

NORTHERN TERRITORY OF AUSTRALIA

UTILITIES COMMISSION ACT 2000

As in force at 21 March 2000

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 21 March 2000

UTILITIES COMMISSION ACT 2000

An Act to establish the Utilities Commission and for related purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Utilities Commission Act 2000*.

2 Object

The object of this Act is to create an economic regulatory framework for regulated industries that promotes and safeguards competition and fair and efficient market conduct or, in the absence of a competitive market, that promotes the simulation of competitive market conduct and the prevention of the misuse of monopoly power.

3 Definitions

In this Act:

Acting Utilities Commissioner means a person appointed as an Acting Utilities Commissioner under Part 2.

Associate Utilities Commissioner means a person appointed as an Associate Utilities Commissioner under Part 2.

licensed entity means an entity licensed under a relevant industry regulation Act.

regulated industry means an industry that is declared to be a regulated industry for the purposes of this Act by another Act.

relevant industry regulation Act means another Act that declares an industry to be a regulated industry for the purposes of this Act and includes regulations under that other Act.

Utilities Commission means the Utilities Commission of the Northern Territory established by Part 2.

Utilities Commissioner means the person appointed as the Utilities Commissioner under Part 2.

4 Crown to be bound

- (1) This Act binds the Crown, not only in the right of the Territory but also, so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.
- (2) Nothing in this Act makes the Crown liable to be prosecuted for an offence.
- (3) Subsection (2) does not apply to an authority of the Territory granted a licence under the *Electricity Reform Act*.

Part 2 Utilities Commission of the Northern Territory

5 Utilities Commission

- (1) The Utilities Commission of the Northern Territory is established.
- (2) The Utilities Commission is constituted:
 - (a) by the Utilities Commissioner; or
 - (b) if a person is appointed as an Associate Utilities Commissioner under section 12 – by the Utilities Commissioner and the Associate Utilities Commissioner.
- (3) The Utilities Commission:
 - (a) is a body corporate;
 - (b) has perpetual succession and a common seal;
 - (c) is capable of suing and being sued in its corporate name; and
 - (d) has the functions assigned by or under this or any other Act.
- (4) The Utilities Commission has all the powers of a natural person together with powers conferred on the Utilities Commission by or under this or any other Act.

6 Powers and functions

- (1) The Utilities Commission has the following functions:
 - (a) to regulate prices charged by government and other businesses for providing certain monopoly services and for providing services in regulated industries as required under relevant industry regulation Acts;
 - (b) to perform licensing functions under relevant industry regulation Acts;
 - (c) to develop, monitor and enforce compliance with and promote improvement in standards and conditions of service and supply under relevant industry regulation Acts;
 - (d) to make, monitor the operation of, and review from time to time, codes and rules relating to the conduct or operations of a regulated industry or licensed entities under relevant industry regulation Acts;
 - (e) to investigate and help resolve complaints relating to the conduct or operations of licensed entities under relevant industry regulation Acts;
 - (f) to provide and require consumer consultation processes in regulated industries and to assist consumers and others with information and other services;
 - (g) to advise the Minister on any matter referred by the Minister;
 - (h) to perform any other function assigned by or under this or any other Act.
- (2) In performing the Utilities Commission's functions, the Utilities Commission must have regard to the need:
 - (a) to promote competitive and fair market conduct;
 - (b) to prevent misuse of monopoly or market power;
 - (c) to facilitate entry into relevant markets;
 - (d) to promote economic efficiency;
 - (e) to ensure consumers benefit from competition and efficiency;
 - (f) to protect the interests of consumers with respect to reliability and quality of services and supply in regulated industries;

- (g) to facilitate maintenance of the financial viability of regulated industries; and
 - (h) to ensure an appropriate rate of return on regulated infrastructure assets.
- (3) The Utilities Commission has the power to do all things that are necessary or convenient to be done for or in connection with or incidental to the performance of its functions under this or another Act.

7 Utilities Commission may publish statements, reports and guidelines

The Utilities Commission may publish statements, reports and guidelines relating to the performance of the Utilities Commission's functions.

8 Independence

Except as provided by or under this Act, the Utilities Commission is not subject to the control or direction of the Minister in respect of the content of any determination, order or decision made by it under this Act.

