

**Version No. 016**  
**Essential Services Commission Act 2001**  
**Act No. 62/2001**

Version incorporating amendments as at 1 January 2007

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**The Parliament of Victoria enacts as follows:**

**PART 1—PRELIMINARY**

**1. Purpose and outline of Act**

- (1) The purpose of this Act is—
- (a) to establish the Essential Services Commission; and
  - (b) to provide for an economic regulatory framework for regulated industries; and
  - (c) to provide a mechanism for monitoring and providing advice to Government on matters relating to the insurance industry and the operations of certain statutory insurers in Victoria.
- (2) In outline this Act—
- establishes the Essential Services Commission with a full-time Chairperson and full and part-time Commissioners;
  - provides for the employment of staff by the Commission and for the Commission to be also assisted by consultants;
  - sets out the objectives, functions and powers of the Commission, including powers in respect of inquiries and special investigations;

S. 1(1)(b)  
amended by  
No. 49/2002  
s. 18(a).

S. 1(1)(c)  
inserted by  
No. 49/2002  
s. 18(b).

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- requires the Commission to publish a Charter of Consultation and Regulatory Practice;
- sets out the process for consultation between the Commission and prescribed agencies;
- provides for the Commission to enter into Memoranda of Understanding with prescribed regulators;
- provides for the collection and use of information required by the Commission;
- enables the enforcement of determinations and licence conditions by the making of enforcement orders;
- provides for appeals against certain decisions and determinations of the Commission and for the procedures to be followed by appeal panels;
- provides for the Act to be reviewed;
- repeals the **Office of the Regulator-General Act 1994** and consequentially amends certain other Acts.

(3) Sub-section (2) is intended only as a guide to readers as to the general scheme of this Act.

## 2. Commencement

This Act comes into operation on 1 January 2002.

## 3. Definitions

In this Act—

**"appeal"** means an appeal under section 55;

**"appeal panel"** means an appeal panel constituted under section 56;

**"Chairperson"** means the Commissioner appointed as Chairperson under section 18;

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**"Commission"** means the Essential Services Commission established under section 7;

**"Commissioner"** means the Chairperson or an additional Commissioner appointed under section 21;

**"empowering instrument"** means—

- (a) the relevant legislation; or
- (b) an Order made under section 4; or
- (c) the Tariff Order; or
- (d) any Order made under Division 2 or 2A of Part 2 of the **Electricity Industry Act 2000**; or
- (e) a Water Industry Regulatory Order made under Part 1A of the **Water Industry Act 1994**;

S. 3 def. of "empowering instrument" amended by Nos 48/2003 s. 11(1), 86/2004 s. 5.

**"essential service"** means a service (including the supply of goods) provided by—

- (a) the electricity industry;
- (b) the gas industry;
- (c) the ports industry;
- (d) the grain handling industry;
- (e) the rail industry;
- (f) the water industry;
- (g) any other industry prescribed for the purpose of this definition;

**"insurance"** does not include reinsurance;

S. 3 def. of "insurance" inserted by No. 49/2002 s. 19.

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S. 3 def. of  
"insurance  
business"  
inserted by  
No. 49/2002  
s. 19.

**"insurance business"** means the business of undertaking liability, by way of insurance, in respect of any loss or damage, including liability to pay damages or compensation, contingent upon the happening of a specified event, and includes any business incidental to that business;

S. 3 def. of  
"insurance  
industry"  
inserted by  
No. 49/2002  
s. 19.

**"insurance industry"** means the industry comprising—

- (a) persons or bodies carrying on insurance business in Victoria; and
- (b) bodies established for the purpose of providing discretionary indemnities in Victoria for liability for loss or damage arising from the conduct of a profession or occupation—

but does not include the statutory insurers or the Victorian Managed Insurance Authority established under the **Victorian Managed Insurance Authority Act 1996**;

**"Order"** means an Order of the Governor in Council published in the Government Gazette;

**"prescribed agency"** means a person, body or agency which is prescribed for the purposes of section 15;

**"prescribed body"** means a person, body or agency which is prescribed for the purposes of section 16;

**"Registrar"** means a person or body appointed by the regulations to be the Registrar;

**"regulated entity"** means an entity operating in a regulated industry;

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**"regulated industry"** means an industry which provides an essential service and—

- (a) is operating under relevant legislation which is specified by the relevant legislation as a regulated industry; or
- (b) is declared by an Order under section 4 to be a regulated industry;

**"relevant legislation"** means legislation which is specified by that legislation as being relevant legislation;

**"statutory insurer"** means—

- (a) the Transport Accident Commission established under the **Transport Accident Act 1986**; or
- (b) the Victorian WorkCover Authority established under the **Accident Compensation Act 1985**;

S. 3 def. of  
"statutory  
insurer"  
inserted by  
No. 49/2002  
s. 19.

**"Tariff Order"** has the same meaning as in the **Electricity Industry Act 2000**.

#### **4. Order declaring a regulated industry**

- (1) Except as otherwise provided in this section, the Governor in Council may by Order declare an industry to be a regulated industry after having regard to—
  - (a) the existence of significant and non-transitory market power;
  - (b) the existence of regulatory benefits which exceed the administration and compliance costs of becoming a regulated industry;
  - (c) the non-existence of economic regulation specific to that industry by another body under any other State or Commonwealth legislation.



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- (2) The Order may declare—
- (a) which prices are to be prescribed prices in respect of a regulated industry;
  - (b) which goods and services are to be prescribed goods and services in respect of a regulated industry;
  - (c) powers that are to be exercised by the Commission in respect of a regulated industry under section 34.
- (3) This section does not apply to the electricity industry or to the **Electricity Industry Act 2000**.
- (4) Sub-section (3) does not affect any Order made before 20 June 1995.
- (5) This section does not apply to the gas industry or to the **Gas Industry Act 2001**.
- (6) Sub-section (5) does not affect any Order made before 1 December 1998.
- (7) This section does not apply to—
- (a) railways and rail infrastructure;
  - (b) tramways and tram infrastructure.
- (8) This section does not apply to the regulated water industry within the meaning of section 4A of the **Water Industry Act 1994**.

S. 4(8)  
inserted by  
No. 48/2003  
s. 11(2).

**5. Interpretation and application of Act**

- (1) Subject to sub-section (2) and sections 33(1) and 34(3), if there is any inconsistency between this Act and any other Act, the provisions of this Act prevail.
- (2) Subject to sub-section (3), if the Commission considers that there is a conflict between the objectives specified in or under this Act and the objectives specified in the relevant legislation under which a regulated industry operates, the
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Commission must perform its functions and exercise its powers in such a manner as the Commission considers best achieves the objectives specified in the relevant legislation.

- (3) Sub-section (2) does not apply to the **Electricity Industry Act 2000** or to the **Gas Industry Act 2001**.
- (4) Except as otherwise specifically provided, this Act does not apply to or in respect of an essential service unless the essential service is provided by a regulated industry.

**6. Crown to be bound**

This Act binds the Crown, not only in right of Victoria but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

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**PART 2—ESSENTIAL SERVICES COMMISSION**

**7. Essential Services Commission**

- (1) There is established a body corporate called the Essential Services Commission.
- (2) The Commission—
  - (a) has perpetual succession; and
  - (b) has a common seal; and
  - (c) may sue and be sued in its corporate name; and
  - (d) is capable of taking, purchasing, leasing, holding, selling, exchanging and disposing of real and personal property for the purposes of this Act; and
  - (e) may do and suffer all acts and things which a body corporate may by law do and suffer and which are necessary or convenient for the purposes of this Act.
- (3) All courts must take judicial notice of the seal of the Commission affixed to a document and, until the contrary is proved, must presume that it was duly affixed.
- (4) The common seal of the Commission must be kept in such custody as the Commission directs and must not be used except as authorised by the Commission.

**8. Objectives of the Commission**

- (1) In performing its functions and exercising its powers, the primary objective of the Commission is to protect the long term interests of Victorian consumers with regard to the price, quality and reliability of essential services.

