

TASMANIA

ECONOMIC REGULATOR BILL 2009

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ECONOMIC REGULATOR BILL 2009

(Brought in by the Premier, the Honourable David John Bartlett)

A BILL FOR

An Act to establish the Tasmanian Economic Regulator, to provide for investigations and inquiries into the pricing policies of certain Government bodies that are monopoly, or near monopoly, providers of services and goods in Tasmania, to provide for the setting of maximum prices chargeable by such bodies in respect of the supply of those services and goods, to provide for inquiries into matters relating to or affecting the pricing policies of certain Government bodies whether or not they are monopoly, or near monopoly, providers of services and goods, to provide for investigations into complaints of breaches of the national competition policy competitive neutrality principles, to provide for the monitoring of certain prices and certain activities of certain non-government bodies, to provide for inquiries relating to methodologies for setting taxi fares and to provide for related matters

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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Economic Regulator Act 2009*.

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2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

(1) In this Act, unless the contrary intention appears –

“Agency” means an Agency within the meaning of the *State Service Act 2000*, other than a Government Business Enterprise or statutory authority;

“amend” means –

- (a) omit any matter; or
- (b) insert or add any matter; or
- (c) omit any matter and substitute any other matter;

“ancillary service” means an ancillary service within the meaning of the National Electricity Rules;

“Cabinet record” means a record which –

- (a) is referred to in section 24(1) of the *Freedom of Information Act 1991* or section 26 of the *Right to Information Act 2009*; and
- (b) contains exempt information, within the meaning of that Act, to which that section applies;

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“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*; or
- (b) in respect of a monopoly provider that is an Agency, statutory authority, State-owned company or Local Government Body, 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 Regulator, 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;

“complaint” means a complaint made by a person under section 48;

“complaint investigation” means an investigation into a complaint commenced by the Regulator under section 52;

“contract” includes agreement and arrangement;

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“**council**” has the same meaning as in the *Local Government Act 1993*;

“**dividend**” includes a dividend within the meaning of the *Government Business Enterprises Act 1995*;

“**employee**” means a person who is, or whose services are, made available to the Regulator under section 17(1) or (2);

“**enactment**” means –

- (a) an Act, order or other instrument of a legislative character; or
- (b) a provision of an Act, order or other instrument of a legislative character;

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

“**function**” includes duty;

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

“**Local Government Association of Tasmania**” means –

- (a) the Local Government Association of Tasmania continued as a body corporate by section 326 of the *Local Government Act 1993*, whether or

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not that body has changed its name; and

- (b) if that body ceases to exist, any other body that has substantially the same purpose and performs substantially the same functions;

“Local Government Body” means –

- (a) a council; or
- (b) a single authority, within the meaning of the *Local Government Act 1993*; or
- (c) a joint authority, within the meaning of the *Local Government Act 1993*;

“member of the Regulator” means a person appointed as a member of the Regulator under section 15;

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

“monopoly provider” means –

- (a) a body specified in column 2 of Schedule 1; or
- (b) a prescribed body which provides a monopoly service;

“monopoly provider investigation” means an investigation that the Regulator is

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required, by the Minister under section 24, to conduct into the pricing policies of a monopoly provider in respect of a monopoly service;

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

“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; or
- (b) any policies adopted by the State for the purpose of complying with or giving effect to the principles referred to in paragraph (a);

“National Electricity Rules” has the same meaning as in the National Electricity Law which is contained in the schedule (as amended from time to time) to the *National Electricity (South Australia) Act 1996* of South Australia;

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

“Portfolio Act” means –

- (a) in respect of a monopoly provider that is a Government Business Enterprise or a statutory authority, the enactment by or under which that Government Business Enterprise or statutory authority is established or continued, together with any other enactment that is incorporated with or required to be read as one with that enactment; or
- (b) in respect of a monopoly provider that is a Local Government Body, the *Local Government Act 1993*;

“Portfolio Minister” –

- (a) in respect of an Agency, means the Minister to whom the Agency is assigned; or
- (b) in respect of a statutory authority or Government Business Enterprise constituted or continued by or under an Act or a provision of an Act, means the Minister to whom the administration of that Act or provision is assigned; or

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- (c) in respect of a statutory authority or Government Business Enterprise not established, constituted or continued by or under an Act or a provision of an Act, means the Minister to whom the administration of the statutory authority or Government Business Enterprise is assigned; or
- (d) in respect of a Local Government Body, means the Minister to whom the administration of the *Local Government Act 1993* is assigned; or
- (e) in respect of a State-owned company, means the Minister to whom the administration of the Act requiring or authorising the formation of the company is assigned;

“prescribed body” means –

- (a) an Agency; or
- (b) a Government Business Enterprise; or
- (c) a statutory authority; or
- (d) a State-owned company; or
- (e) a Local Government Body;

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“prescribed body inquiry” means an inquiry that the Regulator is directed, by the Minister under section 39(1), to conduct in respect of the pricing policies of a prescribed body;

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

“price” includes charge and tariff;

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

“pricing policy determination” means a determination made under section 38(1)(b);

“pricing policy order” means an order made under section 36(3)(b);

“Regulator” means the Tasmanian Economic Regulator established under section 9;

“service” includes –

- (a) the provision of public transport; and
- (b) the making available for use of facilities of any kind; and
- (c) the conferring of rights, benefits or privileges for which a price is payable in the form of a tribute, levy or similar exaction; and

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- (d) the supply of any other good or service declared under section 5 to be a service –

but does not include a water or sewerage service, an ancillary service or other service related to the supply of, or security of the supply of, electricity, or any good or service for which a State charge is payable;

“State charge” means –

- (a) a tax, or duty, imposed for the public revenue purposes of the State; or
- (b) a payment, in the form of a royalty, payable to the Crown, a Government Business Enterprise or State-owned company for the exclusive right to access and market a natural resource;

“State-owned company” means a company incorporated under the Corporations Act which is controlled by the Crown, a Government Business Enterprise or a statutory authority or by another company which is so controlled;

“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

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partly comprises a person or persons appointed by the Governor, a Minister of the Crown or another statutory authority;

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

“supply” includes provide;

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

“taxi fare methodology inquiry” means an inquiry the Regulator is directed, by the Minister under section 44, to conduct into appropriate methodologies in respect of setting taxi fares;

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

“Transport Commission” means the Transport Commission incorporated under section 4 of the *Transport Act 1981*.

- (2) For the purposes of the definition of “State-owned company” in subsection (1), the provisions of the Corporations Act relating to control are taken to apply as if the Crown, Government Business Enterprise or statutory authority, as the case may be, were a corporation under that Act.

4. Maximum prices defined

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 a monopoly service;
- (f) any other terms the Regulator or the Minister, as the case requires, considers appropriate.

5. Declaration of service

- (1) By notice published in the *Gazette*, the Minister may declare the supply of a good or service to be a service.
- (2) By notice published in the *Gazette*, the Minister may amend or revoke a declaration made under subsection (1).

- (3) A notice under this section is not a statutory rule.

6. Declaration of monopoly service

- (1) By notice published in the *Gazette*, the Minister may declare a service supplied by a prescribed body to be a non-prescribed monopoly service, or a prescribed 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) 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.
- (3) A declaration under subsection (1) may specify the day by which the Minister is to require the Regulator 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.