9 Proceedings of Utilities Commission when constituted by more than one member

- (1) If the Utilities Commission is constituted under section 5(2)(b), then this section applies.
- (2) The Utilities Commission may hold meetings when and where it decides.
- (3) The Utilities Commissioner is the chairperson of the Utilities Commission.
- (4) The Utilities Commissioner:
 - (a) may call a meeting of the Utilities Commission at any time; and
 - (b) must call a meeting if requested to do so by another member.
- (5) At a meeting of the Utilities Commission:
 - (a) a majority of the members constitute a quorum;
 - (b) a question is decided by a majority of the members present and voting; and

- (c) a member present at the meeting has a vote on each question to be decided and, if the votes are equal, the chairperson has a casting vote.
- (6) In all other respects, the Utilities Commission may conduct its proceedings (including its meetings) in the way it considers appropriate.

10 Utilities Commissioner

- (1) The Administrator may appoint a person who is qualified for appointment because of the person's knowledge of, or experience in, one or more of the fields of industry, commerce, economics, law or public administration to be the Utilities Commissioner.
- (2) The Utilities Commissioner is to be appointed:
 - (a) for a term of 5 years or, in the case of the first appointment made after the commencement of this Act, for a term of 4 years; and
 - (b) on terms and conditions as to remuneration and other matters determined by the Administrator.
- (3) The Utilities Commissioner may be appointed on a full-time or a part-time basis.
- (4) At the expiration of a term of office, the Utilities Commissioner may be re-appointed.
- (5) The conditions of office of the Utilities Commissioner must not, without the consent of the Utilities Commissioner, be varied while the Utilities Commissioner is in office so as to become less favourable to the Utilities Commissioner.
- (6) If the Utilities Commissioner is appointed on a full-time basis, he or she must not engage in any other remunerated employment without the consent of the Minister.
- (7) The office of the Utilities Commissioner becomes vacant if the Utilities Commissioner:
 - (a) resigns by written notice to the Administrator or is not re-appointed at the end of a term of office;
 - (b) is removed from office under this section;
 - (c) is convicted of a crime or sentenced to imprisonment for an offence;

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- (d) becomes bankrupt or applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
 - (e) becomes a member, or a candidate for election as a member, of the Legislative Assembly or of the parliament of the Commonwealth or a State or another Territory of the Commonwealth.
- (8) The Administrator may suspend the Utilities Commissioner from office for:
- (a) misconduct;
 - (b) physical or mental incapacity to perform satisfactorily the Utilities Commissioner's functions; or
 - (c) material contravention of or failure to comply with the requirements of this or any other Act.
- (9) The Minister must table a statement of the ground for suspending the Utilities Commissioner in the Legislative Assembly within 6 sitting days of the Assembly after the suspension.
- (10) If a statement has been tabled in the Legislative Assembly under subsection (9), the Assembly may, within 6 sitting days of the Assembly, by resolution, declare that the Utilities Commissioner ought to be restored to office and the Administrator must terminate the suspension.
- (11) If, at the expiration of the 6 sitting days of the Legislative Assembly, the Assembly has not passed a resolution under subsection (10), the Administrator must remove the Utilities Commissioner from office.
- (12) The Utilities Commissioner may only be removed or suspended from office as provided in this section.

11 Minister to act as Utilities Commissioner pending first appointment

The Minister may act in the office of the Utilities Commissioner until the first appointment of a person to the office under this Act and has, while acting, all the functions and powers of the Utilities Commissioner.

12 Associate Utilities Commissioners

- (1) The Minister may appoint persons who are qualified for appointment because of their knowledge of, or experience in, one or more of the fields of industry, commerce, economics, law or public administration to be Associate Utilities Commissioners.
- (2) An Associate Utilities Commissioner is to be appointed on terms and conditions determined by the Minister.
- (3) An Associate Utilities Commissioner may be appointed on a full-time or part-time basis and for the term that the Minister determines.
- (4) If an Associate Utilities Commissioner is appointed on a full-time basis, he or she must not engage in any other remunerated employment without the consent of the Minister.
- (5) An Associate Utilities Commissioner may, at any time, resign by written notice to the Minister.
- (6) The Administrator may suspend an Associate Utilities Commissioner from office for:
 - (a) misconduct;
 - (b) physical or mental incapacity to perform satisfactorily the Associate Utilities Commissioner's functions; or
 - (c) material contravention of or failure to comply with the requirements of this or any other Act.
- (7) The Minister must table a statement of the ground for suspending the Associate Utilities Commissioner in the Legislative Assembly within 6 sitting days of the Assembly after the suspension.
- (8) If a statement has been tabled in the Legislative Assembly under subsection (7), the Assembly may, within 6 sitting days of the Assembly, by resolution, declare that the Associate Utilities Commissioner ought to be restored to office and the Administrator must terminate the suspension.
- (9) If, at the expiration of the 6 sitting days of the Legislative Assembly, the Assembly has not passed a resolution under subsection (8), the Administrator must remove the Associate Utilities Commissioner from office.
- (10) An Associate Utilities Commissioner may only be removed or suspended from office as provided in this section.