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- (2) In seeking to achieve its primary objective, the Commission must have regard to the following facilitating objectives—
- (a) to facilitate efficiency in regulated industries and the incentive for efficient long-term investment;
  - (b) to facilitate the financial viability of regulated industries;
  - (c) to ensure that the misuse of monopoly or non-transitory market power is prevented;
  - (d) to facilitate effective competition and promote competitive market conduct;
  - (e) to ensure that regulatory decision making has regard to the relevant health, safety, environmental and social legislation applying to the regulated industry;
  - (f) to ensure that users and consumers (including low-income or vulnerable customers) benefit from the gains from competition and efficiency;
  - (g) to promote consistency in regulation between States and on a national basis.
- (3) Without derogating from sub-sections (1) and (2), the Commission must also perform its functions and exercise its powers in such a manner as the Commission considers best achieves any objectives specified in the relevant legislation under which a regulated industry operates.

**9. Commission represents Crown**

The Commission represents the Crown.

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**10. Functions of the Commission**

The functions of the Commission are—

- (a) to perform such functions as are conferred by this Act and the relevant legislation under which a regulated industry operates;
- (b) to advise the Minister on matters relating to the economic regulation of regulated industries, including reliability issues;
- (c) when requested by the Minister to do so, to conduct an inquiry into any systemic reliability of supply issues related to a regulated industry or other essential service specified by the Minister in the request;
- (d) to conduct inquiries and report under Part 5 on matters relating to regulated industries;
- (e) to make recommendations to the Minister as to whether an industry which provides an essential service should become a regulated industry or whether a regulated industry should continue to be a regulated industry;
- (f) to conduct public education programs—
  - (i) for the purpose of promoting its objectives under this Act and the relevant legislation; and
  - (ii) in relation to significant changes in the regulation of a regulated industry;
- (g) to advise the Minister in relation to any other matter referred to the Commission by the Minister;
- (h) to administer this Act;

S. 10(h)  
amended by  
No. 32/2002  
s. 25(a).

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(i) to perform the functions conferred on the Commission by or under Part VI of the **Transport Act 1983**;

S. 10(i)  
inserted by  
No. 32/2002  
s. 25(b),  
amended by  
No. 72/2006  
s. 115(a).

(j) to perform the functions conferred on the Commission by the **Victorian Renewable Energy Act 2006**.

S. 10(j)  
inserted by  
No. 72/2006  
s. 115(b).

**10A. Functions of the Commission in relation to the insurance industry**

S. 10A  
inserted by  
No. 49/2002  
s. 20.

- (1) Without limiting section 10, the functions of the Commission include the function of advising the Minister (and any other Minister that the Minister specifies in writing) on any matter relating to the insurance industry that the Minister refers to it for advice.
- (2) The matters referred to the Commission under this section may include matters relating to the availability and affordability of insurance and indemnities.
- (3) Section 8 and Parts 5 and 6 do not apply to the functions of the Commission under this section.
- (4) The Commission may only exercise its powers under section 37 to require information in relation to insurance if the Commission is unable to obtain the information from another State regulatory body or from a regulatory body of another State or Territory or of the Commonwealth.

**10B. Functions of the Commission in relation to the statutory insurers**

S. 10B  
inserted by  
No. 49/2002  
s. 20.

- (1) The Minister for the time being administering the **Transport Accident Act 1986** may request the Commission—

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- (a) to review any charges order made or proposed to be made under section 110 of that Act; and
  - (b) to provide advice or make recommendations to the Minister in relation to that order or proposed order.
- (2) The Minister for the time being administering the **Accident Compensation (WorkCover Insurance) Act 1993** may request the Commission—
- (a) to review any premiums order made or proposed to be made under section 15 of that Act; and
  - (b) to provide advice or make recommendations to the Minister in relation to that order or proposed order.
- (3) The Commission may require a statutory insurer to give the Commission any information or a copy of any document that the Commission considers will assist it in carrying out a function under this section in relation to that statutory insurer.
- (4) A statutory insurer must comply with a requirement of the Commission under this section despite anything to the contrary in any other Act or law.
- (5) Section 8 and Parts 3, 4, 5, 6 and 7 do not apply to the functions of the Commission under this section.

S. 10C  
inserted by  
No. 72/2006  
s. 116.

**10C. Commission's functions in relation to renewable energy**

Sections 8, 14, 15, 16, 29 and 30 and Parts 3, 4, 5, 6 and 7 (other than sections 60 and 64) do not apply to the functions of the Commission referred to in section 10(j).

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**11. Powers of the Commission**

- (1) Subject to this Act, the Commission has power to do all things necessary or convenient to be done for or in connection with the performance of its functions and to enable it to achieve its objectives under this Act and under relevant legislation.
- (2) Without derogating from sub-section (1), the Commission also has such powers as may be conferred on the Commission by the relevant legislation under which a regulated industry operates.

**12. Commission not subject to direction or control**

Except as provided by or under this Act or any other Act, the Commission is not subject to the direction or control of the Minister.

S. 12  
substituted by  
No. 75/2004  
s. 3.

**13. Commission may publish statements and guidelines**

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

**14. Commission must publish Charter**

- (1) The Commission must develop and publish a Charter of Consultation and Regulatory Practice including guidelines relating to processes for making determinations and conducting inquiries.
- (2) The Charter of Consultation and Regulatory Practice—
  - (a) must include such matters as are prescribed; and
  - (b) may include any other matters that the Commission considers appropriate.



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## 15. Consultation

- (1) This section applies to the Commission and to prescribed agencies for the purpose of ensuring that—
  - (a) the regulatory and decision making processes of the Commission and prescribed agencies are closely integrated and better informed; and
  - (b) overlap or conflict between existing and proposed regulatory schemes is avoided.
- (2) In this section "**prescribed agency**" means a person, body or agency which—
  - (a) has functions or powers under relevant health, safety, environmental or social legislation applying to a regulated industry; and
  - (b) is prescribed for the purposes of this section.
- (3) The Commission must as early as practicable consult with a relevant prescribed agency—
  - (a) in the making of a determination; and
  - (b) in the conduct of an inquiry, after first consulting with the Minister; and
  - (c) in preparing and reviewing the Charter of Consultation and Regulatory Practice.
- (4) If requested in writing to do so by the Commission, a prescribed agency must consult with the Commission—
  - (a) in relation to any matter specified by the Commission which is relevant to the objectives or functions of the Commission under this Act and under relevant legislation; or

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- (b) in respect of a matter specified by the Commission which may impact on a regulated industry.
  - (5) A prescribed agency must ensure that consultation occurs as early as practicable in the regulatory, advisory or decision making processes of the prescribed agency.
  - (6) The requirements under this section are in addition to any other requirements or processes under any other legislation or regulatory scheme.

**16. Memoranda of Understanding**

- (1) In this section "**prescribed body**" means—
  - (a) a person, body or agency which—
    - (i) is a prescribed agency; or
    - (ii) represents the interests of users or consumers; and
  - (b) is prescribed for the purposes of this section.
- (2) The Commission and a prescribed body must enter into a Memorandum of Understanding by a date determined by the Minister.
- (3) A Memorandum of Understanding—
  - (a) must include such matters as are prescribed; and
  - (b) may include any other matters that the parties consider appropriate.
- (4) The Commission must ensure that a Memorandum of Understanding is published—
  - (a) in the Government Gazette; and
  - (b) on the internet.

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**17. Membership of the Commission**

The Commission consists of—

- (a) one Commissioner appointed as the Chairperson; and
- (b) such number of full-time and part-time additional Commissioners as the Minister considers necessary to enable the Commission to perform its functions.

**18. The Chairperson**

- (1) The Governor in Council may appoint a person as Chairperson who is qualified for appointment because of his or her knowledge of, or experience in, one or more of the fields of industry, commerce, economics, law or public administration.
- (2) The Chairperson is to be appointed on such terms and conditions, not inconsistent with this Act, as the Governor in Council determines.
- (3) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to the Chairperson in respect of his or her office as a Commissioner.
- (4) The Chairperson must not without the consent of the Governor in Council directly or indirectly engage in any paid employment outside of the office of Chairperson.
- (5) An act or decision of the Commission is not invalid merely because of a defect or irregularity in, or in connection with, the appointment of the Chairperson or a vacancy in the office of Chairperson.