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- (4) Before making a declaration under subsection (1) in respect of a service supplied by one or more Local Government Bodies, the Minister is to consult with such of those Local Government Bodies as the Minister considers appropriate.
- (5) 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 subject of the declaration has agreed to it.
- (6) A notice under this section is not a statutory rule.

7. Act binds Crown

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

8. Inconsistency between this Act and another Act

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.

PART 2 – TASMANIAN ECONOMIC REGULATOR

Division 1 – Tasmanian Economic Regulator

9. Tasmanian Economic Regulator

- (1) The Tasmanian Economic Regulator is established.
- (2) The Regulator –
 - (a) is a body corporate with perpetual succession; and
 - (b) has a seal; and
 - (c) may sue and be sued in its corporate name.
- (3) The seal is to be kept and used as authorised by the Regulator.
- (4) All courts and persons acting judicially must take judicial notice of the imprint of the seal on a document and presume that the document was duly sealed by the Regulator.

10. Functions of Regulator

The Regulator has the following functions:

- (a) to conduct monopoly provider investigations and provide a final report in respect of each such investigation;

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- (b) to conduct prescribed body inquiries and provide a report in respect of each such inquiry;
- (c) to conduct taxi fare methodology inquiries and provide a report in respect of each such inquiry;
- (d) to conduct complaint investigations and, if required under section 57, to provide a report in respect of a complaint investigation;
- (e) other functions imposed on the Regulator under this or any other Act.

11. Powers of Regulator generally

The Regulator has the following powers:

- (a) to enter into contracts;
- (b) to appoint agents, attorneys and consultants;
- (c) to act as a consultant or agent, including in respect of the monitoring of prices of petroleum products;
- (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 the performance and exercise of its functions and powers.

12. Power to publish guidelines

The Regulator may publish guidelines relating to the performance and exercise of its functions and powers.

13. Delegation

The Regulator may delegate to a member of the Regulator or 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 37.

14. Regulator not subject to Ministerial control

Except as otherwise provided by or under this or any other Act, the Regulator is not subject to the control or direction of the Minister or any other Minister in respect of a monopoly provider investigation, prescribed body inquiry, complaint

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investigation, taxi fare methodology inquiry,
report or recommendation under this Act.

Division 2 – Membership of Regulator

15. Membership of Regulator

- (1) The Regulator consists of 3 persons appointed by the Minister.
- (2) The Minister is to appoint a member of the Regulator as its chairperson.
- (3) In appointing a person to be a member of the Regulator, the Minister is to be satisfied that the person –
 - (a) has knowledge of, or experience in, industry, commerce, economics, law or public administration; or
 - (b) has knowledge of, or experience in, the regulation of utilities or the provision of services by a monopoly provider or other utility.
- (4) Schedule 2 has effect with respect to the membership of the Regulator.
- (5) Schedule 3 has effect with respect to meetings of the Regulator.

16. Acting member of Regulator

- (1) For the purposes of this section, a member of the Regulator is absent if he or she –
 - (a) is absent from duty; or
 - (b) is disqualified under clause 6(2) of Schedule 3 from taking part in a consideration of, or the making of a decision in relation to, any matter or any other proceeding of the Regulator in relation to the matter; or
 - (c) is otherwise unable to perform the functions of the office of member of the Regulator.
- (2) The Minister may appoint a person to act as a member of the Regulator during any particular, or every, period during which the member of the Regulator is absent.
- (3) The Minister is not to make an appointment of a person to act as a member of the Regulator unless the Minister is satisfied that the person has the knowledge and experience necessary for appointment as a member of the Regulator.
- (4) The appointment of a person under subsection (2) to act in the office of the member of the Regulator who is its chairperson is not an appointment to act in the office of chairperson.
- (5) The appointment of a person under subsection (2) is subject to, and has effect in accordance with, the terms and conditions

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(including remuneration and allowances) specified in the instrument of appointment.

- (6) If a vacancy, within the meaning of clause 5 of Schedule 2 occurs in the office of a member of the Regulator while a person appointed under subsection (2) is acting in the office of that member, that person may continue to act in the office of that member until the first of the following happens:
- (a) the period of 6 months commencing on the day on which the vacancy occurs ends;
 - (b) the Minister appoints a person to that vacant office under section 15 or clause 6 of Schedule 2.
- (7) Anything done by or in relation to a person purporting to act as a member of the Regulator 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 a member of the Regulator has not arisen or has ceased.

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- (8) While a person is acting as a member of the Regulator, that person is taken to be a member of the Regulator.

Division 3 – Staff, assistance and facilities

17. Staff of Regulator

- (1) The Regulator may arrange with the Secretary of the Department for State Service officers and State Service employees employed in the Department to be made available to enable the Regulator to perform and exercise its functions and powers.
- (2) On the written request of the Regulator, the Secretary of the Department may arrange with another Head of a State Service Agency for State Service officers and State Service employees employed in that Agency, or with an employer for the services of a person employed by that employer, to be made available to the Regulator for the purpose of enabling the Regulator to perform and exercise its functions and powers.
- (3) State Service officers and State Service employees made available under subsection (1) or (2) may serve the Regulator in conjunction with State Service employment.
- (4) All expenses associated with the use by the Regulator of the services of a person referred to in subsection (1) or (2) are to be met by the Regulator.

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18. Assistance and facilities

- (1) The Regulator 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, statutory authority or State-owned company if approved by the Minister and Portfolio Minister, in writing;
 - (c) a Local Government Body if approved, in writing, by the Minister and the Minister to whom the administration of the *Local Government Act 1993* is assigned;
 - (d) a body, or the governing authority of a body, that has price-fixing functions or functions similar to those of the Regulator.

- (2) The Regulator 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) the Head of another Agency;
 - (c) a Government Business Enterprise;
 - (d) a Local Government Body;

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- (e) a statutory authority;
- (f) a State-owned company.

Division 4 – Finances of Regulator

19. Funds

- (1) The funds of the Regulator consist of –
 - (a) all money received by it in the course of performing its functions and exercising its powers; and
 - (b) money appropriated by Parliament for the purposes of the Regulator; and
 - (c) all other money received by it from any other source.
- (2) The funds of the Regulator 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 Regulator in the performance and the exercise of its functions and its powers; and
 - (b) in the payment of the remuneration and allowances of the members of the

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Regulator and acting members of the Regulator; and

- (c) in meeting the expenses incurred by the Regulator in respect of –
 - (i) the use of the services of persons referred to in section 17(1) and (2); and
 - (ii) the assistance provided under section 18(1); and
 - (iii) the use of facilities referred to in section 18(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.

20. Costs of monopoly provider investigations

- (1) In this section –

“estimated resident population”, in respect of a municipal area, means the most recent estimated resident population for that area published from time to time by the Australian Statistician under the *Census and Statistics Act 1905* of the Commonwealth;

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“investigated monopoly service” means a monopoly service which is the subject of a monopoly provider investigation.

- (2) A monopoly provider that supplies an investigated monopoly service is liable for the whole or part of the reasonable expenses incurred by the Regulator arising from the conduct and reporting of the monopoly provider 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 Regulator and the monopoly provider.
- (3) If an investigated monopoly service is supplied by 2 or more Local Government Bodies, all of which are councils, the amount of the expenses each council is liable to pay is to be determined in accordance with the following formula:

$$A = \frac{P \times TA}{TP}$$

where –

“A” is the amount to be paid by a council;

“P” is the estimated resident population of the municipal area in respect of which the council was established;

“TA” is the total amount determined under subsection (2) to be payable by all the councils supplying the investigated monopoly service;

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“TP” is the total of the estimated resident populations of all the municipal areas in respect of which all those councils were established.