13 Staff

The staff of the Utilities Commission (other than Associate Utilities Commissioners) is to comprise employees, within the meaning of the *Public Sector Employment and Management Act*, assigned to assist the Utilities Commission.

14 Consultants

The Utilities Commission may engage consultants on terms and conditions considered appropriate by the Utilities Commission.

15 Advisory committees

The Utilities Commission may establish advisory committees to provide advice on specified aspects of the Utilities Commission's functions under this Act or any other Act.

16 Delegation

- (1) The Utilities Commission may delegate any of its powers and functions under this Act other than this power of delegation.
- (2) A delegation under this section may be to an Associate Utilities Commissioner or to any person or body of persons that is, in the Utilities Commission's opinion, competent to exercise the relevant powers or perform the relevant functions.
- (3) A delegation under this section to a person may be to a named person or to a person from time to time holding, acting in or performing the duties of an office, designation or position.
- (4) A power or function delegated under this section when exercised or performed by the delegate is to be taken to have been exercised or performed by the Utilities Commission.
- (5) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Utilities Commission.
- (6) A delegation under this section:
 - (a) is to be in writing; and
 - (b) may be conditional or unconditional.

17 Acting Utilities Commissioner

- (1) The Administrator may appoint an Acting Utilities Commissioner to act in the office of the Utilities Commissioner.

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- (2) An Acting Utilities Commissioner may act in the office of the Utilities Commissioner:
- (a) while:
- (i) the Utilities Commissioner is unable to perform official functions; or
- (ii) the office of the Utilities Commissioner is vacant, but not on a continuous basis for more than 6 months; or
- (b) if the Utilities Commissioner is disqualified from acting in relation to a particular matter – in relation to that matter.
- (3) The terms and conditions of appointment of an Acting Utilities Commissioner are to be determined by the Administrator.

18 Conflict of interest

- (1) The Utilities Commissioner, an Acting Utilities Commissioner or Associate Utilities Commissioner or a delegate of the Utilities Commission must inform the Minister in writing of:
- (a) any direct or indirect interest that the person has or acquires in any business, or in any body corporate carrying on business, in Australia or elsewhere; or
- (b) any other direct or indirect interest that the person has or acquires that conflicts or may conflict with the person's functions.
- (2) The Utilities Commissioner, Acting Utilities Commissioner or Associate Utilities Commissioner or delegate must take steps to resolve a conflict or possible conflict between a direct or indirect interest and the person's functions in relation to a particular matter, and, unless the conflict is resolved to the Minister's satisfaction, the Utilities Commissioner, Acting Utilities Commissioner or Associate Utilities Commissioner or delegate is disqualified from acting in relation to the matter.
- (3) This section does not apply if the interest is as a result of the supply of goods or services that are available to members of the public on the same terms and conditions.
- (4) A failure to comply with this section does not affect the validity of an act or decision of the Utilities Commission.

19 Application of money received by Utilities Commission

Except as otherwise directed by the Treasurer, fees or other amounts received by the Utilities Commission under this or any other Act will be paid into the Consolidated Revenue Account.

Part 3 Economic regulation**20 Determinations by Utilities Commission**

- (1) The Utilities Commission may in respect of a regulated industry make determinations relating to:
 - (a) prices for goods and services;
 - (b) standards and conditions of service and supply;
 - (c) licensing;
 - (d) market conduct; and
 - (e) other economic regulatory matters.
- (2) The Utilities Commission can only make a determination if authorised by a relevant industry regulation Act or by regulations under this Act.