S. 18(3)  
substituted by  
Nos 108/2004  
s. 117(1)  
(Sch. 3  
item 70.1),  
80/2006  
s. 26(Sch.  
item 35.1).

S. 18(4)  
substituted by  
No. 75/2004  
s. 4.

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**19. Tenure of office of Chairperson**

- (1) Subject to this Act, the Chairperson holds office for 5 years and, subject to this section, is eligible for re-appointment.
- (2) The Chairperson may be suspended from office by the Governor in Council, but must not be removed from office except in accordance with this Act.
- (3) The Minister must cause to be laid before each House of the Parliament a full statement of the grounds of any suspension of the Chairperson within 7 sitting days of the House.
- (4) The Chairperson so suspended must be restored to office by the Governor in Council unless each House of the Parliament, within 42 days after the day on which the statement is laid before it, and in the same session, declares by resolution that the Chairperson ought to be removed from office and, if each House within that time so declares, the Chairperson must be removed from office by the Governor in Council.
- (5) The Chairperson ceases to hold office if he or she becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt debtors or compounds with his or her creditors or makes an assignment of his or her property for their benefit or a deed of arrangement under any law relating to bankruptcy.
- (6) The Chairperson ceases to hold office if he or she nominates for election for either House of the Parliament of Victoria or for the Parliament of the Commonwealth or of another State or of a Territory.
- (7) The Chairperson may at any time resign by writing signed and addressed to the Governor in Council.

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**20. Acting appointment**

- (1) The Governor in Council may appoint a person to act in the office of Chairperson—
    - (a) during a vacancy in that office; or
    - (b) during any period, or during all periods, when the person holding that office is absent from duty or is, for any other reason, unable to perform the functions of that office—but a person appointed to act during a vacancy must not continue so to act for more than 6 months.
  - (2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
  - (3) The Governor in Council—
    - (a) subject to this section, may determine the terms and conditions of appointment of a person acting in the office of Chairperson; and
    - (b) may terminate such an appointment at any time.
  - (4) If a person is acting in the office of Chairperson in accordance with sub-section (1)(b) and that office becomes vacant while that person is so acting, that person may continue so to act until—
    - (a) the Governor in Council otherwise directs; or
    - (b) the vacancy is filled; or
    - (c) a period of 6 months from the date on which the vacancy occurred expires—whichever first happens.
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- (5) While a person is acting in the office of Chairperson in accordance with sub-section (1), the person has, and may exercise, all the powers, and shall perform all the functions, of that office under this Act.
- (6) The validity of anything done by or in relation to a person purporting to act in the office of Chairperson under an appointment made under sub-section (1) shall not be called in question on the ground that—
- (a) the occasion for his or her appointment has not arisen; or
  - (b) that there is a defect or irregularity in or in connection with his or her appointment; or
  - (c) that the appointment had ceased to have effect; or
  - (d) that the occasion for him or her to act had not arisen or had ceased.

**21. Additional Commissioners**

- (1) The Governor in Council may appoint persons as additional Commissioners 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.
- (2) An additional Commissioner is to be appointed on such terms and conditions, not inconsistent with this Act, as the Governor in Council determines.
- (3) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to an additional Commissioner in respect of his or her office as a Commissioner.

S. 21(3)  
substituted by  
Nos 108/2004  
s. 117(1)  
(Sch. 3  
item 70.2),  
80/2006  
s. 26(Sch.  
item 35.2).

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**22. Tenure of office of additional Commissioners**

- (1) Subject to this Act, an additional Commissioner—
  - (a) holds office for such period not exceeding 5 years as is specified in the instrument of appointment; and
  - (b) subject to this section, is eligible for re-appointment.
- (2) An additional Commissioner may be appointed—
  - (a) on a full-time or part-time basis; and
  - (b) for—
    - (i) a specific period; or
    - (ii) a specific inquiry or determination—as the Governor in Council determines.
- (3) An additional Commissioner may be suspended from office by the Governor in Council, but must not be removed from office except in accordance with this Act.
- (4) The Minister must cause to be laid before each House of the Parliament a full statement of the grounds of any suspension of an additional Commissioner within 7 sitting days of the House.
- (5) An additional Commissioner so suspended must be restored to office by the Governor in Council unless each House of the Parliament, within 42 days after the day on which the statement is laid before it, and in the same session, declares by resolution that the additional Commissioner ought to be removed from office and, if each House within that time so declares, the additional Commissioner must be removed from office by the Governor in Council.

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- (6) The additional Commissioner ceases to hold office if he or she becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt debtors or compounds with his or her creditors or makes an assignment of his or her property for their benefit or a deed of arrangement under any law relating to bankruptcy.
  - (7) The additional Commissioner ceases to hold office if he or she nominates for election for either House of the Parliament of Victoria or for the Parliament of the Commonwealth or of another State or of a Territory.
  - (8) The additional Commissioner may at any time resign by writing signed and addressed to the Governor in Council.

**23. Payment of Chairperson and other Commissioners**

The Chairperson and each additional Commissioner is entitled to be paid such remuneration and any travelling and other allowances as the Governor in Council fixes from time to time or as may be fixed in the relevant instrument of appointment.

**24. Staff**

- (1) Any employees that are necessary for the purposes of this Act may be employed under Part 3 of the **Public Administration Act 2004**.
- (2) The Commission may enter into agreements or arrangements for the use of the services of any staff of a Department, statutory authority or other public body.

S. 24(1)  
amended by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 70.3).



*Essential Services Commission Act 2001*  
*Act No. 62/2001*

Part 2—Essential Services Commission

s. 25

**25. Consultants**

- (1) The Commission may engage persons with suitable qualifications and experience as consultants.
- (2) An engagement under sub-section (1) may be on any terms and conditions the Commission considers appropriate.

**26. Delegation**

The Commission may, by instrument under its common seal, delegate to—

- (a) a Commissioner; or
- (b) a person referred to in section 24; or
- (c) a member of a Division, committee or panel appointed or designated by the Commission—

any function or power of the Commission under this Act or the regulations or under any other relevant legislation or any other Act other than this power of delegation or the powers of the Commission under section 33 or 53.

**27. Declaration of pecuniary interests**

- (1) If a Commissioner has a pecuniary interest in a matter which he or she is considering or is about to consider in the course of performing his or her duties as a Commissioner, the Commissioner must as soon as practicable after the relevant facts have come to the Commissioner's knowledge declare the nature of that interest to the Minister.
- (2) Sub-section (1) 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.

S. 26  
amended by  
No. 72/2006  
s. 117.

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- (3) Unless the Minister otherwise directs, if a Commissioner has made a declaration under this section, the Commissioner must not take any further part in any decision in relation to the matter.
  - (4) A failure to comply with this section does not affect the validity of any act or decision of the Commission or a Commissioner.

**28. Meetings of the Commission**

- (1) The Chairperson may convene as many meetings of the Commission as he or she considers necessary for the efficient conduct of its affairs.
- (2) The Chairperson or, in his or her absence, a member appointed to act as Chairperson under section 20, must preside at a meeting of the Commission.
- (3) Subject to section 30(2), the quorum for a meeting of the Commission is a majority of the Commissioners in office for the time being other than any additional Commissioner to whom section 29(2) applies.
- (4) A question arising at a meeting of the Commission is determined by a majority of the votes of the Commissioners present and voting on the question.
- (5) The person presiding has a deliberative vote and, in the event of an equality of votes on any question, a second or casting vote.
- (6) Subject to this Act, the Commission may regulate its own procedure.

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**29. Conduct of particular inquiry or determination**

- (1) Subject to sub-section (2), the Commission may determine which Commissioner or Commissioners are to be allocated to a particular inquiry or determination.
- (2) If the Order appointing a Commissioner specifies that the Commissioner is appointed for the purposes of a particular inquiry or determination, the Commissioner—
  - (a) must be allocated to that inquiry or determination; and
  - (b) may only exercise the powers conferred under this Act in relation to that inquiry or determination.
- (3) The Commission may constitute a Division of the Commission consisting of one or more Commissioners for the purposes of a particular inquiry or determination as the Commission determines.
- (4) Subject to this Act, a Division may regulate its own procedure.