- (4) If more than one council supplies the investigated monopoly service, the amount of the expenses determined to be payable by each council is to be specified in the notice provided under subsection (2).
- (5) If a monopoly provider which is a Local Government Body is liable to pay the whole or part of the expenses referred to in subsection (2), the Minister is to provide a copy of the notice referred to in that subsection to the Local Government Association of Tasmania.
- (6) The Regulator may recover the expenses referred to in subsection (2) as a debt due to it in a court of competent jurisdiction.

21. Financial statements

- (1) The financial statements of the Regulator are to –
 - (a) be prepared and certified as specified in a direction given under subsection (2); and
 - (b) present fairly –
 - (i) the financial transactions of the Regulator during the financial year to which the report relates in relation to the performance of its

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functions under this and any other Act; and

(ii) the state of affairs of the Regulator at the end of that financial year; and

(c) comply with any other direction given under subsection (2).

(2) The Treasurer may give written directions to the Regulator in respect of the form, contents, preparation, certification and provision of its financial statements.

(3) Directions under subsection (2) 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*.

Division 5 – Annual report

22. Annual report

(1) In respect of each financial year the Regulator is to prepare a report which includes –

(a) a report on the performance and exercise of the Regulator's functions and powers under this and any other Act; and

(b) the particulars of any contravention of the national competition policy competitive neutrality principles –

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- (i) that a prescribed body admits to having committed in response to a complaint; or
 - (ii) that the Regulator, during a complaint inquiry, prescribed body inquiry or monopoly provider investigation, determines has been committed by a prescribed body; and
 - (c) whether any action was taken by a prescribed body referred to in paragraph (b) in relation to its contravention of the national competition policy competitive neutrality principles and, if so, what that action was; and
 - (d) the financial statements of the Regulator; and
 - (e) the Auditor-General's report on those financial statements; and
 - (f) any information the Minister, by written notice provided to the Regulator, requires to be included; and
 - (g) any other information the Regulator considers appropriate to be included.
- (2) The Regulator is to provide a copy of the annual report to the Minister so as to enable it to be tabled in accordance with section 23.

23. Tabling of annual report

- (1) By 31 October in each year the Minister is to 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 31 October in any year, the Minister is to –
 - (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.

PART 3 – MONOPOLY PROVIDER INVESTIGATIONS

Division 1 – Commencing monopoly provider investigation

24. Requirement to conduct monopoly provider investigation

(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 supplying a monopoly service –

- (a) means the day specified in the declaration under section 6

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declaring that service to be a monopoly service as the day by which the Minister is to require the Regulator to conduct its first investigation into the pricing policies of the monopoly provider in respect of that service under this section; or

- (b) if the declaration under section 6 declaring that service to be a 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 is to require the Regulator 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 supplied by that monopoly provider.
- (3) At least 11 months before the expiration of a pricing policy order or a pricing policy determination in relation to a monopoly provider specified in Schedule 1, the Minister is to require the Regulator to conduct an investigation into the pricing policies of that monopoly provider in respect of each prescribed monopoly service supplied by the monopoly provider.
- (4) At any time, in writing provided to the Regulator, the Minister may require the Regulator to conduct an investigation into the pricing policies of a monopoly provider (whether

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or not specified in Schedule 1) in respect of any monopoly service supplied by the monopoly provider and specified in the requirement.

- (5) Despite subsections (3) and (4), the Minister may not require the Regulator to conduct a monopoly provider investigation into the pricing policies of a monopoly provider that is a Local Government Body if –
- (a) a pricing policy order (the “original order”) or a pricing policy determination (the “original determination”) is in force in respect of a monopoly service supplied 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 pricing policy order or pricing policy determination 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 first agreed to the requirement being made.

- (6) A requirement under subsection (2), (3) or (4) –
- (a) is to contain the terms of reference for the monopoly provider investigation; and

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- (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 Regulator is to not investigate in relation to prices or publish to any person.
- (7) The Minister may amend, by written notice provided to the Regulator and the monopoly provider, a requirement under subsection (2), (3) or (4) if the Regulator has not made a final report in respect of the monopoly provider investigation.
- (8) Before providing a requirement under subsection (2), (3) or (4) or amending a requirement under subsection (7), the Minister is to first –
 - (a) obtain the agreement of the Portfolio Minister to the provision or amendment of the requirement; and
 - (b) if the required monopoly provider investigation is to be in relation to a monopoly service supplied by a monopoly provider which is a Local Government Body, consult with the Local Government Association of Tasmania with respect to the provision or amendment of the requirement.
- (9) The Regulator is to comply with a requirement, or an amended requirement, made under this section.

25. Terms of reference

The terms of reference for a monopoly provider investigation are to –

- (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 day by which the Regulator is to provide its final report in respect of the investigation; and
- (d) specify the matters not referred to in section 31 which the Regulator is to 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 Regulator to be of more importance than any other such matters; and
- (f) specify the period for which any pricing policy order or pricing policy determination 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 period specified in that

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Schedule in relation to that monopoly provider; or

- (ii) in the case of a monopoly provider not specified in Schedule 1, a period that does not exceed 5 years; and
- (g) require the Regulator 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 the period for which any pricing policy order or pricing policy determination made as a result of the investigation would be in force; and
- (h) specify whether the Regulator is to make a draft report in respect of the investigation available during the conduct of the investigation.

26. Notice of monopoly provider investigation

- (1) On receipt of a requirement to conduct a monopoly provider investigation, the Regulator is to 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 Regulator considers appropriate; and

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- (c) if the monopoly provider is a Local Government Body, in writing provided to the Local Government Association of Tasmania.
- (2) A notice of a monopoly provider investigation is to specify –
- (a) the purpose of the investigation; and
 - (b) the period during which the investigation is to be held; and
 - (c) the period within which, and the form in which, submissions may be made to the Regulator; and
 - (d) the matters that the Regulator would like submissions to address; and
 - (e) how copies of the terms of reference may be obtained.
- (3) If the Minister amends a requirement to conduct a monopoly provider investigation, the Regulator is to give notice of that amendment to the same persons and in the same manner as notice of the investigation was given.

Division 2 – Conduct of monopoly provider investigation

27. Conduct of monopoly provider investigations

- (1) The Regulator is to conduct a monopoly provider investigation in accordance with a

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requirement provided under section 24 and the terms of reference.

- (2) Subject to this Act, the Regulator may conduct a monopoly provider investigation in such manner as it considers appropriate and, in particular, may at its discretion –
 - (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 Regulator may be represented by another person.
- (3) In conducting a monopoly provider investigation, the Regulator is not bound by rules of evidence but may inform itself of any matter in such manner it considers appropriate.

28. Hearings

- (1) Before holding a hearing, the Regulator is to give reasonable notice of the hearing in daily newspapers published and circulating generally in Tasmania as the Regulator considers appropriate.
- (2) The notice of a hearing is to specify –
 - (a) the purpose of the hearing; and

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- (b) the time and place at which the hearing is to be held.
- (3) A hearing is to be held in public.
- (4) Despite subsection (3), if the Regulator 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 Regulator is to –
 - (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* and the *Right to Information Act 2009* do not apply in respect of –
 - (a) evidence and documents in respect of which a direction under subsection (4)(b) has been made; or
 - (b) records of the giving or production of such evidence and documents.

