section 3

**CERTAIN MONOPOLY PROVIDERS****PART 1**


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COLUMN 1:  
MONOPOLY PROVIDER

COLUMN 2:  
DATE OF FIRST  
REQUIREMENT TO  
INVESTIGATE

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Hydro-Electric Corporation	31 January 1996
Metropolitan Transport Trust	30 September 1996
Motor Accidents Insurance Board	31 May 1997

**PART 2**


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COLUMN 1:  
MONOPOLY PROVIDER

COLUMN 2:  
DATE OF FIRST  
REQUIREMENT TO  
INVESTIGATE

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Hobart Regional Water Board	31 January 1998
North West Regional Water Authority	31 July 1998

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**SCHEDULE 2**

## Section 15 (6)

**MEMBERS OF COMMISSION****Term of office**

1—(1) The Commissioner holds office for such term, not exceeding 5 years, as is specified in the instrument of appointment.

(2) An Assistant Commissioner holds office—

(a) for such term, not exceeding 6 months, as is specified in the instrument of appointment; or

(b) if that term expires before the Minister and the Portfolio Minister are provided with the final report relating to an investigation in respect of which the Assistant Commissioner is a constituent member of the Commission, for such period as is necessary to undertake and complete all matters relating to the investigation and final report.

(3) A person is not eligible to be appointed as Commissioner or Assistant Commissioner if he or she is 72 years of age or older.

**Conditions of appointment**

2—(1) A member is entitled to be paid the remuneration and allowances specified in the instrument of appointment.

(2) A member holds office on the conditions specified in the instrument of appointment.

**Member's entitlement to hold other office**

3—(1) Except with the written permission of the Minister, a member may not hold another office or position in respect of which he or she receives remuneration.

(2) Despite subclause (1), a member may hold a position or office under the *Tasmanian State Service Act 1984* in conjunction with the office of member.

***Tasmanian State Service Act 1984* inapplicable**

4—The *Tasmanian State Service Act 1984* does not apply in relation to a member.

**Leave of absence**

5—The Minister may grant leave of absence to a member on such conditions as the Minister considers appropriate.

**Resignation**

6—A member may resign by signed notice given to the Minister.

**Removal of member**

7—On the recommendation of the Minister, the Governor may remove a member from office if—

- (a) the member is absent from duty for more than 13 consecutive days, or for more than a total of 28 days in any period of 12 months—
  - (i) otherwise than in accordance with the instrument of appointment; or
  - (ii) without leave of absence granted under clause 5; or
- (b) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration or estate for the benefit of creditors; or
- (c) the Governor considers that the member is physically or mentally incapable of continuing as a member; or
- (d) the Governor considers that the member is unable to perform adequately or competently the functions of the member's office; or
- (e) the member is convicted, in Tasmania or elsewhere, of an offence punishable by imprisonment for a period of 6 or more months; or
- (f) the Governor is satisfied that the member has contravened clause 3 or section 18 (1).

**Defect does not invalidate appointment**

**8**—An appointment of a person as Commissioner or Assistant Commissioner is not invalid merely because of a defect or irregularity in relation to the appointment.

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**SCHEDULE 3**

## Section 16 (4)

**MEETINGS OF COMMISSION****Convening of meetings**

1—(1) Subject to subclause (2), meetings of the Commission are to be held at the times and places determined by the Commission.

(2) The Commissioner—

- (a) must convene a meeting within 30 days after receiving a requirement to conduct an investigation under section 24; and
- (b) may convene a meeting at any time.

**Quorum and voting at meetings**

2—At a meeting of the Commission—

- (a) if the Commission is constituted by 2 members, those 2 members constitute a quorum; and
- (b) if the Commission is constituted by 3 or more members, a quorum is constituted by that number of members being not less than half the total number of members constituting the Commission, as is determined by the Commission; and
- (c) a question is decided by a majority of votes of the members present and voting; and
- (d) the Commissioner has a casting vote if there is an equality of votes.

**Conduct of meetings**

3—(1) Subject to this Act, the Commission may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.

(2) The Commission may permit members to participate in a particular meeting or all meetings by—

- (a) telephone; or
- (b) closed-circuit television; or
- (c) any other means of communication.

(3) A member who participates in a meeting under a permission granted under subclause (2) is present at the meeting.

(4) The Commission may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

### **Resolutions without meetings**

4—(1) If at least that number of members that would constitute a quorum sign a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms is taken to have been passed at a meeting of the Commission held on the day on which the document is signed or, if the members do not sign it on the same day, on the day on which the last of the members signs the document.

(2) If a resolution is taken to have been passed under subclause (1), each member is to be—

(a) advised immediately of the matter; and

(b) given a copy of the terms of the resolution.

(3) For the purposes of subclause (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members, is taken to constitute one document.

### **Minutes**

5—The Commission is to keep minutes of its proceedings.

### **Validity of proceedings, &c.**

6—All acts and proceedings of the Commission or of any person acting pursuant to any direction of the Commission are, notwithstanding the subsequent discovery of any defect in the appointment of a member or that any person was disqualified from acting as, or incapable of being, a member, as valid as if the member had been duly appointed and was qualified to act as, or capable of being, a member and as if the Commission had been fully constituted.

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*[Second reading presentation speech made in:—  
House of Assembly on 29 June 1995  
Legislative Council on 24 August 1995]*

