

Authorised Version No. 050
Essential Services Commission Act 2001

No. 62 of 2001

Authorised Version incorporating amendments as at
7 June 2016

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Authorised Version No. 050
Essential Services Commission Act 2001
No. 62 of 2001

Authorised Version incorporating amendments as at
7 June 2016

The Parliament of Victoria enacts as follows:

Part 1—Preliminary

1 Purpose

The purpose of this Act is to enable the Essential Services Commission to perform the regulatory and advisory functions that are conferred on the Commission in a manner that provides incentives for dynamic, productive and allocative efficiency and promotes the long term interests of Victorian consumers.

S. 1
amended by
No. 49/2002
s. 18,
substituted by
No. 15/2008
s. 3.

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;

Code of Practice means a Code of Practice applying under Part 6 or relevant legislation;

S. 3 def. of
Code of Practice
inserted by
No. 49/2015
s. 13.

S. 3 def. of
*Commission
port Pricing
Order
decision*
inserted by
No. 10/2016
s. 168(b).

Commission means the Essential Services
Commission established under section 7;

Commission port Pricing Order decision means a
decision of the Commission made under a
provision of a port Pricing Order that is
prescribed;

S. 3 def. of
Council
inserted by
No. 65/2015
s. 10.

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

Council has the same meaning as in the **Local
Government Act 1989**;

S. 3 def. of
*empowering
instrument*
amended by
Nos 48/2003
s. 11(1),
86/2004 s. 5,
10/2016
s. 168(a).

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**; or
- (f) a port Pricing Order;

S. 3 def. of
*energy
licence*
inserted by
No. 49/2015
s. 13.

energy licence means—

- (a) a licence issued under Part 2 of the
Electricity Industry Act 2000; or
- (b) a licence issued under Part 3 of the
Gas Industry Act 2001;

energy licensee means the holder of an energy licence;

S. 3 def. of *energy licensee* inserted by No. 49/2015 s. 13.

energy retailer means—

S. 3 def. of *energy retailer* inserted by No. 49/2015 s. 13.

- (a) a retailer within the meaning of the **Electricity Industry Act 2000**; or
- (b) a gas retailer within the meaning of the **Gas Industry Act 2001**;

enforcement action means any of the following—

S. 3 def. of *enforcement action* inserted by No. 49/2015 s. 13.

- (a) the service of an order by the Commission under section 53;
- (b) the service of a notice by the Commission under section 54A;
- (c) the acceptance of an enforceable undertaking by the Commission under section 54B;
- (d) the commencement of proceedings by the Commission under section 54D;
- (e) the service of a penalty notice within the meaning of section 54E by the Commission;
- (f) the commencement of proceedings by the Commission under section 54S;
- (g) the variation of a licence condition by the Commission under section 29A of the **Electricity Industry Act 2000**;
- (h) the variation of a licence condition by the Commission under section 38A of the **Gas Industry Act 2001**;

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Part 1—Preliminary

S. 3 def. of
*essential
service*
amended by
No. 43/2013
s. 31(1)(2).

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;
- (fa) the taxi non-cash payment transaction industry;
- (fb) the taxi industry;
- (g) any other industry prescribed for the purpose of this definition;

S. 3 def. of
insurance
inserted by
No. 49/2002
s. 19,
repealed by
No. 15/2008
s. 6(2).

* * * * *

S. 3 def. of
*insurance
business*
inserted by
No. 49/2002
s. 19,
repealed by
No. 15/2008
s. 6(2).

* * * * *

S. 3 def. of
*insurance
industry*
inserted by
No. 49/2002
s. 19,
repealed by
No. 15/2008
s. 6(2).

* * * * *

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

port Pricing Order means an Order made under section 49A of the **Port Management Act 1995**;

S. 3 def. of *port Pricing Order* inserted by No. 10/2016 s. 168(b).

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;

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;

* * * * *

S. 3 def. of *statutory insurer* inserted by No. 49/2002 s. 19, repealed by No. 15/2008 s. 6(2).

S. 3 def. of
Tariff Order
amended by
No. 43/2013
s. 31(3).

Tariff Order has the same meaning as in the
Electricity Industry Act 2000;

S. 3 def. of *taxi
non-cash
payment
transaction
industry*
inserted by
No. 43/2013
s. 31(4).

taxi non-cash payment transaction industry has
the same meaning as in Division 5B of
Part VI of the **Transport (Compliance and
Miscellaneous) Act 1983**.