**30. Determinations of the Commission**

- (1) A determination of the Commission must be made at a meeting constituted as required by section 28.
- (2) The quorum for a meeting of the Commission at which a determination is to be made in respect of which section 29(2) applies must include the Commissioner or Commissioners appointed for the purposes of the particular inquiry or determination.

*Essential Services Commission Act 2001*  
*Act No. 62/2001*

Part 2—Essential Services Commission

s. 31

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**31. Matters to be included in annual report**

The Commission must include the prescribed information relating to the operation and performance of the Commission in its annual report of operations under Part 7 of the **Financial Management Act 1994**.

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**PART 3—SPECIFIC POWERS**

**32. Price Regulation**

- (1) The Commission may regulate prescribed prices for or in respect of prescribed goods and services supplied by or within a regulated industry.
- (2) In this section—

**"prescribed goods and services"** means any goods or services made, produced or supplied by or within a regulated industry which goods or services are specified in the empowering instrument as being goods or services in respect of which the Commission has power to regulate prices;

**"prescribed price"** means the price or price-range however designated for the supply or sale of any goods or services by or within a regulated industry or particular factors used in price-fixing or terms and conditions relating to the price at which particular goods or services are supplied or sold, being a price, price-range, factor or term and condition specified in the empowering instrument as being a price, price-range, factor or term and condition which the Commission has power to regulate.

**33. Price determinations**

- (1) This section is subject to anything to the contrary in the empowering instrument specifying the prescribed prices or prescribed goods and services in respect of which the Commission is exercising its power of regulation.

*Essential Services Commission Act 2001*  
*Act No. 62/2001*

Part 3—Specific Powers

s. 33

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- (2) In making a price determination, the Commission must adopt an approach and methodology which the Commission considers will best meet the objectives specified in this Act and any relevant legislation.
- (3) In making a determination under this section, the Commission must have regard to—
- (a) the particular circumstances of the regulated industry and the prescribed goods and services for which the determination is being made;
  - (b) the costs of making, producing or supplying the goods or services;
  - (c) the cost of complying with relevant health, safety, environmental and social legislation applying to the regulated industry;
  - (d) the return on assets in the regulated industry;
  - (e) any relevant interstate and international benchmarks for prices, costs and return on assets in comparable industries;
  - (f) the financial implications of the determination for the regulated industry and regulated entities;
  - (g) any factors specified in the relevant legislation;
  - (h) any other factors that the Commission considers relevant.
- (4) In making a determination under this section, the Commission must ensure that—
- (a) wherever possible the costs of regulation do not exceed the benefits; and
  - (b) the decision takes into account and clearly articulates any trade-off between costs and service standards.
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*Essential Services Commission Act 2001*  
*Act No. 62/2001*

Part 3—Specific Powers

s. 33

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- (5) A price determination by the Commission may regulate a prescribed price for prescribed goods and services in any manner the Commission considers appropriate.
- (6) Without limiting the generality of sub-section (5), the manner may include—
- (a) fixing the price or the rate of increase or decrease in the price;
  - (b) fixing a maximum price or maximum rate of increase or minimum rate of decrease in the maximum price;
  - (c) fixing an average price for specified goods or services or an average rate of increase or decrease in the 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 rate or supply of the goods or services;
  - (g) fixing a maximum average revenue or maximum rate of increase or minimum rate of decrease in the maximum average revenue in relation to specified goods or services;
  - (h) monitoring the price levels of specified goods and services.
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**34. Other regulatory powers**

- (1) The Commission may exercise such powers (including the power to make determinations) for or with respect to—
  - (a) standards and conditions of service and supply;
  - (b) licensing;
  - (c) market conduct;
  - (d) other economic regulatory matters—  
as may be conferred on the Commission by the empowering instrument.
- (2) In making a determination under this section, the Commission must have regard to—
  - (a) any factors specified in the empowering instrument; and
  - (b) any other factors that the Commission considers relevant.
- (3) This section is subject to anything to the contrary in the empowering instrument.

**35. General provisions relating to determinations**

- (1) A determination must include a statement of the purpose and reasons for the making of the determination.
- (2) Notice of the making of a determination must be published—
  - (a) in the Government Gazette; and
  - (b) in a daily newspaper generally circulating in Victoria; and
  - (c) on the internet.



*Essential Services Commission Act 2001*  
*Act No. 62/2001*

Part 3—Specific Powers

s. 35

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- (3) The notice must include—
- (a) a brief description of the nature and effect of the determination; and
  - (b) details of when the determination takes effect and how a copy of the determination may be obtained from the Commission.
- (4) The Commission must send a copy of a determination—
- (a) to each regulated entity in the regulated industry to which the determination applies; and
  - (b) 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.
- (5) A determination takes effect on and from—
- (a) the date on which notice of its making is published in the Government Gazette; or
  - (b) any later date of commencement as may be specified in the determination.
- (6) Subject to anything to the contrary in the empowering instrument, a determination has effect until—
- (a) it is amended or revoked by a later determination; or
  - (b) such other date as is specified in the determination.
- (7) A determination is binding on a regulated entity or a regulated industry specified in the determination.
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**PART 4—COLLECTION AND USE OF INFORMATION**

**36. Application of Part**

This Part does not apply to or in respect of any information or a document that is provided to the Commission—

- (a) by the holder of a licence issued by the Commission under this Act or any relevant legislation in accordance with the requirements of the licence; or
- (b) in accordance with the requirements of any relevant legislation.

**37. General power to obtain information and documents**

- (1) If the Commission has reason to believe that a person has information or a document that may assist the Commission in the performance of any of its functions, the Commission may require the person to give the Commission the information or a copy of the document.
- (2) A requirement must be made in a written notice specifying—
  - (a) the information or document required; and
  - (b) the period of time within which the requirement must be complied with; and
  - (c) the form in which the information or copy of the document is to be given to the Commission; and
  - (d) that the requirement is made under this section.
- (3) The notice must include a copy of this Part.

*Essential Services Commission Act 2001*  
*Act No. 62/2001*

Part 4—Collection and Use of Information

s. 37

- (4) A person who without lawful excuse fails to comply with any requirement made under this section in a notice given to the person is guilty of an offence.

Penalty: 120 penalty units.

- (5) It is a lawful excuse for the purposes of subsection (4) that compliance may tend to incriminate the person or make the person liable to a penalty for any other offence.

S. 37(5A)  
inserted by  
No. 49/2002  
s. 21.

- (5A) Despite anything to the contrary in any other Act or law, a person who is a member or employee of a statutory body is not to be found guilty of an offence or to be in breach of a statutory duty by providing information or a copy of a document to the Commission if—

- (a) the person provides information or a copy of a document to the Commission in compliance with a requirement under this section; and
- (b) the Commission made the requirement in the performance of its functions under section 10A; and
- (c) nothing in the information or document provided could lead to the identification of an individual insurance policy holder or indemnified person.

- (6) A person must not, in purported compliance with a requirement, knowingly give the Commission information that is false or misleading.

Penalty: 120 penalty units or imprisonment for 6 months.

*Essential Services Commission Act 2001*  
*Act No. 62/2001*

Part 4—Collection and Use of Information

s. 38

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- (7) 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: 120 penalty units.

- (8) A person is not liable in any way for any loss, damage or injury suffered by another person because of the giving in good faith of any information or a document to the Commission under this section.

