

TASMANIA

GOVERNMENT PRICES OVERSIGHT AMENDMENT BILL 2007

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**GOVERNMENT PRICES OVERSIGHT
AMENDMENT BILL 2007**

*(Brought in by the Premier, the Honourable Paul Anthony
Lennon)*

A BILL FOR

An Act to amend the *Government Prices Oversight Act 1995*

Be 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:

1. Short title

This Act may be cited as the *Government Prices Oversight Amendment Act 2007*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Principal Act

In this Act, the *Government Prices Oversight Act 1995** is referred to as the Principal Act.

*No. 48 of 1995

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4. Long title amended

The long title of the Principal Act is amended by inserting **“to provide for inquiries into matters relating to or affecting the pricing policies of certain Government Agencies, Government Business Enterprises, Local Government Bodies, statutory authorities and State-owned companies, whether or not they are monopoly or near monopoly providers of services and goods,”** after **“goods,”**.

5. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “community service obligation”:

“complaint investigation” means an investigation into a complaint commenced by the Commission under section 39J;

- (b) by inserting the following definition after the definition of “Government Business Enterprise”:

“inquiry” means an inquiry under Part 4A;

- (c) by inserting the following paragraph after paragraph (a) in the definition of “Local Government Body”:

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- (ab) a single authority, within the meaning of the *Local Government Act 1993*; and
 - (d) by omitting “column 1 of Parts 1 and 2 of Schedule 1” from paragraph (a) of the definition of “monopoly provider” and substituting “column 2 of Schedule 1”;
 - (e) by inserting “non-prescribed monopoly service or a prescribed” after “be a” in the definition of “monopoly service”;
 - (f) by inserting the following definitions after the definition of “municipal area”:

“national competition policy competitive neutrality principles” means –

- (a) the principles set out in clause 3 of the agreement called the “Competition Principles Agreement” entered into by the governments of the Commonwealth and each State and Territory on 11 April 1995, as amended or substituted from time to time; and
- (b) any policies adopted by the State for the purpose of complying with or giving effect to the

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principles referred to in
paragraph (a);

“non-prescribed monopoly service”
means a service declared under
section 6 to be a non-prescribed
monopoly service;

- (g) by inserting the following definition after
the definition of “prescribed body”:

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

- (h) by inserting the following definition after
the definition of “pricing policies”:

“pricing policy investigation” means
an investigation that the
Commission is required to
undertake by the Minister under
section 24 in respect of a
monopoly provider;

- (i) by omitting “or gas” from paragraph (a)
of the definition of “service”.

**6. Section 6 amended (Declaration of monopoly
service)**

Section 6 of the Principal Act is amended as
follows:

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- (a) by omitting from subsection (1) “monopoly service” and substituting “non-prescribed monopoly service, or a prescribed monopoly service,”;
- (b) by omitting subsection (2) and substituting the following subsections:
 - (2) Despite subsection (1), the Minister may not declare a service to be a prescribed monopoly service under that subsection unless the service is provided by a monopoly provider specified in Schedule 1.
 - (2A) A declaration under subsection (1) may specify the day by which the Minister must require the Commission to conduct its first investigation under section 24(2) or (3) into the pricing policies of a monopoly provider in respect of the service which is the subject of the declaration.
- (c) by inserting the following subsections after subsection (3):
 - (4) By notice published in the *Gazette*, the Minister may amend or revoke a declaration made under subsection (1) if the Portfolio Minister of the prescribed body which is the

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subject of the declaration has agreed to it.

- (5) A declaration under subsection (1) and an amendment or revocation of such a declaration are not statutory rules for the purposes of the *Rules Publication Act 1953*.

7. Section 10 amended (Functions of Commission)

Section 10 of the Principal Act is amended as follows:

- (a) by inserting in paragraph (a) “pricing policy” after “of”;
- (b) by inserting in paragraph (b) “pricing policy” after “each”;
- (c) by omitting paragraph (ba) and substituting the following paragraphs:
 - (ba) the conduct of inquiries as provided in Part 4A;
 - (bb) the provision of a final report in respect of each inquiry;
 - (bc) the conduct of complaint investigations as provided in Part 4B;

- (bd) if required by section 39O, the provision of a report in respect of a complaint investigation;

8. Section 11A substituted

Section 11A of the Principal Act is repealed and the following section is substituted:

11A. Special powers

The Commission has the power, and is taken to always have had the power, to act as a consultant or agent in respect of the monitoring of prices of petroleum products.