21 Price regulation determinations

- (1) Subject to the requirements imposed by the relevant industry regulation Act or by regulations under this Act, a determination under section 20(1)(a) may regulate prices in any manner that the Utilities Commission considers appropriate including:
 - (a) fixing a price or the rate of increase or decrease in a price;
 - (b) fixing a maximum price or maximum rate of increase or minimum rate of decrease in a maximum price;
 - (c) fixing an average price for specified goods or services or an average rate of increase or decrease in an average price;
 - (d) specifying pricing policies or principles;
 - (e) specifying an amount determined by reference to a general price index, the cost of production, a rate of return on assets employed or any other specified factor;

- (f) specifying an amount determined by reference to quantity, location, period or other specified factor relevant to the supply of goods or services; and
 - (g) fixing a maximum revenue, or maximum rate of increase or minimum rate of decrease in maximum revenue, in relation to specified goods or services.
- (2) In making a determination under section 20(1)(a), the Utilities Commission must (in addition to having regard to the general factors specified in Part 2) have regard to:
- (a) the costs of making, producing or supplying the goods or services;
 - (b) the costs of complying with laws or regulatory requirements;
 - (c) the return on assets in the regulated industry;
 - (d) any relevant interstate and international benchmarks for prices, costs and return on assets in comparable industries;
 - (e) the financial implications of the determination;
 - (f) any factors specified by a relevant industry regulation Act or by regulations under this Act; and
 - (g) any other factors that the Utilities Commission considers relevant.
- (3) Subsections (1) and (2) have effect in relation to a regulated industry subject to the provisions of the relevant industry regulation Act for that industry.
- (4) In this section, **price** includes a price range.

22 Making and effect of determinations

- (1) Before making a determination under this Part, the Utilities Commission may send a copy of a draft of the determination:
- (a) to the Minister;
 - (b) to each licensed entity to which the determination will apply; and
 - (c) to any other person the Utilities Commission considers appropriate.

- (2) A determination is to include a summary of the information on which the determination is based and a statement of the reasons for making the determination.
- (3) The Utilities Commission must:
 - (a) send a copy of a determination:
 - (i) to the Minister;
 - (ii) to each licensed entity to which the determination applies; and
 - (iii) to any person who made a submission to an inquiry to which the determination relates and who has asked for a copy of the determination; and
 - (b) ensure that copies of the determination are available for inspection and purchase by members of the public.
- (4) Notice of the making of a determination is to be published:
 - (a) in the *Gazette*; and
 - (b) in a newspaper circulating generally in the Territory.
- (5) The notice is to include a brief description of the nature and effect of the determination, details of when the determination takes effect and how a copy of the determination may be inspected or purchased.
- (6) A determination takes effect on the date on which notice of its making is published in the *Gazette* or a later date of commencement specified in the determination.
- (7) A determination has effect until it is revoked or until an expiry date specified in the determination.
- (8) A licensed entity must comply with a determination that applies in whole or in part to the entity.
- (9) A determination may be varied or revoked by subsequent determination.

23 Enforcement of determinations

- (1) If the Utilities Commission forms the opinion that a person is contravening or is likely to contravene a determination of the Utilities Commission under this Part and that the contravention is not of a trivial nature, the Utilities Commission may, by written

order, require the person to comply with the determination.

- (2) An order may be a provisional order or a final order.
- (3) Unless withdrawn earlier by the Utilities Commission, a provisional order has effect for a period of 7 days commencing on the day that it is served.
- (4) The Utilities Commission may serve another provisional order on the expiry of a preceding provisional order.
- (5) If the Utilities Commission has made a provisional order, the Utilities Commission must not make a final order if the person has given an undertaking to comply with the determination and the Utilities Commission has accepted the undertaking.
- (6) The Utilities Commission must not make a final order unless the Utilities Commission has:
 - (a) given the person at least 28 days notice of the intention to do so;
 - (b) given the person the opportunity to make a submission in respect of the order; and
 - (c) considered any submission or other objection to the order received by the Utilities Commission.
- (7) The Utilities Commission must as soon as possible after serving a provisional order or a final order on a person publish a copy of the order in the *Gazette*.
- (8) A person must comply with:
 - (a) a provisional order or a final order served on the person under this section; or
 - (b) an undertaking given by the person and accepted by the Utilities Commission under this section.

Penalty: 2500 penalty units.