29. Requiring person to give evidence or provide document

- (1) For the purposes of a monopoly provider investigation, the Regulator may require a person, by written notice provided to the person, to do any one or more of the following:
 - (a) attend before the Regulator and answer questions which, in the opinion of the Regulator, are relevant to the investigation;
 - (b) provide to the Regulator, 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 Regulator, is relevant to the investigation;
 - (c) provide to the Regulator, in the manner specified in the notice, any other information specified in the notice which, in the opinion of the Regulator, is relevant to the investigation.
- (2) A person who attends before the Regulator under a requirement referred to in subsection (1)(a) may, at the Regulator's discretion, be paid by the Regulator –
 - (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

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determines by notice published in the *Gazette*.

- (3) Despite subsection (1), the Regulator 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 Regulator a Cabinet record.
- (4) A notice under subsection (2)(b) is not a statutory rule.

30. Use of documents or other information

- (1) The Regulator –
 - (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 monopoly provider investigation; and
 - (c) is to allow a person who would be entitled to inspect the document if it were not in the possession of the Regulator to inspect it, make a copy of it or take an extract from it at any reasonable time.

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- (2) The Regulator 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 Regulator 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 Regulator 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* or the *Right to Information Act 2009*.

31. Matters to be considered

In a monopoly provider investigation, the Regulator is to consider the following matters:

- (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) if appropriate, the need for a reasonable return (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;

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- (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) in the case of a monopoly provider that is a State-owned company, any statement of expectations from the shareholders or other similar document;
- (k) any relevant provision in the Portfolio Act or any other Act;
- (l) any community service obligations of the monopoly provider;
- (m) the quality of the supply of the monopoly service;
- (n) the matters set out in the terms of reference;
- (o) any other matter the Regulator considers relevant.

32. Limitations on monopoly provider investigation and reporting

- (1) The Regulator is not to investigate the terms of a contract, or the terms of a contract which is a member of a class of contracts, if that

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investigation is prohibited by the requirement to investigate under section 24.

- (2) Except as authorised or required by law, the Regulator, a member of the Regulator or an employee is not to 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 Regulator 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 (1); or
 - (b) a contract or the terms of a contract if the Regulator was prohibited by this section from investigating the contract or terms at the time the contract or terms came into the possession of the Regulator; or
 - (c) information which, if published, could cause damage to the commercial interests of a monopoly provider.
- (3) The *Freedom of Information Act 1991* and the *Right to Information Act 2009* do not apply in respect of –
 - (a) a document, part of a document or information the publication of which is prohibited by subsection (2); or
 - (b) records of the giving, production or obtaining of that document, part of a document or information.

33. Offences

- (1) A person must not –
- (a) fail to comply with a requirement made under section 29(1); or
 - (b) provide to the Regulator, in relation to a monopoly provider investigation, 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 Regulator of that knowledge or belief; or
 - (c) hinder, obstruct or interfere with the Regulator, a member of the Regulator or any other person in the performance or exercise of its, his or her functions or powers under this Part; 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 Regulator in a monopoly provider investigation.

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

- (2) Despite 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.

Division 3 – Action following monopoly provider investigation

34. Draft report

- (1) If the terms of reference require that a draft report be made available, the Regulator is to, at an appropriate time during the monopoly provider investigation –
 - (a) provide a copy of the draft report to –
 - (i) the Minister; and
 - (ii) the Portfolio Minister; and
 - (iii) the monopoly provider specified in the terms of reference; and
 - (iv) if that monopoly provider is a Local Government Body, the Local Government Association of Tasmania; and
 - (b) make copies of the draft report available for free or for purchase by the public as the Regulator considers appropriate.
- (2) Even if this Act or the terms of reference do not require the Regulator to make a draft report available –
 - (a) the Regulator –
 - (i) is to provide a copy of a draft report to each person and body referred to in subsection (1)(a) if

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the Minister and the Portfolio Minister, jointly, require it to do so by written notice provided to the Regulator; and

- (ii) at its discretion, may provide a copy of a draft report to each person and body referred to in subsection (1)(a); and
 - (b) the Regulator may make copies of a draft report available for free or for purchase by the public if the Minister and the Portfolio Minister agree in writing.
- (3) A draft report is not to contain any matter that is not supported by every member of the Regulator in respect of the monopoly provider supplying the monopoly service which is the subject of the monopoly provider investigation.
- (4) If a draft report is provided or made available to any person or body, the Regulator is to –
- (a) allow persons and bodies to whom it has been provided or made available to make submissions in respect of the report to the Regulator; and
 - (b) take any such submissions into consideration before making a final report.

35. Final report

- (1) In this section –

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“relevant monopoly provider” means the monopoly provider supplying the monopoly service which is the subject of the monopoly provider investigation.

- (2) The Regulator, by the day specified in the terms of reference, is to –
- (a) prepare a final report in respect of the monopoly provider investigation; and
 - (b) provide a copy of that final report to –
 - (i) the Minister; and
 - (ii) the Portfolio Minister; and
 - (iii) the relevant monopoly provider; and
 - (iv) if that monopoly provider is a Local Government Body, the Local Government Association of Tasmania.
- (3) The final report is to –
- (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 relevant monopoly provider during the period that any pricing policy order or pricing policy determination that may result from the investigation would be in force; and

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-
- (c) include any views or statements of a member of the Regulator that are contrary to the views and statements of the Regulator.
 - (4) Within 20 sitting-days after receiving a final report, the Portfolio Minister is to lay a copy of the final report before each House of Parliament.
 - (5) The Regulator is to 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.

36. Pricing policy order

- (1) In this section –

“prescribed monopoly provider” means –

- (a) a monopoly provider specified in Schedule 1; or
- (b) a monopoly provider declared to be a prescribed monopoly provider under subsection (2) –

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but does not include a monopoly provider which has been declared under subsection (9) not to be a prescribed monopoly provider.

- (2) The Minister and the Portfolio Minister, jointly, by notice published in the *Gazette* may declare a monopoly provider to be a prescribed monopoly provider.
- (3) Within 90 days after receiving a copy of a final report in respect of a monopoly provider investigation in relation to a monopoly service supplied by a prescribed monopoly provider, the Portfolio Minister is to –
 - (a) provide a copy of the recommendations contained in the final report to each Minister of the Crown; and
 - (b) 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 in which the order is in force, taking into consideration –
 - (i) the recommendations referred to in paragraph (a); and
 - (ii) any comments received in relation to those recommendations from any Minister of the Crown, the monopoly provider and, if the monopoly provider is a Local Government Body, the Local

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Government Association of
Tasmania.

- (4) A pricing policy order –
- (a) is to repeal, rescind, revoke or amend any 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) is to 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, and provisions relating to 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*; and
 - (d) is a statutory rule.
- (5) Section 47 (3), (3A), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* applies to a pricing

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policy order as if it were regulations within the meaning of that Act.