**38. Restriction on disclosure of confidential information**

- (1) This section applies if—
- (a) information or a document is given to the Commission under section 37, 44 or 51; and
  - (b) at the time the information or document is given, the person giving it states that it is of a confidential or commercially-sensitive nature.
- (2) The Commission must not disclose the information or the contents of the document to any person unless—
- (a) the Commission is of the opinion—
    - (i) that the disclosure of the information or document would not cause detriment to the person supplying it; or

*Essential Services Commission Act 2001*  
*Act No. 62/2001*

Part 4—Collection and Use of Information

s. 38

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- (ii) that although the disclosure of the information or document would cause detriment to the person supplying it, the public benefit in disclosing it outweighs that detriment; and
  - (b) the Commission is of the opinion, in relation to any other person who is aware of the information or the contents of the document and who might be detrimentally affected by the disclosure—
    - (i) that the disclosure of the information or document would not cause detriment to that person; or
    - (ii) that although the disclosure of the information or document would cause detriment to that person, the public benefit in disclosing it outweighs that detriment; and
  - (c) the Commission gives the person who supplied the information or document a written notice—
    - (i) stating that the Commission wishes to disclose the information or contents of the document, specifying the nature of the intended disclosure and setting out detailed reasons why the Commission wishes to make the disclosure; and
    - (ii) stating that the Commission is of the opinion required by paragraph (a) and setting out detailed reasons why it is of that opinion; and
    - (iii) setting out a copy of this section and section 55, and as the case requires, section 45 or 52; and
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*Essential Services Commission Act 2001*  
*Act No. 62/2001*

Part 4—Collection and Use of Information

s. 38

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- (d) if the Commission is aware that the person who supplied the information or document in turn received the information or document from another person and is aware of that other person's identity and address, the Commission gives that other person a written notice—
- (i) containing the details required by paragraph (c); and
  - (ii) stating that the Commission is of the opinion required by paragraph (b) in relation to him, her or it and setting out detailed reasons why it is of that opinion; and
- (e) no notice of appeal is lodged in respect of any notice given under paragraph (c) or (d) within the time permitted by section 55(3).

Penalty: 120 penalty units.

- (3) Sub-section (2) does not prevent the Commission—
- (a) from disclosing information or the contents of a document to—
    - (i) an employee employed under section 24(1); or
    - (ii) a member of staff referred to in section 24(2); or
    - (iii) a consultant engaged under section 25; or
    - (iv) a member of a Division, committee or panel acting under a delegation under section 26; or
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*Essential Services Commission Act 2001*  
*Act No. 62/2001*

Part 4—Collection and Use of Information

s. 38

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- (b) from using information or a document for the purposes of an inquiry or investigation; or
  - (c) from disclosing information or the contents of a document to the Minister in a report prepared in the form required by section 45(2) or 52(2); or
  - (d) from supplying the information or document to the members of any appeal panel hearing an appeal in relation to the information or document.
- (4) If an appeal is lodged under section 55 and the appeal—
- (a) is withdrawn or dismissed, the Commission may disclose any information, or the contents of any document, that was the subject of the appeal in the manner set out in the notice given under sub-section (2)(c);
  - (b) is granted, the Commission may disclose anything that the appeal panel permits it to disclose under section 56(7)(b)(ii) in the manner specified by the appeal panel.
- (5) For the purposes of this section, the disclosure of anything that is already in the public domain at the time the Commission wishes to disclose it can not cause detriment to any person referred to in sub-section (2)(a) or (2)(b).

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**39. Commission must not disclose exempt freedom of information documents**

- (1) The Commission must not disclose to any person any document that it has obtained from any agency (as defined in the **Freedom of Information Act 1982**) or Minister that is an exempt document under the **Freedom of Information Act 1982** in the hands of the agency or Minister.
  - (2) Sub-section (1) does not prevent the Commission from doing anything specified in section 38(3).
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**PART 5—INQUIRIES AND REPORTS**

**40. Inquiry by Commission**

The Commission may after consultation with the Minister conduct an inquiry if the Commission considers an inquiry is necessary or desirable for the purpose of carrying out its functions.

**41. Minister may refer matter for inquiry**

- (1) The Commission must conduct an inquiry into any matter which the Minister by written notice refers to the Commission under this Part.
- (2) The written notice must specify the terms of reference for the inquiry.
- (3) The Minister may—
  - (a) specify a period within which a report is to be submitted to the Minister;
  - (b) require the Commission to make a draft report publicly available or available to specified persons or bodies during the inquiry;
  - (c) require the Commission to consider specified matters;
  - (d) give the Commission specific directions in respect of the conduct of the inquiry.
- (4) The Commission must report to the Minister on the results of any inquiry.
- (5) The Minister may amend the terms of reference or extend the period within which a report is to be submitted to the Minister.

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**42. Notice of inquiry**

- (1) The Commission must after notifying the Minister publish notice of an inquiry—
  - (a) in the Government Gazette; and
  - (b) in a daily newspaper generally circulating in Victoria; and
  - (c) on the internet.
- (2) The notice must 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;
  - (d) the matters that the Commission would like submissions to deal with.
- (3) If the inquiry relates to a matter referred to the Commission by the Minister, the notice must include the terms of reference and the matters specified in section 41(3).
- (4) The Commission must publish a further notice if the Minister amends the terms of reference or extends the period within which the report is to be submitted to the Minister.
- (5) The Commission must send a copy of any notice published under this section to the relevant regulated entities and any person or body that the Commission considers should be notified.

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**43. Conduct of inquiry**

- (1) Subject to this Act, the Commission may conduct an inquiry in such a manner as the Commission considers appropriate.
- (2) In conducting an inquiry, the Commission is not bound by rules or practice as to evidence but may inform itself in relation to any matter in such manner as the Commission considers appropriate.
- (3) The Commission may receive written submissions or statements.
- (4) The Commission—
  - (a) must hold at least one public hearing; and
  - (b) has a discretion as to whether any person may appear before the Commission in person or be represented by another person.
- (5) The Commission may determine that a hearing or a part of a hearing be held in private if it is satisfied that—
  - (a) it would be in the public interest; or
  - (b) the evidence is of a confidential or commercially-sensitive nature.
- (6) In conducting an inquiry the Commission may—
  - (a) consult with any person that it considers appropriate;
  - (b) hold public seminars and conduct workshops;
  - (c) establish working groups and task forces.

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**44. Powers relating to inquiries**

- (1) The Commission may serve upon any person a summons to—
  - (a) provide specified information; or
  - (b) produce specified documents; or
  - (c) appear before the Commission to give evidence.
- (2) The Commission may make an order for the manner of service, including substituted service, of a summons under sub-section (1).
- (3) A person who without lawful excuse disobeys a summons of the Commission is guilty of an offence.

Penalty: 60 penalty units.

- (4) It is a lawful excuse for the purposes of sub-section (3) that compliance may tend to incriminate the person or make the person liable to a penalty for any other offence.
- (5) A person must not give information which he or she knows is false or misleading to the Commission.

Penalty: 120 penalty units or imprisonment for 6 months.

- (6) 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 assisted, or intends to assist, any inquiry conducted by the Commission.

Penalty: 120 penalty units.

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- (7) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of the making in good faith of a statement, or the giving in good faith of a document or information to the Commission in connection with an inquiry under this Part, whether or not the statement is made, or the document or information is given, in connection with a written submission or a public hearing.

#### **45. Reports**

- (1) The Commission must submit a copy of its final report on an inquiry to the Minister.
- (2) If, in the opinion of the Commission, a final report will contain confidential or commercially-sensitive information, the Commission must divide the report into—
- (a) a document containing the confidential or commercially-sensitive information; and
  - (b) another document containing the rest of the report.
- (3) For the purposes of sub-section (2), any information that the Commission may disclose under section 38 is not confidential or commercially-sensitive unless an appeal panel states that it is imposing a restriction under section 56(7)(b)(i).
- (4) If the Commission submits a final report to the Minister in the form required by sub-section (2), a reference to the final report in sub-sections (5), (6) and (7) is to be read as a reference to the document described in sub-section (2)(b).
- (5) The Minister must cause a copy of the final report to be laid before each House of the Parliament within 7 sitting days of the House after receiving the final report.
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*Essential Services Commission Act 2001*  
*Act No. 62/2001*

Part 5—Inquiries and Reports

s. 46

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- (6) The Minister must, after the final report has been laid before each House of the Parliament, or if the Parliament is not sitting, within 30 days after receiving a final report, ensure that a copy of the final report is available for public inspection.
  - (7) After the Minister has made a final report publicly available, the Commission must ensure that copies are made publicly available.