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.
- (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;

S. 4(2)(c)
amended by
No. 15/2008
s. 4(1).

- (d) decisions or classes of decisions of the Commission under the powers conferred by the Order that are to be determinations for the purposes of this Act. **S. 4(2)(d) inserted by No. 15/2008 s. 4(2).**
- (3) This section does not apply to the electricity industry or to the **Electricity Industry Act 2000**.
- (4) Subsection (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) Subsection (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).**
- (9) While a port Pricing Order is in effect, this section does not apply to—
- (a) the ports industry in the port of Melbourne within the meaning of the **Port Management Act 1995**; or
 - (b) the **Port Management Act 1995** in respect of the port of Melbourne. **S. 4(9) inserted by No. 10/2016 s. 169.**

5 Interpretation and application of Act

- (1) Subject to subsection (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 subsection (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 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) Subsection (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.

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 Objective of the Commission

- (1) In performing its functions and exercising its powers, the objective of the Commission is to promote the long term interests of Victorian consumers.

**S. 8
substituted by
No. 15/2008
s. 5.**

- (2) Without derogating from subsection (1), in performing its functions and exercising its powers in relation to essential services, the Commission must in seeking to achieve the objective specified in subsection (1) have regard to the price, quality and reliability of essential services.

S. 8A
inserted by
No. 15/2008
s. 5.

8A Matters which the Commission must have regard to

- (1) In seeking to achieve the objective specified in section 8, the Commission must have regard to the following matters to the extent that they are relevant in any particular case—
- (a) efficiency in the industry and incentives for long term investment;
 - (b) the financial viability of the industry;
 - (c) the degree of, and scope for, competition within the industry, including countervailing market power and information asymmetries;
 - (d) the relevant health, safety, environmental and social legislation applying to the industry;
 - (e) the benefits and costs of regulation (including externalities and the gains from competition and efficiency) for—
 - (i) consumers and users of products or services (including low income and vulnerable consumers);
 - (ii) regulated entities;
 - (f) consistency in regulation between States and on a national basis;
 - (g) any matters specified in the empowering instrument.

- (2) Without derogating from section 8 or subsection (1), the Commission must also when performing its functions and exercising its powers in relation to a regulated industry do so in a manner that the Commission considers best achieves any objectives specified in the empowering instrument.

9 Commission represents Crown

The Commission represents the Crown.

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;
- S. 10(h)
amended by
No. 32/2002
s. 25(a).
- (h) to administer this Act;
- S. 10(i)
inserted by
No. 32/2002
s. 25(b),
amended by
Nos 72/2006
s. 115(a),
6/2010
s. 203(1)(Sch. 6
item 20) (as
amended by
No. 45/2010
s. 22).
- (i) to perform the functions conferred on the Commission by or under Part VI of the **Transport (Compliance and Miscellaneous) Act 1983**;
- S. 10(j)
inserted by
No. 72/2006
s. 115(b),
amended by
No. 70/2007
s. 77(a).
- (j) to perform the functions conferred on the Commission by the **Victorian Renewable Energy Act 2006**;
- S. 10(k)
inserted by
No. 70/2007
s. 77(b),
amended by
No. 40/2011
s. 23(1).
- (k) to perform the functions conferred on the Commission by the **Victorian Energy Efficiency Target Act 2007**;
- S. 10(ka)
inserted by
No. 65/2015
s. 11.
- (ka) to perform the functions conferred on the Commission by Part 8A of the **Local Government Act 1989**;
- S. 10(l)
inserted by
No. 40/2011
s. 23(2),
amended by
No. 63/2011
s. 7(a).
- (l) to perform the functions conferred on the Commission by the **Accident Towing Services Act 2007**;

(la) to perform the functions conferred on the Commission by the **Fire Services Property Levy Act 2012**;

S. 10(la) inserted by No. 58/2012 s. 92.

* * * * *

S. 10(lb) inserted by No. 81/2012 s. 113(1), repealed by No. 81/2012 s. 113(2).

(m) if, under Part 1B of the **Water Industry Act 1994**, the Commonwealth provisions (within the meaning of that Part) are applied as a law of the State, to perform the functions conferred on the Commission as the State Agency under those provisions.