- (6) Despite subsection (5), a House of Parliament may pass a resolution to approve a pricing policy order at any time within the first 15 sitting-days of that House after the order is laid before it.
- (7) The Treasurer may not, under section 3 (2) of the *Subordinate Legislation Act 1992*, declare a pricing policy order to be subordinate legislation for the purposes of that Act.
- (8) A pricing policy order may be amended at any time even if a pricing policy investigation with respect to the monopoly service to which the order relates has not been conducted since the making of the order.
- (9) 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.
- (10) A notice under subsection (2) or (9) is not a statutory rule.

37. Action by monopoly provider following pricing policy order

- (1) Within the period of 45 days immediately after a pricing policy order in respect of a monopoly

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service is made, the monopoly provider to which the order relates is to –

- (a) determine –
 - (i) the pricing policies to be applicable to the monopoly service during the period in which the order is in force; and
 - (ii) the prices to be charged on the day on which the order takes effect and the period during which those prices will apply; and
 - (b) lodge with the Regulator an application for the approval of those pricing policies and prices, together with any supporting information the Regulator may require.
- (2) A monopoly provider is not to amend the pricing policies or prices determined under subsection (1) and approved under subsection (3) unless it has the written approval of the Regulator to do so.
- (3) The Regulator –
- (a) is to approve the determination or amendment by a monopoly provider of its pricing policies in respect of a monopoly service or prices for a monopoly service if it is satisfied that the policies or prices as determined or amended would be consistent with the

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pricing policy order made in respect of the monopoly service; and

- (b) is not to approve such a determination or amendment unless it is so satisfied.
- (4) The Regulator is to give notice of its approval, or disapproval, of the determination or amendment by a monopoly provider of its pricing policies or prices under subsection (3) within 15 days after it receives the application for approval.

38. Determination by Portfolio Minister where no pricing policy order made

- (1) 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 is to –
 - (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 in relation to those recommendations from any Minister of the Crown, the monopoly provider and, if the monopoly provider is a Local Government Body, the Local Government Association of Tasmania, determine the maximum prices which may be charged by the monopoly

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provider in respect of that monopoly service during the period –

- (i) specified in the terms of reference for the investigation under section 25(f); and
 - (ii) commencing on the day the determination takes effect; and
 - (c) give such directions and take such other action as is necessary to ensure that the monopoly provider acts in accordance with that determination.
- (2) For the avoidance of doubt, if the Portfolio Minister is the Minister to whom the administration of the *Local Government Act 1993* is assigned and the monopoly provider is a Local Government Body, that body is to comply with a direction of that Minister given under subsection (1)(c).

PART 4 – PRESCRIBED BODY INQUIRIES

39. Direction to conduct prescribed body inquiry

- (1) The Minister may direct the Regulator 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 Regulator; or
 - (b) a Portfolio Minister; or
 - (c) a prescribed body.
- (3) The Minister is not to give a direction –
 - (a) unless satisfied that undertaking the proposed prescribed body inquiry would not interfere with the ability of the Regulator 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.

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- (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 prescribed body inquiry; and
 - (d) may specify that the Regulator is not to inquire into, or publish to any person, the terms of a particular contract or a contract of a class of contracts; and
 - (e) is to specify the day by which the Regulator is to provide a report on the prescribed body inquiry to the Minister; and
 - (f) is to specify who is liable to pay the costs of the prescribed body inquiry and what proportion of those costs that person or body is liable to pay.
- (5) In determining the liability to pay the costs of a prescribed body inquiry, the Minister and Portfolio Minister, jointly, may determine that –
- (a) the Regulator is to pay all or a proportion of the costs of the prescribed body inquiry; and
 - (b) a prescribed body which is the subject of the prescribed body inquiry is to pay all or a proportion of the costs of the prescribed body inquiry; and

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- (c) a prescribed body which is not the subject of the prescribed body inquiry but which has agreed or offered to pay an amount towards the costs of the prescribed body inquiry is to pay an amount not exceeding the amount specified in the agreement or offer.
- (6) Before the Regulator provides the report on a prescribed body inquiry to the Minister, the Minister may amend or rescind the direction by written notice provided to the Regulator and all prescribed bodies to which the direction relates.
- (7) The Regulator is to comply with a direction or an amended direction.

40. Conduct of prescribed body inquiry

- (1) Subject to this Act and the regulations, the Regulator may conduct a prescribed body inquiry in such manner as it considers appropriate and, in particular, may at its discretion –
 - (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 or required to appear before the Regulator may be represented by another person.

- (2) In conducting a prescribed body inquiry, the Regulator –
- (a) is not bound by the 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 prescribed body inquiry.

41. Use of documents or other information

- (1) The Regulator may give directions prohibiting or restricting the publication of any answer, document or other information provided to it for the purposes of a prescribed body 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.

42. Report on prescribed body inquiry

The Regulator is to provide, by the day specified in the direction to conduct a prescribed body inquiry –

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

43. Offences

A person must not –

- (a) provide, in relation to a prescribed body inquiry, information that the person knows or believes to be false or misleading without informing the Regulator of that knowledge or belief; or
- (b) hinder, obstruct or interfere with the Regulator or any other person in the performance or exercise of its, his or her functions or powers in respect of a prescribed body 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 Regulator in a prescribed body inquiry.

Penalty: Fine not exceeding 100 penalty units.

PART 5 – TAXI FARE METHODOLOGY INQUIRIES

44. Direction to conduct taxi fare methodology inquiry

- (1) The Minister, on the request of the Transport Commission, may direct the Regulator to inquire into and report to the Transport Commission on appropriate methodologies in respect of setting taxi fares.
- (2) The Minister is not to give a direction –
 - (a) unless satisfied that conducting the proposed taxi fare methodology inquiry would not interfere with the ability of the Regulator to exercise its other functions; and
 - (b) unless the Minister to whom the administration of the *Taxi and Luxury Hire Car Industries Act 2008* is assigned has approved the direction.
- (3) A direction –
 - (a) is to be in writing; and
 - (b) is to specify the scope of the taxi fare methodology inquiry.
- (4) The Transport Commission is liable to pay the costs of the taxi fare methodology inquiry.
- (5) Before the Regulator provides the report on a taxi fare methodology inquiry to the Transport Commission, the Minister may amend or rescind

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the direction by written notice provided to the Regulator and the Transport Commission if the Minister to whom the administration of the *Taxi and Luxury Hire Car Industries Act 2008* is assigned approves the amendment or rescission.

- (6) The Regulator is to comply with a direction or an amended direction.

45. Conduct of taxi fare methodology inquiry

- (1) Subject to this Act, the Regulator may conduct a taxi fare methodology inquiry in such manner as it considers appropriate.
- (2) In conducting a taxi fare methodology inquiry, the Regulator –
- (a) is not bound by the 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 taxi fare methodology inquiry.

46. Offences

A person must not –

- (a) provide, in relation to a taxi fare methodology inquiry, information that the person knows or believes to be false

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or misleading without informing the Regulator of that knowledge or belief; or

- (b) hinder, obstruct or interfere with the Regulator or any other person in the performance or exercise of its, his or her functions or powers in respect of a taxi fare methodology inquiry.

Penalty: Fine not exceeding 100 penalty units.

47. Report on taxi fare methodology inquiry

The Regulator is to provide, by the day specified in the direction to conduct a taxi fare methodology inquiry –

- (a) a report of its findings in the taxi fare methodology inquiry to the Transport Commission; and
- (b) a copy of that report to the Minister and to the Minister to whom the administration of the *Transport Act 1981* is assigned.