9. Section 14 amended (Commission not subject to Ministerial control)

Section 14 of the Principal Act is amended by omitting “an investigation” and substituting “a pricing policy investigation, inquiry, complaint investigation”.

10. Section 16 amended (Constitution of Commission)

Section 16 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “an investigation into the pricing policies of”

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and substituting “a pricing policy investigation relating to”;

- (b) by omitting from subsection (1) “matters where the monopoly provider is a Local Government Body or is specified in Part 1 of Schedule 1,” and substituting “matters,”;
- (c) by omitting subsection (2);
- (d) by omitting from subsection (3) “subsection (1) or (2),” and substituting “subsection (1),”.

11. Section 18 amended (Conflict of interest)

Section 18 of the Principal Act is amended as follows:

- (a) by omitting from subsection (3) “Part 1 of”;
- (b) by omitting from subsection (4) “Part 1 of”;
- (c) by omitting from subsection (5) “Part 1 of”.

12. Section 21 amended (Funds)

Section 21 of the Principal Act is amended as follows:

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- (a) by omitting from subsection (1)(a) “powers, other than money received under section 23” and substituting “powers”;
 - (b) by omitting subsection (2) and substituting the following subsections:
 - (2) The funds of the Commission are to be paid into an account in the Special Deposits and Trust Fund.
 - (3) Money standing to the credit of the account in the Special Deposits and Trust Fund may 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 –

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- (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.

13. Section 22 repealed

Section 22 of the Principal Act is repealed.

14. Section 23 amended (Costs of pricing policy investigations)

Section 23 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “an investigation” and substituting “a pricing policy investigation”;
- (b) by omitting from subsection (1A) “an investigation” first occurring and substituting “a pricing policy investigation”;
- (c) by omitting subsection (3).

15. Part 3: Heading amended

Part 3 of the Principal Act is amended by omitting “**INVESTIGATIONS**” from the heading to that Part and substituting “**PRICING POLICY INVESTIGATIONS**”.

16. Part 3, Division 1: Heading amended

Division 1 of Part 3 of the Principal Act is amended by omitting “*an*” from the heading to that Division and substituting “*a pricing policy*”.

17. Section 24 amended (Requirement to investigate)

Section 24 of the Principal Act is amended as follows:

- (a) by omitting subsections (1), (2) and (3) and substituting the following subsections:

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(1) In this section –

“affected Local Government Body”, in relation to a proposed investigation into the pricing policies of a monopoly provider in respect of a monopoly service (whether a prescribed monopoly service or non-prescribed monopoly service), means –

- (a) that monopoly provider if it is a Local Government Body; or
- (b) if that monopoly provider is a single authority, or joint authority, established under section 33 of the *Local Government Act 1993*, the Local Government Body or Local Government Bodies that so established the single authority or joint authority;

“initial requirement day”, in relation to a monopoly provider providing a monopoly service –

- (a) if the declaration under section 6 declaring a service to be a non-prescribed monopoly service or a prescribed monopoly service specifies the day by which the Minister must require the Commission to conduct its first investigation into the pricing policies of the monopoly provider in respect of that service under this section, means that day; and
- (b) if the declaration under section 6 declaring a service to be a non-prescribed monopoly service or a prescribed

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monopoly service does not specify such a day, means the last day of the period of 3 months after the declaration takes effect.

- (2) On or before the initial requirement day, the Minister 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 a monopoly service that is provided by that monopoly provider.
 - (3) At least 10 months before the expiration of an order under section 36 or a determination under section 38 in relation to a monopoly provider specified in Schedule 1, the Minister must require the Commission to conduct an investigation into the pricing policies of that monopoly provider in respect of each prescribed monopoly service supplied by the monopoly provider.
- (b) by omitting subsection (4A) and substituting the following subsection:

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(4A) Despite subsections (3) and (4), the Minister may not require the Commission to conduct a pricing policy investigation into the pricing policies of a monopoly provider that is a Local Government Body if –

- (a) an order under section 36 (the “original order”) or a determination under section 38 (the “original determination”) is in force in respect of a monopoly service provided by that monopoly provider; and
- (b) a purpose of the investigation is to determine whether the original order or original determination should be revoked and another order under section 36 or determination under section 38 be made that would be in force during the whole or any part of the period during which the original order or determination would have been in force had it not been revoked –

unless at least half of all affected Local Government Bodies have

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first agreed to the requirement
being made.