- (9) If a person profits from a contravention of subsection (8), the Utilities Commission may recover an amount equal to the profit from the person:
 - (a) on application to the court that finds the person guilty of an offence under that subsection; or
 - (b) by action in a court of competent jurisdiction.

Part 4 Industry codes and rules

24 Codes and rules

- (1) The Utilities Commission may make codes or rules relating to the conduct or operations of a regulated industry or licensed entities.
- (2) The Utilities Commission may only make a code or rules under subsection (1) if authorised to do so by the relevant industry regulation Act or by regulations under this Act.
- (3) The Utilities Commission may vary or revoke a code or rules.
- (4) The Utilities Commission must, before making, varying or revoking a code or rules, consult with the Minister and representative bodies and participants in the regulated industry that the Utilities Commission considers appropriate.
- (5) A code or rules may apply or incorporate, wholly or partially and with or without modification, a document referred to in the code or rules, as in force from time to time or as in force at a particular time.
- (6) The Utilities Commission must:
 - (a) give notice of the making, variation or revocation of a code or rules:
 - (i) to the Minister; and
 - (ii) to each licensed entity to which the code or rules apply; and
 - (b) ensure that copies of the code or rules (as in force from time to time) are available for inspection and purchase by members of the public.
- (7) Notice of the making of a code or rules, or the variation or revocation of a code or rules, is to be published in the *Gazette*.
- (8) A code or rule, or variation or revocation of a code or rule, takes effect on the date on which it is notified in the *Gazette* or a later date specified by the Utilities Commission in the code or rules.
- (9) The Utilities Commission must keep the contents and operation of codes and rules under review with a view to ensuring their continued relevance and effectiveness.

Part 5 Collection and use of information

25 Utilities Commission's power to require information

(1) The Utilities Commission may, by written notice, require a person to give the Utilities Commission, within a time and in a manner stated in the notice (which must be reasonable), information in the person's possession that the Utilities Commission reasonably requires for the performance of the Utilities Commission's functions (including the holding of an inquiry under Part 7).

(2) A person required to give information under this section must provide the information within the time and in the manner stated in the notice.

Penalty: 500 penalty units.

(3) A person cannot be compelled to give information under this section if the information might tend to incriminate the person of an offence or make the person liable to pay a penalty.

(4) A person must not:

(a) threaten, intimidate or coerce another person; or

(b) take, threaten to take, incite or be involved in any action that causes another person to suffer any loss, injury or disadvantage,

because that other person complied, or intends to comply, with a requirement made under this section.

Penalty: 200 penalty units or imprisonment for 2 years.

(5) A person is not liable in any way for any loss, damage or injury suffered by another person because of his or her giving information under this section.

26 Obligation to preserve confidentiality

(1) Information gained under this Act or a relevant industry regulation Act that:

(a) could affect the competitive position of a licensed entity or other person; or

(b) is commercially sensitive for some other reason,

is, for the purposes of this Act, confidential information and a person performing a function under this Act or a relevant industry regulation Act is guilty of an offence if the person discloses the information otherwise than as authorised under this section.

Penalty: 500 penalty units.

- (2) Confidential information may be disclosed if:
- (a) the disclosure is made to another person who is also performing a function under this Act or a relevant industry regulation Act;
 - (b) the disclosure is made with the consent of the person who gave the information or to whom the information relates;
 - (c) the disclosure is authorised or required under any Act or law;
 - (d) the disclosure is authorised or required by a court or tribunal constituted by law; or
 - (e) the disclosure is authorised by regulations.
- (3) If a person, when giving information to the Utilities Commission in response to a notice under this Part, claims that the information is confidential information, the Utilities Commission must, before disclosing the information, give the person written notice of the proposed disclosure and the reasons for the disclosure.
- (4) If the Utilities Commission considers, when given information in response to a notice under this Part, that a person to whom the information relates may claim that the information is confidential information, the Utilities Commission must, before disclosing the information, give the person written notice of the proposed disclosure and the reasons for the disclosure.
- (5) A person exercising a power or performing a function under this Act or a relevant industry regulation Act must not use confidential information for the purpose of securing a private benefit for himself or herself or for some other person.

Penalty: 200 penalty units or imprisonment for 2 years.