**PART 6 – COMPETITIVE NEUTRALITY
COMPLAINTS**

48. Who may make a complaint

A person may make a complaint to the Regulator 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.

49. Making complaint

A complaint –

- (a) is to be made to the Regulator 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 complainant 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 complainant considers relevant; and
- (c) is to be accompanied by the prescribed fee.

50. Preliminary assessment of complaint

- (1) Within 30 days after receiving a complaint, the Regulator is to 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 Regulator may –
 - (a) make any preliminary inquiries that the Regulator 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 Regulator allows –

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- (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) After making preliminary inquiries under subsection (1), the Regulator may –
 - (a) resolve the complaint under subsection (5); or
 - (b) determine that the complaint is to be investigated; or
 - (c) refuse to investigate the complaint under section 51.
- (5) After making preliminary inquiries under subsection (1), the Regulator may resolve the complaint without the complaint being investigated if –
 - (a) having regard to the nature and seriousness of the complaint, the Regulator believes that the complaint may be resolved expeditiously; and
 - (b) the parties to the complaint agree to that resolution.

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

51. Refusal to conduct complaint investigation

- (1) The Regulator may refuse to commence a complaint investigation 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 Regulator 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

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- (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 Regulator refuses to commence a complaint investigation 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 Regulator is to provide written notice of the refusal –
- (a) to the complainant; and
 - (b) if the Regulator has sought information from a prescribed body under section 50 but not 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.

52. Commencing investigation into complaint

If the Regulator determines under section 50(4)(b) that a complaint should be

investigated, the Regulator is to 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.

53. Reply to complaint

- (1) Within 30 days after receiving a copy of a complaint and notice of the Regulator’s intention to investigate it provided under section 52, the prescribed body must provide the Regulator 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

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- (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.

54. Conduct of complaint investigation

- (1) Subject to this Act and the regulations, the Regulator 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 or required to appear before the Regulator may be represented by another person.
- (2) In conducting a complaint investigation, the Regulator –

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- (a) is not bound by the 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 complaint investigation.

55. Requiring person to give evidence or provide document

- (1) In a complaint investigation, the Regulator may require a person, by written notice provided to the person, to do any one or more of the following:
 - (a) attend before the Regulator and answer questions which, in the opinion of the Regulator, are relevant to the investigation;
 - (b) provide to the Regulator, 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 Regulator, is relevant to the investigation;
 - (c) provide to the Regulator, in the manner specified in the notice, any other information specified in the notice which, in the opinion of the Regulator, is relevant to the investigation.

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- (2) A person who attends before the Regulator under a requirement referred to in subsection (1)(a) may, at the Regulator's discretion, be paid by the Regulator reasonable allowances and expenses.
- (3) Despite subsection (1), the Regulator 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 Regulator a Cabinet record.

56. Use of documents or other information

- (1) The Regulator –
 - (a) may examine, take possession of, make copies of and take extracts from any document provided under a requirement referred to in section 55(1)(b) or (c); and
 - (b) may retain that document for so long as is necessary for the purposes of the investigation; and
 - (c) is to allow a person who would be entitled to inspect the document if it were not in the possession of the Regulator to inspect it, make a copy of it or take an extract from it at any reasonable time.

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- (2) The Regulator 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 55(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 Regulator may make any answer, document or other information provided to it under a requirement referred to in section 55(1) or part of any such answer, document or other information available to any person as the Regulator 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 information under the *Freedom of Information Act 1991* or the *Right to Information Act 2009*.

57. Decision of Regulator

- (1) After conducting a complaint investigation, the Regulator is to determine whether or not the complaint is justified.
- (2) If the Regulator determines that the complaint is justified, the Regulator is to 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 Regulator is final.
- (4) The complainant is not entitled to compensation for the adverse effects suffered.

58. Time by which complaint investigation to be completed

- (1) A complaint investigation, including the provision of the report under section 57(2), is to be completed within 45 days after the Regulator receives under section 53 the written reply of the

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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 Regulator in writing of –
 - (a) that extension; and
 - (b) the day by which the complaint investigation is to be completed; and
 - (c) the day by which the report under section 57(2) is to be provided.

59. Action by Minister on determination

Within 30 days after receiving a report on a complaint investigation under section 57(2) that contains a recommendation of a kind referred to in section 57(2)(a) or (b), the Portfolio Minister is to provide the Regulator and the complainant with written notice of any action he or she has taken or intends to take as a result of receiving that report.

60. Action by prescribed body on determination

- (1) Within 30 days after receiving a report on a complaint investigation under section 57(2) that contains a recommendation of a kind referred to in section 57(2)(b), the prescribed body must provide the Regulator 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 Regulator may require the prescribed body, within the period specified in the requirement, to provide the Regulator 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 57(2).
- (3) A prescribed body must not contravene a requirement made under subsection (2).

Penalty: Fine not exceeding 100 penalty units.

61. Refund of fee accompanying complaint

If the Regulator determines that a complaint is justified, the Regulator is to refund to the complainant any prescribed fee paid under section 49(c).

62. Offences

- (1) A person must not –
- (a) fail to comply with a requirement made under section 55(1); or
 - (b) provide to the Regulator in relation to a complaint investigation information that the person knows or believes to be false or misleading without informing the Regulator of that knowledge or belief; or
 - (c) hinder, obstruct or interfere with the Regulator or any other person in the performance or exercise of its, his or her functions or 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 Regulator 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 55(1) if to do so would tend to incriminate that person.

PART 7 – MISCELLANEOUS

63. Non-application of certain Acts to certain information

The *Freedom of Information Act 1991* and the *Right to Information Act 2009* do 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 has been given under section 30(2), 41(1) or 56(2); and
- (b) records relating to the production of any such answer, document, other information or part.

64. Service of documents

- (1) A document is effectively provided, served or given to the Regulator if it is –
 - (a) left at, or sent by post to, the Department or the office or address of the Regulator; or
 - (b) faxed to the fax number of the Department or the Regulator; or
 - (c) emailed to the email address of the Department or the Regulator.

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- (2) A document is effectively provided, served or given by the Regulator to a person or Agency if it is –
- (a) in the case of a natural person –
 - (i) given to the person; or
 - (ii) left at or sent by post to the person’s postal or residential address or address of business or employment last known to the Regulator; or
 - (iii) faxed to the person’s fax number; or
 - (iv) emailed to the person’s email address; and
 - (b) in the case of any other person or an Agency –
 - (i) left at or sent by post to the person or Agency’s principal or registered office or principal place of business; or
 - (ii) faxed to the person or Agency’s fax number; or
 - (iii) emailed to the person or Agency’s email address.

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65. Amendment of Schedule 1

- (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) An order under this section may not –
 - (a) amend Schedule 1 so as to specify in that Schedule for the purposes of section 25(f)(i) a period of more than 5 years; or
 - (b) substitute for Schedule 1 another Schedule which specifies for the purposes of section 25(f)(i) a period of more than 5 years.
- (3) 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.
- (4) 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.

66. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), regulations may be made –
 - (a) for and in relation to the conduct by the Regulator of monopoly provider investigations, prescribed body inquiries, taxi fare methodology inquiries and complaint investigations; and
 - (b) providing for the fees payable under this Act.
- (3) The 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.
- (4) The regulations may –
 - (a) provide that a contravention of 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.
- (5) The regulations may authorise any matter to be from time to time determined, applied, approved or regulated by the Minister.