18. Section 25 amended (Terms of reference)

Section 25 of the Principal Act is amended as follows:

- (a) by inserting “for a pricing policy investigation” after “reference”;
- (b) by inserting the following paragraph after paragraph (e):
 - (ea) specify the length of the period for which any order under section 36 or determination under section 38 made in relation to a monopoly provider as a result of the investigation would be in force, being –
 - (i) in the case of a monopoly provider specified in Schedule 1, the length of the period specified in that Schedule in relation to that monopoly provider; or
 - (ii) in any other case, a length that does not exceed 5 years; and
- (c) by omitting from paragraph (f) “a period of 3 years after the completion of the

final report;” and substituting “the period for which any order under section 36 or determination under section 38 made as a result of the investigation would be in force;”.

19. Section 26 amended (Notice of pricing policy investigations)

Section 26 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “an investigation,” and substituting “a pricing policy investigation,”;
- (b) by inserting in subsection (2)(a)(i) “pricing policy” after “of the”;
- (c) by inserting in subsection (2)(a)(ii) “pricing policy” after “which the”;
- (d) by omitting from subsection (3) “an investigation,” and substituting “a pricing policy investigation,”.

20. Part 3, Division 2: Heading amended

Division 2 of Part 3 of the Principal Act is amended by inserting in the heading to that Division “*pricing policy*” after “*of*”.

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21. Section 27 amended (Conduct of pricing policy investigations)

Section 27 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “an investigation” and substituting “a pricing policy investigation”;
- (b) by omitting from subsection (2) “an investigation” and substituting “a pricing policy investigation”;
- (c) by omitting from subsection (3) “an investigation,” and substituting “a pricing policy investigation,”.

22. Section 29 amended (Requiring person to give evidence or provide document)

Section 29(1) of the Principal Act is amended by omitting “an investigation,” and substituting “a pricing policy investigation,”.

23. Section 30 amended (Use of documents or other information)

Section 30(1)(b) of the Principal Act is amended by inserting “pricing policy” after “of the”.

24. Section 31 amended (Matters to be considered)

Section 31 of the Principal Act is amended by omitting “an investigation,” and substituting “a pricing policy investigation.”.

25. Section 33 amended (Offences)

Section 33(1) of the Principal Act is amended as follows:

- (a) by inserting in paragraph (b) “in relation to a pricing policy investigation” after “to the Commission”;
- (b) by omitting from paragraph (c) “Act;” and substituting “Part;”;
- (c) by inserting in paragraph (d) “other” after “because that”;
- (d) by omitting from paragraph (d) “an investigation.” and substituting “a pricing policy investigation.”.

26. Part 4: Heading amended

Part 4 of the Principal Act is amended by inserting in the heading to that Part “**PRICING POLICY**” after “**FOLLOWING**”.

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27. Section 34 amended (Draft report)

Section 34 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “an investigation” and substituting “a pricing policy investigation”;
- (b) by inserting in subsection (2)(a)(iii) “pricing policy” after “which the”;
- (c) by inserting in subsection (3) “pricing policy” after “subject of the”.

28. Section 35 amended (Final report)

Section 35 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(a) “pricing policy” after “the”;
- (b) by inserting in subsection (1)(b)(iii) “pricing policy” after “of the”;
- (c) by inserting in subsection (2)(b) “pricing policy” after “subject of the”;
- (d) by omitting from subsection (2)(b) “of 3 years after completion of the report;” and substituting “that any order under section 36 or determination under section 38 that may result from the investigation would be in force;”.

29. Section 36 amended (Order made in certain cases after final report)

Section 36 of the Principal Act is amended as follows:

- (a) by omitting paragraph (a) from the definition of “prescribed monopoly provider” in subsection (1) and substituting the following paragraph:
 - (a) a monopoly provider providing a monopoly service in respect of which an order has been made under subsection (2)(b); or
- (b) by inserting in subsection (2) “in relation to a pricing policy investigation” after “a final report”;
- (c) by omitting from subsection (2)(b) “of 3 years after the order takes effect.” and substituting “commencing on the day the order takes effect that is of the length specified under section 25(ea) in the terms of reference for the investigation.”.

30. Section 38 amended (Action by Portfolio Minister where no order is made)

Section 38(1)(b) of the Principal Act is amended by omitting “of 3 years after the making of that determination;” and substituting “commencing on the day the determination takes effect that is

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of the length specified under section 25(ea) in the terms of reference for the investigation;”.