S. 10(m) inserted by No. 63/2011 s. 7(b).

10AA Commission's energy industry compliance and enforcement functions

S. 10AA inserted by No. 49/2015 s. 14.

Without limiting section 10(a) or the **Electricity Industry Act 2000** or the **Gas Industry Act 2001**, the functions of the Commission under this Act in respect of the electricity industry and the gas industry include—

- (a) to monitor and report on compliance by energy licensees with conditions of energy licences held by them and provisions of Codes of Practice; and
- (b) to investigate contraventions or possible contraventions by energy licensees of conditions of energy licences held by them and provisions of Codes of Practice; and
- (c) to commence and conduct proceedings in relation to contraventions by energy licensees of conditions of energy licences held by them or provisions of Codes of Practice.

S. 10A
inserted by
No. 49/2002
s. 20,
repealed by
No. 15/2008
s. 6(1),
new s. 10A
inserted by
No. 63/2011
s. 8.

10A Commission's functions in relation to particular Basin water charges

The following provisions do not apply to the functions of the Commission referred to in section 10(m)—

- (a) sections 8, 8A and 26; and
- (b) Part 4 (other than sections 37 and 38 to the extent necessary for the operation of Part 5); and
- (c) Part 7 (other than sections 61 and 64).

Note

Parts 3, 3A and 6 do not apply to the Commission's function under section 10(m) because that function does not relate to a regulated industry.

* * * * *

S. 10B
inserted by
No. 49/2002
s. 20,
repealed by
No. 15/2008
s. 6(1).

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).

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

S. 10D
inserted by
No. 70/2007
s. 78.

10D Commission's functions in relation to energy efficiency

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(k).

10E Commission's functions in relation to Councils

S. 10E
inserted by
No. 65/2015
s. 12.

- (1) The Commission has the following functions in relation to Councils—
 - (a) monitoring and reviewing Councils' compliance with the caps set under Part 8A of the **Local Government Act 1989**;
 - (b) assessing the outcomes as a result of general Orders and special Orders made under Part 8A of the **Local Government Act 1989**;
 - (c) identifying trends across the local government sector arising from the caps, and any other impacts of the caps on the sector.
- (2) The Commission must prepare an annual report on Councils' compliance with the caps.
- (3) The Commission must prepare a biennial report containing—
 - (a) an assessment of outcomes as a result of general Orders and special Orders made under Part 8A of the **Local Government Act 1989**; and
 - (b) the identification of any trends across the local government sector arising from the caps, and of any other impacts of the caps on the sector.
- (4) A report under subsection (2) or (3) must be published on the Commission's internet site.
- (5) The Commission must publish notice of the publication of a report under subsection (2) or (3) in the Government Gazette and in a newspaper generally circulating in Victoria as soon as is practicable after the report is published.
- (6) A notice under subsection (5) must specify a place where copies of the report are available for inspection.

- (7) In performing its functions and exercising its powers under this section and the **Local Government Act 1989**, the objective of the Commission is to promote the purposes of Part 8A of the **Local Government Act 1989**.

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 subsection (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.

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 other regulatory decisions and conducting inquiries.
- (2) The Charter of Consultation and Regulatory Practice—
- (a) must include such matters as are prescribed;
and

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

S. 14(1)
amended by
No. 15/2008
s. 7.

- (b) may include any other matters that the Commission considers appropriate.

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
- (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.

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.

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.

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 subsection (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 subsection (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.

- (5) While a person is acting in the office of Chairperson in accordance with subsection (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 subsection (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).

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.

- (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.

25 Consultants

- (1) The Commission may engage persons with suitable qualifications and experience as consultants.

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

- (2) An engagement under subsection (1) may be on any terms and conditions the Commission considers appropriate.

26 Delegation

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

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) Subsection (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.
- (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.

S. 28(4A)
inserted by
No. 15/2008
s. 8.

- (4A) The Commission may transact any of its business at a meeting at which the Commissioners or any of the Commissioners participate by audio link or audio visual link.

S. 28(4B)
inserted by
No. 15/2008
s. 8.

- (4B) A Commissioner who participates in a meeting in accordance with subsection (4A) is to be taken to be present at the meeting.