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- (6) The regulations may –
- (a) provide for savings and transitional matters necessary or expedient for bringing this Act into operation; and
 - (b) provide for any of those savings or transitional matters to take effect when this Act commences or on 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.

67. Administration of Act

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 that Minister in relation to the administration of this Act is the Department of Treasury and Finance.

68. Savings and transitional provisions

- (1) In this section –

“**commencement day**” means the day on which this Act commences.

- (2) On and after the commencement day –

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- (a) a declaration may not be made under section 5 or 6 of the *Government Prices Oversight Act 1995*; and
 - (b) a requirement to conduct an investigation into, and report on, the pricing policies of a monopoly provider, within the meaning of the *Government Prices Oversight Act 1995*, may not be made under section 24 of that Act; and
 - (c) a direction to inquire into and report on a matter relating to or affecting the pricing policies of a prescribed body, within the meaning of the *Government Prices Oversight Act 1995*, may not be given under section 39A of that Act; and
 - (d) a complaint may not be made under section 39G of the *Government Prices Oversight Act 1995*.
- (3) The savings and transitional provisions set out in Schedule 4 have effect.

69. Repeals and rescissions

- (1) The following Acts are repealed on a day to be proclaimed:
 - (a) *Government Prices Oversight Act 1995*;
 - (b) *Government Prices Oversight Amendment Act 2007*.

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- (2) The *Government Prices Oversight Regulations 2008* are rescinded on the day proclaimed under subsection (1).
- (3) The *Proclamation under the Government Prices Oversight Amendment Act 2007* is revoked on the day proclaimed under subsection (1).

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SCHEDULE 1 – CERTAIN MONOPOLY PROVIDERS

Sections 3, 6, 24, 25 and 65

Column 1	Column 2	Column 3
	MONOPOLY PROVIDER	PERIOD OF ORDER OR DETERMINATION
1.	Metro Tasmania Pty. Ltd	5 years
2.	Motor Accidents Insurance Board	4 years

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SCHEDULE 2 – MEMBERSHIP OF REGULATOR

Section 15(4)

1. Term of office

A member of the Regulator is appointed for such period, not exceeding 3 years, as is specified in the member's instrument of appointment and may be reappointed.

2. Holding other office

The holder of an office who is required by the terms of his or her employment to devote the whole of his or her time to the duties of that office is not disqualified from –

- (a) holding that office in conjunction with the office of a member of the Regulator;
or
- (b) accepting any remuneration payable to a member of the Regulator.

3. *State Service Act 2000*

- (1) The *State Service Act 2000* does not apply in relation to a member of the Regulator in his or her capacity as such a member.
- (2) A person may hold the office of member of the Regulator in conjunction with State Service employment.

4. Remuneration and conditions of appointment

- (1) A member of the Regulator is entitled to be paid such remuneration and allowances as the Minister determines.
- (2) A member of the Regulator who is a State Service employee or State Service officer is not entitled to remuneration or allowances under this clause except with the approval of the Minister administering the *State Service Act 2000*.
- (3) A member of the Regulator holds office on such conditions in relation to matters not provided for by this Act as are specified in the member's instrument of appointment.

5. Vacation of office

- (1) A member of the Regulator vacates office if he or she –
 - (a) dies; or
 - (b) resigns by written notice provided to the Minister; or
 - (c) is removed from office under this clause.
- (2) The Minister may remove a member of the Regulator from office if the member –
 - (a) is absent from 3 consecutive meetings of the Regulator –

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- (i) otherwise than in accordance with the member's instrument of appointment; or
 - (ii) without the permission of the other members of the Regulator; or
 - (b) 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) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment of 12 months or longer; or
 - (d) is convicted of an offence under this Act.
- (3) The Minister may remove a member of the Regulator from office if satisfied that –
- (a) the member is unable to perform adequately or competently the duties of office; or
 - (b) the member has contravened clause 6 of Schedule 3.

6. Filling of vacancies

If the office of a member of the Regulator becomes vacant, the Minister may appoint a

person to the vacant office for the remainder of that member's term of office.

7. Validation of proceedings, &c.

- (1) An act or proceeding of the Regulator or of a person acting under any direction of the Regulator is not invalidated by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the office of a member of the Regulator.
- (2) All acts and proceedings of the Regulator or of a person acting under a direction of the Regulator are, despite the subsequent discovery of a defect in the appointment of a member of the Regulator or that any other person was disqualified from acting as, or incapable of being, a member of the Regulator, as valid as if the member of the Regulator had been duly appointed and was qualified to act as, or capable of being, a member of the Regulator, and as if the Regulator had been fully constituted.

8. Presumptions

In any proceedings by or against the Regulator, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the Regulator; or
- (b) the appointment of any member of the Regulator.

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SCHEDULE 3 – MEETINGS OF REGULATOR

Section 15(5)

1. Convening of meetings

- (1) Subject to subclause (2), meetings of the Regulator are to be held at the times and places determined by the Regulator.
- (2) The chairperson of the Regulator –
 - (a) is to convene a meeting within 30 days after receiving a requirement to conduct a monopoly provider investigation; and
 - (b) may convene a meeting at any time.
- (3) If the chairperson of the Regulator is absent or otherwise unable to perform the duties of the office –
 - (a) the person acting in the office of chairperson of the Regulator, or a person authorised by the Regulator to do so, is to convene a meeting in accordance with subclause (2)(a) as if he or she were the chairperson of the Regulator; or
 - (b) any other meeting may be convened by –
 - (i) two members of the Regulator; or
 - (ii) a person authorised by the Regulator to do so.

2. Presiding at meetings

- (1) The chairperson of the Regulator is to preside at all meetings of the Regulator at which he or she is present.
- (2) If the chairperson is not present at a meeting of the Regulator, the member of the Regulator elected by the members of the Regulator present is to preside.

3. Quorum and voting at meetings

- (1) At a meeting of the Regulator, 2 members of the Regulator constitute a quorum.
- (2) A meeting of the Regulator at which a quorum is present is competent to transact any business of the Regulator.
- (3) At a meeting of the Regulator –
 - (a) a question is decided by a majority of votes of the members of the Regulator present and voting; and
 - (b) the person presiding has a casting vote if there is an equality of votes.

4. Conduct of meetings

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

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- (2) The Regulator may permit members of the Regulator to participate in a particular meeting or all meetings by –
 - (a) telephone; or
 - (b) video conference; or
 - (c) any other means of communication approved by the Regulator.
- (3) A member who participates in a meeting under a permission granted under subclause (2) is present at the meeting.
- (4) The Regulator may allow a person to attend a meeting for the purpose of advising or informing it on any matter or for any other reason the Regulator considers appropriate.

5. Resolutions without meetings

- (1) If at least 2 members of the Regulator sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, a resolution in those terms is taken to have been passed at a meeting of the Regulator 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 of the Regulator 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 of the Regulator, are taken to constitute one document.

6. Disclosure of interests

- (1) If a member of the Regulator has a direct or indirect interest (pecuniary or otherwise) in a matter being or about to be considered by the Regulator, that member must disclose the nature of the interest to the Regulator as soon as practicable after the relevant facts come to that member's knowledge.

Penalty: Fine not exceeding 50 penalty units.