31. Parts 4A and 4B inserted

After section 39 of the Principal Act, the following Parts are inserted:

**PART 4A – INQUIRIES INTO PRICING POLICIES OF
PRESCRIBED BODIES**

39A. Direction to conduct inquiry

- (1) The Minister may direct the Commission to inquire into and report to him or her on a matter relating to or affecting the pricing policies of a prescribed body.
- (2) The Minister may make a direction at his or her own discretion or at the request of –
 - (a) the Commission; or
 - (b) a Portfolio Minister; or
 - (c) a prescribed body.
- (3) The Minister must not give a direction –
 - (a) unless satisfied that undertaking the proposed inquiry would not interfere with the ability of the Commission to exercise its other functions; and

- (b) unless he or she has first consulted with the Portfolio Minister; and
 - (c) if the direction relates to one or more Local Government Bodies, unless he or she has first consulted with that body or such of those bodies, or the Local Government Association of Tasmania, as the Minister considers appropriate.
- (4) A direction –
- (a) may be made in respect of one or more prescribed bodies; and
 - (b) is to be in writing; and
 - (c) is to specify the scope of the inquiry; and
 - (d) may specify that the Commission must not inquire into, or publish to any person, the terms of a contract or a contract of a class of contracts; and
 - (e) is to specify the day by which the Commission is to provide a final report on the inquiry to the Minister; and
 - (f) is to specify who is liable to pay the costs of the inquiry and what

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proportion of those costs that
person is liable to pay.

- (5) In determining the liability to pay the costs of an inquiry, the Minister and Portfolio Minister, jointly, may determine that –
- (a) the Commission is to pay all or a proportion of the costs of the inquiry; and
 - (b) a prescribed body which is the subject of the inquiry is to pay all or a proportion of the costs of the inquiry; and
 - (c) a prescribed body which is not the subject of the inquiry but which has agreed or offered to pay an amount towards the costs of the inquiry is to pay an amount not exceeding the amount specified in the agreement or offer.
- (6) Before the Commission provides the final report on an inquiry to the Minister, the Minister may amend or rescind the direction by written notice provided to the Commission and all prescribed bodies who are subject to the direction.

39B. Conduct of inquiry

- (1) Subject to this Act and the regulations, the Commission may conduct an inquiry 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 conferences and seminars; and
 - (d) determine whether any person wishing to appear before the Commission may be represented by another person.
- (2) In conducting an inquiry, the Commission –
 - (a) is not bound by rules of evidence but may inform itself of any matter in any manner it considers appropriate; and
 - (b) has the power to do all things it considers necessary or convenient for the purposes of the inquiry.

39C. Use of documents or other information

- (1) The Commission may give directions prohibiting or restricting the publication

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of any answer, document or other information provided to it for the purposes of an inquiry, 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.

- (2) A person must not contravene a direction given under subsection (1).

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

- (3) 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 (1) has been given; and

(b) records relating to the production of any such answer, document, other information or part.

39D. Report on inquiry

The Commission must provide, by the day specified in the direction to undertake an inquiry –

- (a) a report of its findings in the inquiry to the Minister; and
- (b) unless the direction to undertake the inquiry specifies otherwise, a copy of that report to all prescribed bodies that are the subjects of the inquiry and their Portfolio Ministers.

39E. Offences

A person must not –

- (a) provide in relation to an inquiry information that the person knows or believes to be false or misleading without informing the Commission of that knowledge or belief; or
- (b) hinder, obstruct or interfere with the Commission or any other person in the performance and exercise of its, his or her functions and powers in respect of an inquiry; or
- (c) take, or threaten to take, any action that detrimentally affects the employment of another person because that other person has assisted, is assisting or intends to assist the Commission in an inquiry.

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Penalty: Fine not exceeding 100 penalty
units.

**PART 4B – COMPETITIVE NEUTRALITY
COMPLAINTS**

39F. Who may make a complaint

A person may make a complaint to the Commission if the person –

- (a) believes that a prescribed body has contravened any of the national competition policy competitive neutrality principles; and
- (b) is adversely affected by that supposed contravention; and
- (c) has discussed that supposed contravention with the prescribed body.