Part 6 Reviews and appeals

27 Review by Utilities Commission

- (1) An application may be made to the Utilities Commission:
 - (a) by the Minister or by a licensed entity to which or a person to whom the determination applies – for a review of a determination of the Utilities Commission;
 - (b) by a person who has been required by written notice under Part 5 to give information to the Utilities Commission – for a review of the decision of the Utilities Commission to make the requirement; or
 - (c) by a person who has been given written notice under Part 5 of the proposed disclosure of information – for a review of the decision of the Utilities Commission to disclose the information.
- (2) An application cannot be made under subsection (1)(a) in respect of a determination:
 - (a) that may be reviewed under the relevant industry regulation Act under which it was made; or
 - (b) that is declared to be final under the relevant industry regulation Act under which it was made.
- (3) An application for a review is to:
 - (a) be in writing;
 - (b) set out the determination or part of the determination, or the decision, to which the application relates;
 - (c) set out in detail the grounds on which the applicant seeks review and the decision sought on the review;
 - (d) be accompanied by any information that the applicant considers should be taken into account by the Utilities Commission on the review; and
 - (e) be lodged with the Utilities Commission within 28 days after the determination is published or after receipt of the written notice referred to in subsection (1) (as the case requires).

- (4) If an application is made for a review of a determination of the Utilities Commission:
 - (a) the Utilities Commission must give a copy of the application to each other person who could also have applied for review of the determination; and
 - (b) invite the person to join as a party to the review and make submissions on the matter the subject of the review in a manner and within a period specified by the Utilities Commission.
- (5) The Utilities Commission may stay the operation of the determination or decision to which the application relates.
- (6) If a determination is stayed, the Utilities Commission must cause notice of the stay of the determination:
 - (a) to be given to the Minister and to each licensed entity to which the determination applies; and
 - (b) to be published in the *Gazette*.
- (7) A review is to be decided within 6 weeks of the application being lodged with the Utilities Commission.
- (8) If a review is not decided within that period, the Utilities Commission is to be taken to have confirmed the determination or decision.
- (9) After considering the application, the Utilities Commission may confirm, vary or substitute the determination or decision.
- (10) The Utilities Commission must give the applicant and any other person who joins as a party to the review written notice of the Utilities Commission's decision, and the reasons for the decision, on the review.
- (11) If the Utilities Commission decides on a review of a determination to vary or substitute the determination, the Utilities Commission must vary or substitute the determination by a further determination but that further determination may not be made the subject of an application for a review under this section.

28 Appeal

- (1) The applicant to a review under this Part, or any other party to the review who made submissions on the review, may appeal to the Supreme Court against the decision of the Utilities Commission on the review (including a further determination made in consequence of the decision).
- (2) An appeal may only be made on the grounds that:
 - (a) there has been bias; or
 - (b) the facts on which the decision is based have been misinterpreted in a material respect.
- (3) An appeal is to be made:
 - (a) within 14 days after the written notice of the decision appealed against is received; or
 - (b) if the Utilities Commission failed to make a decision on the review within the allowed period – within 14 days after the end of that period.
- (4) The time for making an appeal cannot be extended.
- (5) If an appeal is made under this section, any other party to the review who made submissions on the review is to be given notice of the appeal and may, on application, be joined as a party to the appeal.
- (6) The Utilities Commission or the Supreme Court may stay the operation of a determination or decision to which the appeal relates.
- (7) If a determination is stayed, the Utilities Commission or the Supreme Court, as the case may be, must cause notice of the stay of the determination:
 - (a) to be given to the Minister and to each licensed entity to which the determination applies; and
 - (b) to be published in the *Gazette*.
- (8) On an appeal, the Supreme Court is only to consider the information on which the Utilities Commission based the determination or decision that was the subject of the review and any information put before the Utilities Commission on the review.

- (9) On an appeal, the Supreme Court may:
- (a) confirm the decision under appeal; or
 - (b) return the matter to the Utilities Commission with directions the Court considers appropriate.

29 Exclusion of other challenges to determinations

The validity of a determination or decision of the Utilities Commission cannot be challenged in a prosecution or other proceedings concerning non compliance with the determination or decision or by any other proceedings apart from a review or appeal under this Part.

Part 7 Inquiries and reports

30 Inquiry by Utilities Commission

The Utilities Commission may, after consulting with the Minister, conduct an inquiry if the Utilities Commission considers an inquiry is necessary or desirable for the purpose of carrying out the Utilities Commission's functions.