**46. Special reports**

- (1) If in the course of an inquiry the Commission considers that there is another matter on which the Commission should report to the Minister, the Commission may do so, in the final report or in a special report.
  - (2) If the Commission prepares a special report, subsections (5), (6) and (7) of section 45 apply to the special report as if it were a final report.
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*Essential Services Commission Act 2001*  
*Act No. 62/2001*

Part 6—Special References

s. 47

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**PART 6—SPECIAL REFERENCES**

S. 47  
amended by  
Nos 40/2003  
s. 23, 91/2004  
s. 26.

**47. Expiry of Part**

This Part expires on 31 December 2007.

**48. Reference by Minister**

- (1) The Commission must conduct an investigation into any matter—
  - (a) relating to the electricity industry which the Minister administering the **Electricity Industry Act 2000**; or
  - (b) relating to the gas industry which the Minister administering the **Gas Industry Act 2001**—

by written notice refers to the Commission under this Part.

- (2) The Minister administering the **Electricity Industry Act 2000** or the Minister administering the **Gas Industry Act 2001** must consult with the Minister before referring a matter to the Commission.
- (3) The written notice must specify the terms of reference for the investigation.
- (4) The Minister referring a matter—
  - (a) may specify a period within which a report is to be submitted to the Minister;
  - (b) may require the Commission to make a draft report publicly available or available to specified persons or bodies during the investigation;
  - (c) may require the Commission to consider specified matters;

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- (d) may give the Commission specific directions in respect of the conduct of the investigation;
  - (e) may specify objectives that the Commission is to have in performing its functions and exercising its powers in relation to the investigation.
- (5) If a Minister has referred a matter to the Commission for investigation, the Minister may, by written notice given to the Commission, withdraw or amend the reference at any time before the Minister has received the report from the Commission.
  - (6) The Minister must cause a notice given to the Commission under this section to be published in the Government Gazette.

#### **49. Conduct of investigation**

- (1) Subject to this Act and any directions under section 48(4)(d), the Commission may conduct an investigation under this Part in such a manner as the Commission considers appropriate.
- (2) In conducting an investigation, the Commission is not bound by rules or practices as to evidence but may inform itself in relation to any matter in such manner as the Commission considers appropriate.
- (3) The Commission may receive written submissions or statements.
- (4) If the Commission holds a public hearing—
  - (a) the Commission has a discretion as to whether any person may appear before the Commission in person or be represented by another person;



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- (b) the Commission may determine that the hearing, or part of the hearing, be held in private if it is satisfied that—
    - (i) it would be in the public interest; or
    - (ii) the evidence is of a confidential or commercially sensitive nature.
  - (5) In conducting an investigation, the Commission—
    - (a) may consult with any person that it considers appropriate;
    - (b) may hold public seminars and hold workshops;
    - (c) may establish working groups and task forces.

**50. Objectives not to apply**

Except to the extent (if any) that the Minister referring a matter otherwise determines, the objectives of the Commission under this or any other Act do not apply to the functions and powers of the Commission under this Part.

**51. Powers relating to investigations**

- (1) The Commission may serve upon any person a summons—
  - (a) to provide specified information;
  - (b) to produce specified documents;
  - (c) to appear before the Commission to give evidence.
- (2) The Commission may make an order for the manner of service, including substituted service, of a summons under sub-section (1).
- (3) A person must not, without lawful excuse, disobey a summons of the Commission.

Penalty: 60 penalty units.

*Essential Services Commission Act 2001*  
*Act No. 62/2001*

Part 6—Special References

s. 52

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(4) It is a lawful excuse for the purposes of subsection (3) that compliance may tend to incriminate the person or make the person liable to a penalty for any other offence.

(5) A person must not give information to the Commission that he or she knows is false or misleading.

Penalty: 120 penalty units or imprisonment for 6 months.

(6) 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 assisted, or intends to assist, any investigation conducted by the Commission.

Penalty: 120 penalty units.

(7) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of the making in good faith of a statement, or the giving in good faith of a document or information to the Commission in connection with an investigation under this Part, whether or not the statement is made, or the document or information is given, in connection with a written submission or a public hearing.

## **52. Reports**

(1) The Commission must submit a copy of its report on an investigation to the Minister who referred the matter.

*Essential Services Commission Act 2001*  
*Act No. 62/2001*

Part 6—Special References

s. 52

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- (2) If, in the opinion of the Commission, a report will contain confidential or commercially sensitive information, the Commission must divide the report into—
    - (a) a document containing the confidential or commercially sensitive information; and
    - (b) another document containing the rest of the report.
  - (3) Any information that the Commission may disclose under section 38 is not confidential or commercially sensitive for the purposes of sub-section (2) unless an appeal panel states that it is imposing a restriction under section 56(7)(b)(i).
  - (4) If the Commission submits a final report to the Minister who referred the matter in the form required by sub-section (2), a reference to the final report in sub-sections (5), (6) and (7) is to be read as a reference to the document described in sub-section (2)(b).
  - (5) The Minister who referred the matter must cause a copy of the final report to be laid before each House of the Parliament within 7 sitting days of the House after receiving the final report.
  - (6) The Minister who referred the matter must, after the final report has been laid before each House of the Parliament, or if the Parliament is not sitting, within 30 days after receiving a final report, ensure that a copy of the final report is available for public inspection.
  - (7) After the Minister who referred the matter has made a final report publicly available, the Commission must ensure that copies are made publicly available.
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**PART 7—GENERAL**

**53. Enforcement orders**

- (1) This section applies if a person has contravened or is contravening or, in the opinion of the Commission, is likely to contravene—
  - (a) a determination; or
  - (b) if the Commission is under the relevant legislation or by virtue of an Order made under section 4 responsible for licensing, the conditions of a licence—and the Commission considers that the contravention or likely contravention is not of a trivial nature.
- (2) The Commission may serve a provisional order or a final order on the person requiring the person—
  - (a) to comply with the determination or licence condition; and
  - (b) if a contravention has already occurred, to take such actions as are specified in the order to rectify the contravention.
- (3) Unless sooner withdrawn by the Commission, a provisional order has effect for a period of 7 days commencing on the day that it is served.
- (4) The Commission may serve another provisional order upon the expiry of a preceding provisional order.
- (5) If the Commission has made a provisional order, the Commission must not make a final order if—
  - (a) the person has undertaken to comply with the determination or licence condition; or

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- (b) the Commission is satisfied that the order would be inconsistent with the objectives of this Act.
- (6) The Commission must not make a final order unless the Commission has—
- (a) given the person at least 28 days notice of the intention to do so; and
  - (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 Commission.
- (7) The 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 Government Gazette.
- (8) A person must comply with a provisional order or a final order or an undertaking under sub-section (5)(a).
- (9) A person who contravenes sub-section (8) is guilty of an offence and is liable to a penalty not exceeding 5000 penalty units and to a further penalty not exceeding 500 penalty units for each day after service of the order that contravention continues.

**54. Application to Supreme Court**

The Commission may apply to the Supreme Court for an injunction or declaration or both in respect of a provisional order or final order served under section 53.

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**55. Right of appeal**

- (1) A person who is aggrieved by—
- (a) a requirement made by the Commission under section 37; or
  - (b) a decision of the Commission to disclose information or the contents of a document given to the Commission by that person under a notice given under section 38(2)(c) or 38(2)(d); or
  - (c) a determination of the Commission—
- may appeal against the requirement, decision or determination in accordance with this section.
- (2) The only ground for an appeal—
- (a) under sub-section (1)(a) is that the requirement—
    - (i) was not made in accordance with the law; or
    - (ii) is unreasonable having regard to all the relevant circumstances;
  - (b) under sub-section (1)(b) is that the decision—
    - (i) was not made in accordance with the law; or
    - (ii) is unreasonable having regard to all the relevant circumstances;
  - (c) under sub-section (1)(c) is that—
    - (i) there has been bias; or
    - (ii) the determination is based wholly or partly on an error of fact in a material respect.
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- (3) A person must lodge notice of the appeal with the Registrar—
- (a) in the case of an appeal under sub-section (1)(a) or (1)(b), within 7 working days after the person is given the notice; or
  - (b) in the case of an appeal under sub-section (1)(c), within 14 working days after the determination is published.
- (4) If a person lodges an appeal under sub-section (1)(a), the person need not comply with the requirement until the appeal is withdrawn or dismissed.