S. 28(4C)
inserted by
No. 15/2008
s. 8.

- (4C) For the purposes of subsection (4A)—
- audio link** means facilities (including telephone) that enable audio communication between persons at different locations;
- audio visual link** means facilities (including closed-circuit television) that enable audio and visual communication between persons at different locations.

- (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.

29 Conduct of particular inquiry or determination

- (1) Subject to subsection (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.

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**.

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
No. 62 of 2001
Part 3—Specific powers

S. 33(3)
substituted by
No. 15/2008
s. 9.

- (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 efficient costs of producing or supplying regulated goods or services and of complying with relevant legislation and relevant health, safety, environmental and social legislation applying to the regulated industry;
 - (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) any other factors that the Commission considers relevant.

S. 33(4)
substituted by
No. 15/2008
s. 9.

- (4) In making a determination under this section, the Commission must ensure that—
- (a) the expected costs of the proposed regulation do not exceed the expected benefits; and
 - (b) the determination takes into account and clearly articulates any trade-offs between costs and service standards.
- (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 subsection (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.

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;

S. 34(2)
amended by
No. 15/2008
s. 10.

- (c) market conduct;
 - (d) other economic regulatory matters—
as may be conferred on the Commission by the
empowering instrument.
- (2) In making a determination or other regulatory
decision 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.
- (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.

Part 3A—Third party access regimes

Pt 3A
(Heading and
ss 35A–35D)
inserted by
No. 15/2008
s. 11.

35A Object of Part

The object of this Part is to promote the economically efficient operation of, use of and investment in, the infrastructure by means of which services are provided, thereby promoting effective competition in upstream and downstream markets.

S. 35A
inserted by
No. 15/2008
s. 11.

35B Application of Part

This Part applies to a regulated industry which has an access regime.

S. 35B
inserted by
No. 15/2008
s. 11.

35C Pricing principles applying in respect of regulated access prices

The pricing principles relating to the price of access to a service are—

- (a) that regulated access prices should—
 - (i) be set so as to generate expected revenue for a regulated service or services that is at least sufficient to meet the efficient costs of providing access to the regulated service or services; and
 - (ii) include a return on investment commensurate with the regulatory and commercial risks involved; and
- (b) that the access price structures should—
 - (i) allow multi-part pricing and price discrimination when it aids efficiency; and

S. 35C
inserted by
No. 15/2008
s. 11.

- (ii) not allow a vertically integrated access provider to set terms and conditions that discriminate in favour of its downstream operations, except to the extent that the cost of providing access to other operators is higher; and
- (c) that access pricing regimes should provide incentives to reduce costs or otherwise improve productivity.

35D Time limit for determinations relating to third party infrastructure access regimes

S. 35D
inserted by
No. 15/2008
s. 11.

- (1) Subject to this section, if the Commission has been provided with sufficient information, the Commission must make a determination relating to a third party infrastructure access regime within 6 months after receiving the application or proposal.
- (2) The Commission may in accordance with subsection (3) suspend the time limit applying under subsection (1) for a period not exceeding 2 months if—
 - (a) the Commission does not have sufficient information and any reasonable request for further information has not been complied with; or
 - (b) further time is required to enable consultation with third parties and the public; or
 - (c) any other ground specified in the guidelines applies.

- (3) If the Commission proposes to suspend the time limit applying under subsection (1), the Commission must—
- (a) notify—
 - (i) the Minister and the parties by notice in writing; and
 - (ii) the public by a notice published in a daily newspaper circulating generally in Victoria;
 - (b) specify in the notice—
 - (i) the reason why the time limit is being suspended; and
 - (ii) the date by which the Commission proposes to use its best endeavours to make a decision on the application or proposal.
- (4) The Commission may suspend the time limit applying under subsection (1) by a further period not exceeding 2 months if the Commission—
- (a) first obtains the approval of the Minister; and
 - (b) complies with subsection (3).
- (5) Despite subsection (2)(a), the Commission may make a determination within the time limit applying under subsection (1) on the information available to the Commission if the service provider of a significant infrastructure facility has not provided the further information requested within the specified period.

Part 4—Collection and use of information

36 Application of this Part

Subject to any provisions to the contrary in any relevant legislation, this Part applies to or in respect of any information or document that is provided to the Commission.