39G. Making complaint

A complaint –

- (a) is to be made to the Commission in writing; and
- (b) is to include –
 - (i) the name of the prescribed body; and
 - (ii) the service provided by the prescribed body; and

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- (iii) details of how the applicant believes the national competition policy competitive neutrality principles have been contravened; and
 - (iv) details of how the complainant has been adversely affected by that contravention; and
 - (v) such other details as the applicant considers relevant; and
- (c) is to be accompanied by the prescribed fee.

39H. Preliminary assessment of complaint

- (1) Within 30 days after receiving a complaint, the Commission must determine whether or not an investigation of the complaint is necessary or appropriate.
- (2) For the purpose of ascertaining whether a complaint should be investigated, the Commission may –
 - (a) make any preliminary inquiries that the Commission considers necessary or appropriate; and

- (b) require the complainant or prescribed body concerned, within the time specified in the requirement or such longer period as the Commission allows –
 - (i) to provide information or documents; and
 - (ii) to verify all or any part of the complaint or other information or document by statutory declaration.
- (3) A prescribed body must comply with a requirement made under subsection (2)(b).

Penalty: Fine not exceeding 100 penalty units.
- (4) If the Commission has made preliminary inquiries under subsection (1), the Commission may resolve the complaint without the complaint being investigated if –
 - (a) having regard to the nature and seriousness of the complaint, the Commission believes that the complaint may be resolved expeditiously; and
 - (b) the parties to the complaint agree to that resolution.

- (5) If the Commission resolves a complaint under subsection (4), the Commission must provide a copy of the complaint and the resolution to the prescribed body concerned, its Portfolio Minister and the complainant.

39I. Refusal to conduct complaint investigation

- (1) The Commission may refuse to commence an investigation into a complaint under section 39H or, having commenced a complaint investigation, may refuse to continue the complaint investigation or that part of a complaint investigation relating to a matter raised in a complaint if the Commission is of the opinion –
- (a) that the complaint does not contain –
 - (i) an allegation that one or more of the national competition policy competitive neutrality principles have been contravened; or
 - (ii) matter to support such an allegation; or
 - (iii) matter showing how the complainant has been adversely affected by an

act of the prescribed
body; or

- (b) that the complaint, or the matter raised in the complaint, is vexatious or frivolous or not made in good faith; or
 - (c) that there is no evidence that the complainant has been adversely affected by an act of the prescribed body; or
 - (d) that, having regard to all the circumstances of the case, the investigation, the continuance of the investigation or the continuance of the investigation of the matter raised in the complaint is unnecessary or unjustifiable.
- (2) If the Commission refuses to commence an investigation into a complaint under section 39H or, having commenced a complaint investigation, refuses to continue the complaint investigation or that part of a complaint investigation relating to a matter raised in a complaint, the Commission must provide written notice of the refusal –
- (a) to the complainant; and
 - (b) if the Commission has sought information from a prescribed body under section 39H but not

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commenced a complaint investigation, to the prescribed body; and

- (c) if a complaint investigation has been commenced, to the prescribed body and its Portfolio Minister.

39J. Commencing investigation into complaint

If the Commission determines under section 39H that a complaint should be investigated, the Commission must commence an investigation of the complaint by –

- (a) providing written notice of the intention to investigate to the complainant, the prescribed body concerned and its Portfolio Minister; and
- (b) providing a copy of the complaint to the prescribed body concerned and its Portfolio Minister.

39K. Reply to complaint

- (1) Within 30 days after receiving a copy of a complaint and notice of the Commission's intention to investigate the complaint under section 39J, the prescribed body must provide the

Commission with a written reply to the complaint that –

- (a) specifies the belief of the prescribed body as to whether the complaint is justified, partly justified or not justified; and
- (b) in the case of a belief that the complaint is justified or partly justified, specifies whether the prescribed body proposes to take any action to stop any ongoing contravention of the national competition policy competitive neutrality principles which was the subject of the complaint or to ensure that such a contravention does not occur again; and
- (c) in the case of a belief that the complaint or part of the complaint is not justified, sets out the grounds on which that belief is based.

Penalty: Fine not exceeding 100 penalty units.

- (2) A reply that specifies that a complaint is justified or partly justified may include recommendations for the alteration of the application of the national competition policy competitive neutrality principles and other recommendations that the prescribed body considers appropriate.