**56. Appeal panel**

- (1) An appeal must be heard by an appeal panel consisting of 3 members—
- (a) being a chairperson and 2 other persons appointed by the Registrar; and
  - (b) of which at least one must have knowledge of administrative law or of the law of procedure and evidence.
- (2) An appeal panel is to be constituted from a pool of persons appointed by the Governor in Council because of their knowledge of, or experience in, one or more of the fields of industry, commerce, economics, law or public administration.
- (3) An appeal panel must be constituted within 7 working days after notice of the appeal is lodged.
- (4) An appeal must be heard and decided—
- (a) in the case of an appeal under section 55(1)(a) or 55(1)(b), within 7 working days of the appeal panel being constituted, or if the appeal panel requires further time, within a further period not exceeding 7 working days; or
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- (b) in the case of an appeal under section 55(1)(c), within 30 working days of the appeal panel being constituted, or if the appeal panel requires further time, within a further period not exceeding 15 working days.
- (5) If an appeal panel requires further time under sub-section (4), the chairperson must notify the Registrar in writing.
- (6) The appeal panel has such of the powers of the Commission under Part 3 as are necessary to enable the appeal panel to determine whether the appeal should be granted and may conduct a preliminary hearing to determine whether—
- (a) the appeal is trivial or vexatious; or
  - (b) there is sufficient evidence supporting the grounds of the appeal; or
  - (c) the matters raised in the appeal are likely to have had a material impact on the outcome being appealed against.
- (7) Without limiting sub-section (6), the appeal panel—
- (a) in the case of an appeal under section 55(1)(a), may in granting the appeal, cancel the requirement;
  - (b) in the case of an appeal under section 55(1)(b), may in granting the appeal—
    - (i) forbid disclosure by the Commission of the information or document that is the subject of the appeal; or
    - (ii) restrict the intended disclosure by the Commission of the information or document within limits specified by the appeal panel;
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- (c) in the case of an appeal under section 55(1)(c) on the ground specified in section 55(2)(c)(i)—
- (i) may determine whether or not there has been bias; and
  - (ii) if it determines that there has been bias, may set aside the determination of the Commission and remit it to the Commission for amendment of the determination in accordance with the decision and recommendations (if any) of the appeal panel; and
- (d) in the case of an appeal under section 55(1)(c) on the ground specified in section 55(2)(c)(ii)—
- (i) may affirm the determination of the Commission; or
  - (ii) may vary the determination of the Commission in order to correct the error; or
  - (iii) may set aside the determination of the Commission and remit it to the Commission for amendment of the determination in accordance with the decision and recommendations (if any) of the appeal panel.
- (8) The Commission—
- (a) is a party to an appeal; and
  - (b) is entitled to perform the role of a contradictor in an appeal if the Commission gives notice to all the other parties to the appeal that it intends to do so.
- (9) Subject to sub-section (10), the Commission must give an appeal panel such information as the appeal panel may request.
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- (10) An appeal panel can only consider evidence in accordance with the regulations.
  - (11) On the hearing of an appeal under section 55(1)(a) or 55(1)(b), the Commission bears the onus of establishing that the requirement or decision—
    - (a) was made in accordance with the law; and
    - (b) is reasonable having regard to all relevant circumstances.
  - (12) The Commission must take such action as is necessary to give effect to a decision of the appeal panel.

**57. Decision if appeal panel not unanimous**

If the members constituting an appeal panel are divided in opinion as to the decision to be made on any question—

- (a) if there is a majority of the one opinion, the question shall be decided according to the opinion of the majority; or
- (b) in any other case, the question shall be decided according to the opinion of the chairperson of the appeal panel.

**58. Disclosure of interests**

- (1) If a person is, or is to be, a member of an appeal panel and the person has or acquires any interests, pecuniary or otherwise, that could conflict with the proper performance of the functions of that person in relation to an appeal—
  - (a) the person must disclose the interest to the Registrar; and
  - (b) the person must not take part, or continue to take part, in the hearing of the appeal if—
    - (i) the Registrar gives a direction under sub-section (2)(a); or

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- (ii) if the Registrar has caused the interest of the person to be disclosed to the parties to the hearing, all the parties do not consent to the person being a member of the appeal panel.
- (2) If the Registrar receives a disclosure of an interest under sub-section (1) or becomes aware that a person is, or is to be, a member of an appeal panel in relation to a hearing and that the person has in relation to the hearing such an interest—
- (a) if the Registrar considers that the person should not take part, or should not continue to take part, in the hearing, the Registrar must give a direction to the person accordingly; or
- (b) in any other case, the Registrar must cause the interest of the person to be disclosed to the parties to the hearing.

**59. Member of appeal panel becomes unavailable**

- (1) This section applies where a hearing before an appeal panel has been commenced or completed by the appeal panel but, before the matter has been determined, one of the members constituting the appeal panel has ceased to be a member of the appeal panel or has ceased to be available for the purposes of the hearing.
- (2) If the Registrar is satisfied that sub-section (1) applies in relation to a hearing, the Registrar may appoint a member of the appeal panels pool to take the place of the person referred to in sub-section (1) for the purposes of the hearing.
- (3) If sub-section (1) applies in relation to a hearing that has been dealt with by an appeal panel, the Registrar may, instead of appointing a member under sub-section (2), direct that the determination

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of the hearing be completed by the appeal panel constituted by the remaining members.

- (4) An appeal panel as constituted in accordance with any of the provisions of this section for the purposes of a hearing may have regard to any record of proceedings for the appeal panel as previously constituted.

#### **60. Personal liability**

- (1) A Commissioner or any employee or a member of a committee or panel acting under a delegation under section 26 is not personally liable for anything done or omitted to be done in good faith—
- (a) in the exercise of a power or the performance of a function under this Act or any relevant legislation; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function under this Act or any relevant legislation.
- (2) Any liability resulting from an act or omission that would but for sub-section (1) attach to a person referred to in that sub-section attaches instead to the Commission.

#### **61. Disclosure of information an offence**

- (1) A person must not disclose any confidential or commercially-sensitive information obtained during the exercise of a power or the performance of a function under, or in connection with, this Act or any relevant legislation.

Penalty: 120 penalty units.

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- (2) A person must not use any such information to obtain directly or indirectly any pecuniary or other advantage for himself or herself or for any other person.

Penalty: 120 penalty units.

- (3) However, the person may disclose or use such information if—
- (a) the disclosure or use is made in the exercise of a power or the performance of a function under, or in connection with, this Act or any relevant legislation; or
  - (b) the person has the consent of the person who supplied the information; or
  - (c) the disclosure or use is made in legal proceedings at the direction of a court; or
  - (d) the information is in the public domain at the time it is disclosed or used.
- (4) For the purpose of removing doubt, sub-section (3) is not intended to interfere with any rights another person may have with regard to the disclosure or use of the information.

**62. Proceedings**

- (1) No proceedings may be brought in respect of a determination or a provisional order or final order other than on the grounds that—
- (a) there was no power to make the determination or provisional order or final order; or
  - (b) that the procedural requirements in relation to the making of the determination or provisional order or final order have not been complied with.

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- (2) The Commission is entitled to perform the role of a contradictor in any proceedings brought on the grounds specified in sub-section (1) if the Commission gives notice to all the other parties in the proceedings that it intends to do so.

**63. Supreme Court—limitation of jurisdiction**

It is the intention of sections 44(7), 51(7) and 62 to alter or vary section 85 of the **Constitution Act 1975**.

**64. Service of documents**

A document may be served on the Commission by leaving it at or posting it to the principal office of the Commission.

**65. Regulations**

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Without limiting the generality of sub-section (1) the regulations may—
- (a) provide for a person or body to be appointed as the Registrar; and
  - (b) regulate proceedings relating to appeals; and
  - (c) provide for procedures to be followed by appeal panels, including matters relating to the conduct of hearings, the rights of parties to the appeal and the rules of evidence (including what facts and materials constitute evidence which may be considered) to be used by the appeal panel.