- (2) Unless the Regulator otherwise determines, a member of the Regulator who has made a disclosure under subclause (1) in relation to a matter must not –
- (a) be present during any consideration of, or the making of a decision in relation to, the matter by the Regulator or during any other proceeding of the Regulator in relation to the matter; or

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- (b) take part in any consideration of, or the making of a decision in relation to, the matter.
- (3) For the purpose of making a decision under subclause (2), the member of the Regulator to whom the decision relates must not –
 - (a) be present during any deliberation of the Regulator for the purpose of making the decision; or
 - (b) take part in making the decision.
- (4) Subclause (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.
- (5) A contravention of subclause (1) does not invalidate any act, proceeding or decision of the Regulator.

7. Minutes

The Regulator is to keep minutes of its proceedings.

8. General procedure

Subject to this Act, the Regulator may regulate its own proceedings.

9. Presumptions

In any proceedings by or against the Regulator, unless evidence is given to the contrary, proof is not required of –

- (a) any resolution of the Regulator; and
- (b) the presence of a quorum at any meeting of the Regulator.

**SCHEDULE 4 – SAVINGS AND TRANSITIONAL
PROVISIONS**

Section 68(3)

1. Interpretation

In this Schedule –

“**commencement day**” means the day on which this Act commences;

“**Commissioner**” has the same meaning as in the GPO Act;

“**GPO Act**” means the *Government Prices Oversight Act 1995*;

“**repeal day**” means the day, fixed by proclamation under section 69(1), on which the GPO Act is repealed.

2. Commissioner to be chairperson of Regulator

The Commissioner is taken to have been appointed under section 15 on the commencement day as a member of the Regulator, and as its chairperson, for the remainder of the term specified in his or her instrument of appointment as Commissioner and on the same conditions.

3. Abolition of Government Prices Oversight Commission, &c.

- (1) On the repeal day –
 - (a) the Government Prices Oversight Commission established by section 9 of the GPO Act is abolished; and
 - (b) the appointment of the Commissioner under section 15(1)(a) of the GPO Act is terminated; and
 - (c) if a person has an appointment under section 17 of the GPO Act as Acting Commissioner, that appointment is terminated.
- (2) The Commissioner and an Acting Commissioner referred to in subclause (1)(c) are not entitled to receive any benefit in respect of the termination of their appointments under this clause.

4. Declarations under GPO Act

- (1) On and after the commencement day, a declaration of a service made under section 5 of the GPO Act that has effect immediately before that day is taken, for the purposes of this Act, to be a declaration of a service made under section 5 of this Act.
- (2) On and after the commencement day, a declaration of a monopoly service made under section 6 of the GPO Act that has effect immediately before that day is taken, for the

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purposes of this Act, to be a declaration of a monopoly service made under section 6 of this Act.

5. Guidelines under GPO Act

If guidelines published under section 12 of the GPO Act are in effect immediately before the commencement day, those guidelines –

- (a) continue in effect for the purposes of the GPO Act until the repeal day; and
- (b) also are taken for the purposes of this Act to have been published under section 12 of this Act.

6. Requirement under section 24 of GPO Act

If under section 24 of the GPO Act a requirement to conduct an investigation has been made but no notice of the investigation has been given under section 26 of that Act before the commencement day –

- (a) that requirement is taken to have been made, and provided to the Regulator, under section 24 of this Act; and
- (b) no action is to be taken under the GPO Act in respect of that requirement.

7. Order under section 36 of GPO Act

On and after the commencement day, an order made under section 36 of the GPO Act that has effect immediately before that day is taken, for the purposes of this Act, to be an order made under section 36 of this Act.

8. Determination under section 38 of GPO Act

On and after the commencement day, a determination made under section 38 of the GPO Act that has effect immediately before that day is taken, for the purposes of this Act, to be a determination made under section 38 of this Act.

9. Complaint

- (1) On or after the commencement day, the Commission may refer to the Regulator a complaint made to it under section 39G of the GPO Act before that day if –
 - (a) the Commission has not commenced a preliminary assessment of the complaint under section 39H; or
 - (b) the Commission has determined, following such a preliminary assessment, that an investigation of the complaint is necessary or appropriate but has not commenced that investigation under section 39J of the GPO Act.

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- (2) If a complaint is referred to the Regulator under subclause (1)(b), the determination and preliminary assessment referred to in that subclause are taken to have been made and undertaken by the Regulator under section 50 of this Act.
- (3) If the Regulator finds a complaint referred to it under this clause justified, the Regulator is to refund to the complainant any prescribed fee paid to the Commission under section 39G of the GPO Act as if the fee had been paid to the Regulator.

10. Funds and liabilities

- (1) On the repeal day any funds standing to the credit of the Commission, whether or not in an authorised deposit-taking institution account, become the funds of the Regulator.
- (2) On and after the repeal day, an authorised deposit-taking institution account that, immediately before that day, was in the name of the Commission is taken to be in the name of the Regulator and may be operated by the Regulator as determined at a meeting of the Regulator.
- (3) As soon as practicable after the repeal day, the Regulator is to pay into its account in the Special Deposits and Trust Fund any funds transferred to it by the operation of subclause (1).
- (4) On the repeal day, all liabilities and financial obligations belonging to the Commission

become the liabilities and financial obligations of the Regulator.

11. Annual report

(1) In this clause –

“complaint” means a complaint made to the Commission under section 39G of the GPO Act;

“complaint investigation” has the same meaning as in the GPO Act;

“inquiry” has the same meaning as in the GPO Act;

“prescribed body” has the same meaning as in the GPO Act;

“pricing policy investigation” has the same meaning as in the GPO Act;

“relevant financial year” means a financial year in respect of which the Regulator is to make an annual report.

(2) If during a relevant financial year the Commission has performed and exercised any functions and powers, the annual report of the Regulator in respect of that year is to include –

(a) a report on the performance and exercise of the Commission’s functions and powers; and

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- (b) the particulars of any contravention of the national competition policy competitive neutrality principles –
 - (i) that a prescribed body admits to having committed in response to a complaint; or
 - (ii) that the Commission, during a complaint investigation, an inquiry or a pricing policy investigation, determines has been committed by a prescribed body; and
 - (c) whether any action was taken by a prescribed body referred to in paragraph (b) in relation to its contravention of the national competition policy competitive neutrality principles and, if so, what that action was.
- (3) For the purposes of an annual report in respect of a relevant financial year, the financial statements of the Commission are to be combined with the financial statements of the Regulator.

12. Records and information

- (1) On the repeal day, any records held by the Commission become the records of the Regulator.
- (2) If immediately before the repeal day a direction of the Commission given under section 30(2),

39C(1) or 39N(2) of the GPO Act that prohibits or restricts publication of any answer, document or other information provided to it, or part of any such answer, document or other information, has effect, on and after the repeal day –

- (a) that direction continues to apply; and
 - (b) for that purpose is taken to have been made by the Regulator under section 30(2), section 41(1) or section 56(2) of this Act, as appropriate.
- (3) If immediately before the repeal day the *Freedom of Information Act 1991* or the *Right to Information Act 2009* did not apply to –
- (a) any answer, document, other information or part of any answer, document or other information provided to the Commission; or
 - (b) any record held by the Commission –

neither of those Acts apply to that answer, document, part, other information or record on and after the repeal day.