39L. Conduct of complaint investigation

- (1) Subject to this Act and the regulations, the Commission may conduct a complaint 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 conferences and seminars; and
 - (d) determine whether or not any person wishing to appear before the Commission may be represented by another person.
- (2) In conducting a complaint investigation, the Commission is not bound by the rules of evidence but may inform itself of any matter in any manner it considers appropriate.

39M. Requiring person to give evidence or provide document

- (1) In a complaint investigation, the Commission may require a person, by written notice provided to the person, to do any one or more of the following:

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- (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 reasonable allowances and expenses.
- (3) Despite 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

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- (b) to provide to the Commission a Cabinet record.

39N. Use of documents or other information

(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 39M(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 39M, 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 39M(1) or part of any such answer, document or other information available to any person as the Commission considers appropriate except where –

- (a) to do so would contravene a direction; or
- (b) the answer, document, other information or part contains information which is exempt

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information under the *Freedom of Information Act 1991*.

390. Decision of Commission

- (1) After conducting a complaint investigation, the Commission must determine whether or not the complaint is justified.
- (2) If the Commission finds the complaint justified, the Commission must provide to the Minister, the Portfolio Minister, the prescribed body and the complainant a written report of that determination containing one or more of the following recommendations:
 - (a) that the application of the national competition policy competitive neutrality principles be changed;
 - (b) that the prescribed body be directed to change the manner in which it applies the national competition policy competitive neutrality principles to the service which is the subject of the complaint.
- (3) The determination of the Commission is final.

- (4) The complainant is not entitled to compensation for the adverse effects suffered.

39P. Time by which complaint investigation to be completed

- (1) A complaint investigation, including the provision of the report under section 39O(2), is to be completed within 45 days after the Commission receives under section 39K the written reply of the prescribed body or such longer period as the Minister may allow under this section.
- (2) The Minister may extend the period within which the complaint investigation is to be completed for a period not exceeding 30 days.
- (3) The Minister may grant an extension under subsection (2) more than once.
- (4) On granting an extension, the Minister is to notify the Commission in writing of that extension and the day by which the complaint investigation is to be completed and the day by which the report under section 39O(2) is to be provided.

39Q. Action by Minister on determination

Within 30 days after receiving a report on a complaint investigation under section 39O(2) that contains a recommendation of a kind referred to in section 39O(2)(a) or (b), the Minister must provide the Commission with written notice of any action he or she has taken or intends to take as a result of receiving that report.

39R. Action by prescribed body on determination

- (1) Within 30 days after receiving a report on a complaint investigation under section 39O(2) that contains a recommendation of a kind referred to in section 39O(2)(b), the prescribed body must provide the Commission with written notice of any action it has taken or intends to take as a result of receiving that report.

Penalty: Fine not exceeding 100 penalty units.

- (2) At any time after the end of the period referred to in subsection (1), the Commission may require the prescribed body, within the period specified in the requirement, to provide the Commission with information in respect of any action the prescribed body has taken or is still to take as a result of receiving the complaint

investigation report under
section 39O(2).

- (3) A prescribed body must not contravene a requirement made under subsection (2).

Penalty: Fine not exceeding 100 penalty units.

39S. Refund of fee accompanying complaint

If the Commission determines that a complaint is justified, the Commission must refund to the complainant any prescribed fee paid under section 39G(c).

39T. Offences

- (1) A person must not –
- (a) fail to comply with a requirement made under section 39M(1); or
 - (b) provide to the Commission in relation to a complaint investigation information that the person knows or believes to be false or misleading without informing the Commission of that knowledge or belief; or
 - (c) hinder, obstruct or interfere with the Commission or any other person in the performance and

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exercise of its, his or her functions and powers in respect of the conduct of a complaint investigation; or

- (d) take, or threaten to take, any action that detrimentally affects the employment of another person because that other person has assisted, is assisting or intends to assist the Commission in the conduct of a complaint investigation.

Penalty: Fine not exceeding 100 penalty units.

- (2) Despite subsection (1)(a), a person is not required to comply with a requirement made under section 39M(1) if to do so would tend to incriminate that person.

32. Section 43 amended (Amendment of Schedule 1)

Section 43 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) An order under this section may not –
 - (a) amend Schedule 1 so as to specify in that Schedule for the purposes of section 25(ea)(i) a period of more than 5 years; or

- (b) substitute for Schedule 1 another Schedule which specifies for the purposes of section 25(ea)(i) a period of more than 5 years.

33. Section 43A repealed

Section 43A of the Principal Act is repealed.