31 Minister may refer matter for inquiry

- (1) The Utilities Commission must conduct an inquiry into any matter that the Minister, by written notice, refers to the Utilities Commission.
- (2) The written notice is to specify the terms of reference for the inquiry.
- (3) The Minister may:
 - (a) require that a report on the inquiry be delivered to the Minister within a specified period;
 - (b) require the Utilities Commission to make a draft report publicly available or available to specified persons or bodies during the inquiry;
 - (c) require the Utilities Commission to consider specified matters; and
 - (d) give the Utilities Commission specific directions in respect of the conduct of the inquiry.

- (4) The Minister may, by written notice, vary the terms of reference or a requirement or direction under subsection (3).

32 Notice of inquiry

- (1) The Utilities Commission must, after notifying the Minister, publish notice of an inquiry in a newspaper circulating generally in the Territory.
- (2) The notice is to specify:
 - (a) the purpose of the inquiry;
 - (b) the period during which the inquiry is to be held;
 - (c) the period within which, and the form in which, members of the public may make submissions, including details of public hearings; and
 - (d) the matters that the Utilities Commission would like submissions to deal with.
- (3) If the inquiry relates to a matter referred to the Utilities Commission by the Minister, the notice must include the terms of reference and any requirements or directions of the Minister relating to the inquiry.
- (4) The Utilities Commission must publish a further notice if the Minister varies the terms of reference or any requirement or direction relating to the inquiry.
- (5) The Utilities Commission must send a copy of a notice published under this section to licensed entities in the regulated industry concerned and any person or body that the Utilities Commission considers should be notified.

33 Conduct of inquiry

- (1) Subject to any requirement or direction of the Minister under this Part, an inquiry:
 - (a) may be conducted in any manner that the Utilities Commission considers appropriate; and
 - (b) may (but need not) involve public hearings.
- (2) The Utilities Commission is not bound by the rules of evidence when conducting an inquiry.

- (3) The power of the Utilities Commission under Part 5 to require the giving of information includes, for the purposes of an inquiry, the power to require that a person attend before the Utilities Commission to give information.

34 Reports

- (1) The Utilities Commission must deliver a copy of the Utilities Commission's final report on an inquiry to the Minister.
- (2) The Utilities Commission may during the course of an inquiry deliver a special report to the Minister on any matter that the Utilities Commission considers should be the subject of a special report.
- (3) The Utilities Commission must identify in a report any information contained in the report that the Utilities Commission considers is confidential information in accordance with Part 5.
- (4) The Minister must cause a copy of a report (excluding any information identified under subsection (3) as confidential information) to be tabled in the Legislative Assembly within 6 sitting days after receiving the report.
- (5) The Minister must, after a report has been tabled in the Legislative Assembly or, if the Legislative Assembly is not sitting, within 28 days after receiving a report, ensure that copies of the report (excluding any information identified under subsection (3) as confidential information) are available for public inspection.
- (6) After the Minister has made a report publicly available, the Utilities Commission must ensure that copies (excluding any information identified under subsection (3) as confidential information) are available for purchase by members of the public.
- (7) If information is excluded from a report as being confidential information, a note to that effect must be included in the report at the place in the report from which the information is excluded.

Part 8 Miscellaneous

35 Annual report

- (1) The Utilities Commission must, within 3 months after the end of each financial year, deliver to the Minister a report on the administration of this Act during that financial year.
- (2) The Minister must cause a copy of the report to be tabled in the Legislative Assembly within 6 sitting days after receiving the report.

36 False or misleading information

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information given under this Act.

Penalty: If the person made the statement knowing that it was false or misleading – 200 penalty units or imprisonment for 2 years.

In any other case – 100 penalty units.

37 Statutory declarations

If a person is required by or under this Act to give information to the Utilities Commission, the Utilities Commission may require that the information be verified by statutory declaration and, in that event, the person will not be taken to have given the information as required unless it has been verified in accordance with the requirements of the Utilities Commission.

38 General defence

It is a defence to a charge of an offence against this Act if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

39 Offences by bodies corporate

If a body corporate is guilty of an offence against this Act, each director of the body corporate is, subject to the general defence under this Part, guilty of an offence and liable to the same penalty as may be imposed for the principal offence.