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- (3) The regulations—
- (a) may be of general or limited application; and
  - (b) may differ according to differences in time, place or circumstance; and
  - (c) may impose penalties not exceeding 10 penalty units for a contravention of or an offence under the regulations; and
  - (d) may apply, adopt or incorporate (with or without modification)—
    - (i) the provisions of any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person or body whether as formulated, issued, prescribed or published at the time the regulations are made, or at any time before then; or
    - (ii) the provisions of any Act of the Commonwealth or of another State or of a Territory or any matter contained in an Index published by the Commonwealth or of another State or of a Territory or any matter contained in an Index published by the Commonwealth Statistician or the provisions of any subordinate instrument under any of those Acts, whether wholly or partially or as amended by the regulations or as in force or published at a particular time or from time to time; and
  - (e) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by the Commission or the Registrar; and
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- (f) may confer powers or impose duties in connection with the regulations on the Commission or the Registrar.
  - (4) The Regulations are subject to disallowance by a House of the Parliament.

**66. Review**

- (1) The Minister must ensure that a review of this Act is completed within 5 years of the commencement of the Act.
  - (2) The purpose of the review is to determine—
    - (a) whether the objectives of this Act and the Commission are being achieved and are still appropriate; and
    - (b) whether the Act is effective or needs to be amended so as to further facilitate the objectives or to insert new objectives.
  - (3) The Minister must cause a copy of the review and a statement of the response of the Government to the review to be laid before each House of the Parliament within 7 sitting days of that House after the expiry of the period specified in subsection (1).
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**PART 8—TRANSITIONAL**

**67. Repeal of the Office of the Regulator-General Act 1994**

- (1) The **Office of the Regulator-General Act 1994** is repealed.
  - (2) Except as in this Act expressly or by necessary implication provided—
    - (a) all persons, things and circumstances appointed or created by or under the **Office of the Regulator-General Act 1994** or existing or continuing under that Act or under relevant legislation immediately before the commencement of this Act shall under and subject to this Act continue to have the same status, operation and effect as they respectively would have had if this Act had not come into operation; and
    - (b) in particular and without affecting the generality of paragraph (a), this Act shall not disturb the continuity of, status, operation or effect of any Order, determination, declaration, notice, exemption, approval, appointment, authorisation, application, grant, revocation, suspension, condition, certificate, licence, permit, registration, contract, agreement, charge, consent, authority, proceeding, action, appeal, appeal panel, liability, right or other matter or thing made, done, effected, obtained, issued, granted, given, prescribed, fixed, accrued, incurred, acquired, existing or continuing before the commencement of this Act under the **Office of the Regulator-General Act 1994** or under relevant legislation.
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**68. Commission is successor in law**

- (1) On the commencement of this Act—
  - (a) all property, rights and assets of the Office of the Regulator-General are by virtue of this Act held by the Commission;
  - (b) all liabilities of the Office of the Regulator-General are by virtue of this Act held by the Commission;
  - (c) the Commission is the successor in law of the Office of the Regulator-General.
- (2) Where, immediately before the commencement of this Act, proceedings in respect of which the Office of the Regulator-General was a party were pending or existing in any court or tribunal, then, on and after that commencement, the Commission is substituted for the Office of the Regulator-General as a party to the proceedings and has the same rights and obligations in the proceedings as the Office of the Regulator-General.
- (3) On and after the commencement of this Act, any reference in any Act (other than this Act), regulation, subordinate instrument or other document whatsoever to—
  - (a) the Office of the Regulator-General is to be construed as a reference to the Commission, unless the contrary intention appears; or
  - (b) the **Office of the Regulator-General Act 1994** is to be construed as a reference to this Act, unless the contrary intention appears.
- (4) No stamp duty or other tax is payable under any Act in respect of anything done under this section.

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- (5) The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title or instrument, must make any amendments in the Register that are necessary because of the operation of this section.

**69. Regulator-General**

Subject to this Act, the person who immediately before the commencement of this Act holds the office of the Regulator-General is to be taken to have been appointed as the Chairperson of the Commission until—

- (a) the end of the period when his or her term of appointment as the Regulator-General would have expired; or
- (b) if the Governor in Council extends the period under this section, the end of the period as so extended.

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Pt 9 (Heading and ss 70–76) amended by No. 11/2002 s. 3(Sch. 1 item 23), repealed by No. 75/2004 s. 5.

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Pts 10–15 (Headings and ss 77–96) repealed by No. 75/2004 s. 5.

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**ENDNOTES**

**1. General Information**

*Minister's second reading speech—*

*Legislative Assembly: 23 August 2001*

*Legislative Council: 9 October 2001*

The long title for the Bill for this Act was "to establish the Essential Services Commission, to repeal the **Office of the Regulator-General Act 1994** and consequentially amend certain other Acts and for other purposes."

**Constitution Act 1975:**

*Section 85(5) statement:*

*Legislative Assembly: 23 August 2001*

*Legislative Council: 9 October 2001*

*Absolute majorities:*

*Legislative Assembly: 27 September 2001*

*Legislative Council: 16 October 2001, 17 October 2001*

The **Essential Services Commission Act 2001** was assented to on 23 October 2001 and came into operation on 1 January 2002: section 2.

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Endnotes
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## 2. Table of Amendments

This Version incorporates amendments made to the **Essential Services Commission Act 2001** by Acts and subordinate instruments.

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### **Statute Law (Further Revision) Act 2002, No. 11/2002**

*Assent Date:* 23.4.02  
*Commencement Date:* S. 3(Sch. 1 item 23) on 23.10.01: s. 2(2)(d)  
*Current State:* This information relates only to the provision/s amending the **Essential Services Commission Act 2001**

### **Transport (Further Miscellaneous Amendments) Act 2002, No. 32/2002**

*Assent Date:* 12.6.02  
*Commencement Date:* S. 25 on 13.6.02: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Essential Services Commission Act 2001**

### **Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002, No. 49/2002**

*Assent Date:* 22.10.02  
*Commencement Date:* Ss 18–21 on 23.10.02: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Essential Services Commission Act 2001**

### **Energy Legislation (Consumer Protection and Other Amendments) Act 2003, No. 40/2003**

*Assent Date:* 11.6.03  
*Commencement Date:* S. 23 on 12.6.03: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Essential Services Commission Act 2001**

### **Water Legislation (Essential Services Commission and Other Amendments) Act 2003, No. 48/2003**

*Assent Date:* 11.6.03  
*Commencement Date:* S. 11 on 1.1.04: Government Gazette 11.12.03 p. 3117  
*Current State:* This information relates only to the provision/s amending the **Essential Services Commission Act 2001**

### **Essential Services Commission (Amendment) Act 2004, No. 75/2004**

*Assent Date:* 9.11.04  
*Commencement Date:* Ss 3–5 on 10.11.04: s. 2  
*Current State:* This information relates only to the provision/s amending the **Essential Services Commission Act 2001**

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**Electricity Industry (Wind Energy Development) Act 2004, No. 86/2004**

*Assent Date:* 23.11.04  
*Commencement Date:* S. 5 on 24.11.04: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Essential Services Commission Act 2001**

**Energy Legislation (Amendment) Act 2004, No. 91/2004**

*Assent Date:* 7.12.04  
*Commencement Date:* S. 26 on 8.12.04: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Essential Services Commission Act 2001**

**Public Administration Act 2004, No. 108/2004**

*Assent Date:* 21.12.04  
*Commencement Date:* S. 117(1)(Sch. 3 item 70) on 5.4.05: Government Gazette 31.3.05 p. 602  
*Current State:* This information relates only to the provision/s amending the **Essential Services Commission Act 2001**

**Victorian Renewable Energy Act 2006, No. 72/2006**

*Assent Date:* 19.9.06  
*Commencement Date:* Ss 115–117 on 1.1.07: s. 2(2)  
*Current State:* This information relates only to provision/s amending the **Essential Services Commission Act 2001**

**Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006**

*Assent Date:* 10.10.06  
*Commencement Date:* S. 26(Sch. item 35) on 11.10.06: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Essential Services Commission Act 2001**

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**Endnotes**

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**3. Explanatory Details**

No entries at date of publication.