S. 36
substituted by
No. 15/2008
s. 12.

36A Commission must have regard to certain matters

In exercising the powers conferred on the Commission under this Part, the Commission must have regard to—

S. 36A
inserted by
No. 15/2008
s. 13.

- (a) the relevance of the information or document; and
- (b) the estimated compliance costs.

37 General power to obtain information and documents

- (1) If the Commission considers that it is necessary to do so for the purposes of performing its functions or exercising its powers, the Commission may require a person that the Commission has reason to believe has any relevant information or document to provide that information or document to the Commission.

S. 37(1)
substituted by
No. 15/2008
s. 14(1).

- (1A) For the purposes of subsection (1), the Commission may require the person to appear before the Commission to provide the information or 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

S. 37(1A)
inserted by
No. 15/2008
s. 14(1).

S. 37(2)(ca)
inserted by
No. 15/2008
s. 14(2).

(c) the form in which the information or copy of the document is to be given to the Commission; and

(ca) whether or not the person is required to appear before the Commission; and

(d) that the requirement is made under this section.

(3) The notice must include a copy of this Part.

(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,
repealed by
No. 15/2008
s. 6(3).

(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.

- (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.

37A Provision of information relating to regulated entities

S. 37A
inserted by
No. 15/2008
s. 15.

- (1) A regulated entity must provide information relating to the regulated entity requested by the Commission by written notice to the Commission in the manner and form specified in the notice.
- (2) If information relating to a regulated entity is held by a third party, the Commission may require the regulated entity to enter into an arrangement with the third party under which the third party is to provide the information to the Commission.
- (3) The Commission may specify the kind or class of information which a regulated entity must maintain for the purposes of this section in a Code of Practice.

38 Restriction on disclosure of confidential information

(1) This section applies if—

S. 38(1)(a)
amended by
Nos 15/2008
s. 16(1),
40/2011
s. 24(a),
substituted by
No. 58/2012
s. 93(1).

- (a) information or a document is given to the Commission under—
 - (i) section 37, 37A or 51; or
 - (ii) section 212E of the **Accident Towing Services Act 2007**; or
 - (iii) section 89 of the **Fire Services Property Levy Act 2012**; 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.

S. 38(1A)
inserted by
No. 15/2008
s. 16(2).

- (1A) Before the Commission makes a decision under subsection (2), the Commission must—
 - (a) give the person giving the information or document an opportunity to make a submission to the Commission specifying—
 - (i) why the information or document is of a confidential or commercially-sensitive nature; and
 - (ii) the detriment that would be caused by the disclosure of the information or document; and
 - (b) consider any submission made by that person.
- (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

- (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

S. 38(2)(c)(iii)
amended by
Nos 40/2011
s. 24(b),
58/2012
s. 93(2).

- (iii) setting out a copy of this section and section 55, and as the case requires, section 45 of this Act or section 212F of the **Accident Towing Services Act 2007** or section 91 of the **Fire Services Property Levy Act 2012**; and
- (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) Subsection (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
 - (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) of this Act or section 212F(2) of the **Accident Towing Services Act 2007** or section 91(3) of the **Fire Services Property Levy Act 2012**; 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 subsection (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 subsection (2)(a) or (2)(b).

S. 38(3)(c)
amended by
Nos 40/2011
s. 24(c),
58/2012
s. 93(3).

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) Subsection (1) does not prevent the Commission from doing anything specified in section 38(3).

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.

(1A) The Minister is responsible for referring any matter to the Commission for an inquiry unless relevant legislation provides that the Minister administering the relevant legislation may refer a matter to the Commission for an inquiry.

S. 41(1A)
inserted by
No. 15/2008
s. 17.

(1B) Before referring a matter to the Commission for an inquiry, the Minister must consult with any Minister who has responsibilities in respect of that matter.

S. 41(1B)
inserted by
No. 15/2008
s. 17.

(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.

S. 41A
inserted by
No. 15/2008
s. 18.

41A Minister may limit use of powers under section 37

If any inquiry is to be conducted into a matter that does not relate to a regulated industry, the Minister may give the Commission specific directions in respect of the conduct of the inquiry which limit the use of the powers conferred on the Commission under section 37 in the manner specified in the specific directions.

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.

- (2A) The Commission may specify in the notice under subsection (2) that if a submission is not received within the period specified under subsection (2)(c), the Commission may decide not to consider the submission.
- (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.

S. 42(2A)
inserted by
No. 15/2008
s. 19.

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.