40 Continuing offence

- (1) A person found guilty of an offence against a provision of this Act in respect of a continuing act or omission:
 - (a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-fifth of the penalty prescribed for that offence; and
 - (b) is, if the act or omission continues after the finding of guilt, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than

one-fifth of the penalty prescribed for the offence.

- (2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

41 Immunity from liability

- (1) No liability attaches to any person engaged in the administration or enforcement of this Act for an act or omission done in the exercise or performance, or purported exercise or performance, of a power or function under this Act unless it is done or made in bad faith.
- (2) In subsection (1), **this Act** includes a relevant industry regulation Act.

42 Evidence

- (1) If, in any legal proceedings, a person is alleged to have held a specified appointment under this Act at a specified time, the allegation is taken to have been proved in the absence of proof to the contrary.
- (2) In any legal proceedings, an apparently genuine document purporting to be a certificate of the Utilities Commission certifying as to the making and contents of a delegation, determination, requirement, decision, order, undertaking, code or rules under this Act constitutes proof of the matters so certified in the absence of proof to the contrary.

43 Service

- (1) A notice or other document required or authorised to be given to or served on a person under this Act may be given or served:
 - (a) by delivering it personally to the person or an agent of the person;
 - (b) by leaving it for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
 - (c) by posting it to the person or agent of the person at the person's or agent's last known place of residence or business.

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- (2) Without limiting the effect of subsection (1), a notice or other document required or authorised to be given to or served on a person may, if the person is a body corporate, be given to or served on the person in accordance with section 109X of the Corporations Law.

44 Regulations

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the Regulations may deal with the following matters:
- (a) fees to be paid in respect of any matter under this Act and the recovery, refund, waiver or reduction of such fees;
 - (b) penalties not exceeding 100 penalty units for offences against the Regulations.
- (3) The Regulations may:
- (a) be of general application or limited in application according to the persons, areas, times or circumstances to which they are expressed to apply;
 - (b) provide that a matter or thing in respect of which Regulations may be made is to be determined, regulated or prohibited according to the discretion of the Minister or the Utilities Commission.

45 Savings and transitional

- (1) If:
- (a) the Utilities Commission takes any action to enable the Utilities Commission to perform functions under, or obligations imposed by, a provision of this Act or the electricity legislation before the provision comes into force in anticipation of the provision coming into force; and
 - (b) the action was taken so far as reasonably practicable in accordance with the provision (as though the provision was in force at the time the action was taken),

then, after the provision comes into force, the action is to be taken to have been taken validly in accordance with the provision.

- (2) Any action taken by the Interim Utilities Commissioner that is subsequently ratified by the Utilities Commission is to be taken to have been taken by the Utilities Commission for the purposes of this section.
- (3) For the avoidance of doubt:
 - (a) in making any determination or decision or taking any action under this Act or the electricity legislation – the Utilities Commission may rely on any action by the Utilities Commission or the Interim Utilities Commissioner contemplated by subsection (1) or (2); and
 - (b) the Utilities Commission may treat any submission, application, approval, statement or document (***the application***) made or given by a person to the Utilities Commission or the Interim Utilities Commissioner in anticipation of a provision of this Act or the electricity legislation coming into force as having been made to the Utilities Commission after the relevant provision comes into force and the Utilities Commission may take action under this Act or the electricity legislation on the basis of the application or taking into account the application.
- (4) In this section:

electricity legislation means the *Electricity Reform Act*, the *Electricity Networks (Third Party Access) Act*, the Network Access Code and any instrument of a legislative or administrative character made, granted or issued under, or contemplated by, those Acts or the Code.

Interim Utilities Commissioner means the person appointed by the Minister to undertake the role of the independent industry regulator before the establishment of the Utilities Commission.

ENDNOTES

1

KEY

Key to abbreviations

amd = amended

app = appendix

bl = by-law

ch = Chapter

cl = clause

div = Division

exp = expires/expired

f = forms

Gaz = *Gazette*

hdg = heading

ins = inserted

lt = long title

nc = not commenced

od = order

om = omitted

pt = Part

r = regulation/rule

rem = remainder

renum = renumbered

rep = repealed

s = section

sch = Schedule

sdiv = Subdivision

SL = Subordinate Legislation

sub = substituted

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LIST OF LEGISLATION

Utilities Commission Act 2000 (Act No. 9, 2000)

Assent date 21 March 2000

Commenced 21 March 2000