34. Section 44 amended (Regulations)

Section 44 of the Principal Act is amended as follows:

- (a) by omitting subsection (1A) and substituting the following subsection:

(1A) Without limiting the generality of subsection (1), regulations may be made –

- (a) for and in relation to the conduct by the Commission of pricing policy investigations, inquiries and complaint investigations; and
 - (b) providing for the fees payable under this Act.
- (b) by omitting from subsection (5) “Act.” and substituting “Act or an Act amending this Act.”;

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(c) by omitting subsection (6) and substituting the following subsection:

(6) A provision referred to in subsection (5) may take effect on the day on which this Act, or the provision of an Act that amends this Act, commences or a later day as specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

35. Section 45 inserted

After section 44 of the Principal Act, the following section is inserted in Part 5:

45. Savings and transitional provisions

(1) In this section –

“amended Act” means this Act as amended by the *Government Prices Oversight Amendment Act 2007*;

“commencement day” means the day on which the *Government Prices Oversight Amendment Act 2007* commences;

“superseded Act” means this Act as in force immediately before the commencement day;

“superseded Regulations” means the *Government Prices Oversight Regulations 1998* as in force immediately before the commencement day.

- (2) If immediately before the commencement day a declaration made under section 6 of the superseded Act was in force, that declaration –
- (a) continues to have effect; and
 - (b) is taken to have been made under section 6 of the amended Act; and
 - (c) is taken to have declared the monopoly service which is its subject to be –
 - (i) a non-prescribed monopoly service if that service was not a prescribed monopoly service, within the meaning of section 24 of the superseded Act, immediately before the commencement day; or
 - (ii) a prescribed monopoly service if that service was a prescribed monopoly service, within the meaning of section 24 of the superseded Act,

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immediately before the
commencement day.

- (3) If a requirement for an investigation into the pricing policies of a monopoly provider is made under section 24(2), (3) or (4) of the superseded Act but the investigation is not completed before the commencement day –
- (a) the requirement is taken to have been made under section 24(2), (3) or (4) of the amended Act; and
 - (b) the investigation may be completed under the amended Act; and
 - (c) in the case of an investigation under section 24(4) of the superseded Act into the pricing policies of a monopoly provider that is a Local Government Body, all affected Local Government Bodies, within the meaning of section 24 of the amended Act, are taken to have agreed to the making of the requirement.
- (4) If the Minister has given a direction under regulation 20 of the superseded Regulations to the Commission to inquire into a matter but the final report in respect of that inquiry has not been provided as required under regulation 22

of the superseded Regulations before the commencement day –

- (a) that direction is taken to have been made under section 39A of the amended Act; and
 - (b) that inquiry is to be continued and the final report provided under Part 4A of the amended Act; and
 - (c) anything done or omitted in relation to that inquiry under the superseded Regulations is taken to have been done or omitted under Part 4A of the amended Act.
- (5) If a person has made a complaint under Part 2 of the superseded Regulations but that complaint has not been finalised before the commencement day –
- (a) that complaint is taken to have been made under Part 4B of the amended Act; and
 - (b) that complaint is to be finalised under Part 4B of the amended Act; and
 - (c) anything done or omitted in relation to that complaint under the superseded Regulations is taken to have been done or omitted under Part 4B of the amended Act.

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- (6) For the purposes of subsection (5), a complaint is finalised when the Commission has taken all appropriate action that it could take under Part 2 of the superseded Regulations or Part 4B of the amended Act in respect of the complaint, as the case requires.

36. Schedule 1 substituted

Schedule 1 to the Principal Act is repealed and the following Schedule is substituted:

SCHEDULE 1 – CERTAIN MONOPOLY PROVIDERS

Sections 3, 6, 18, 24, 25 and 43

Column 1	Column 2	Column 3
	MONOPOLY PROVIDER	PERIOD OF ORDER OR DETERMINATION
1.	Cradle Coast Water (established as a joint authority under section 33 of the <i>Local Government Act 1993</i> as the North West Water Authority and having its name changed by <i>Gazette</i> notice dated 12 December 2001)	5 years
2.	Esk Water Authority (established as a joint authority under section 33 of the <i>Local Government Act 1993</i>)	5 years

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3.	Hobart Regional Water Authority (established as a joint authority under section 33 of the <i>Local Government Act 1993</i>)	5 years
4.	Metro Tasmania Pty. Ltd.	5 years
5.	Motor Accidents Insurance Board	4 years