* * * * *

S. 44
repealed by
No. 15/2008
s. 20.

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 subsection (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 subsection (2), a reference to the final report in subsections (5), (6) and (7) is to be read as a reference to the document described in subsection (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.
- (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.

Pt 6 (Heading and ss 47–52) amended by Nos 40/2003 s. 23, 91/2004 s. 26, expired by force of No. 62/2001 s. 47, new Pt 6 (Heading and ss 47–51) inserted by No. 15/2008 s. 21.

Part 6—Codes of Practice

New s. 47 inserted by No. 15/2008 s. 21.

47 Power to make Codes of Practice

- (1) The Commission may make, amend or revoke Codes of Practice in accordance with this Part for the purpose of performing regulatory functions in respect of a regulated industry.
- (2) Without limiting the generality of subsection (1), a Code of Practice may provide for any matter relating to—
 - (a) requiring a specified regulated entity or a specified class of regulated entity to develop, issue and comply with customer-related standards, procedures, policies and practices (including with respect to the payment of compensation to customers) in accordance with the Code of Practice;
 - (b) specifying minimum customer-related standards, procedures, policies and practices for inclusion by a specified regulated entity or a specified class of regulated entity in a customer charter for specific services;
 - (c) requiring a specified regulated entity or a specified class of regulated entity to enter into an agreement with another specified regulated entity or another specified class of regulated entity for the purpose of ensuring

- that obligations relating to customer-related standards can be met;
- (d) specifying principles for the negotiation of agreements required under paragraph (c) between regulated entities in relation to standards and conditions of service and supply;
 - (e) requiring regulated entities to maintain specified accounting records and to prepare accounts according to specified principles.
- (3) A Code of Practice may establish principles giving practical guidance in relation to the performance of the functions and the exercise of the powers of the Commission.
- (4) A Code of Practice may—
- (a) impose a duty on any person;
 - (b) direct how any matter or thing is to be done;
 - (c) create an enforceable legal right;
 - (d) impose any liability or penalty, including proportionate penalties for failures to comply with requirements imposed by the Code of Practice.
- (5) A Code of Practice is not a determination.
- (6) A reference in this Part to—
- (a) a proposed Code of Practice includes a reference to a proposed amendment to a Code of Practice;
 - (b) a Code of Practice includes a reference to an amendment to a Code of Practice.

New s. 48
inserted by
No. 15/2008
s. 21.

48 Power to apply, adopt or incorporate

- (1) A Code of Practice may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—
 - (a) wholly or partially or as amended by the Code of Practice; or
 - (b) as formulated, issued, prescribed or published at the time the Code of Practice is made or at any time before then; or
 - (c) as formulated, issued, prescribed or published from time to time.
- (2) If a Code of Practice has applied, adopted or incorporated any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published from time to time and that document, code, standard, rule, specification or method is at any time amended, until the Commission causes notice to be published in the Government Gazette of that amendment, the document, code, standard, rule, specification or method is to be taken not to have been so amended.
- (3) Without limiting the generality of subsection (1), a Code of Practice may apply, adopt or incorporate by reference any benchmarks, standards or technical references.

New s. 49
inserted by
No. 15/2008
s. 21.

49 Regulatory scrutiny of Codes of Practice

- (1) This section applies in respect of the making or amending of a Code of Practice under this Part or under any relevant legislation.
- (2) The Commission must prepare a regulatory statement in respect of a proposed Code of Practice.

- (3) A regulatory statement must include—
 - (a) a statement of the objectives of the proposed Code of Practice;
 - (b) an evaluation of the costs and benefits of the proposed Code of Practice;
 - (c) an evaluation of alternative means of achieving those objectives;
 - (d) a draft copy of the proposed Code of Practice.
- (4) The evaluation of the costs and benefits must include an assessment of the economic, environmental and social impact and the likely administration and compliance costs including resource allocation costs.
- (5) The Chairperson must ensure the adequacy of the regulatory statement and of the assessment included in the regulatory statement.
- (6) The Chairperson must ensure that a notice in accordance with subsection (7) is published in—
 - (a) the Government Gazette; and
 - (b) a daily newspaper circulating generally throughout Victoria; and
 - (c) in any trade, professional or public interest publications as the Chairperson considers appropriate.
- (7) A notice must—
 - (a) state the reason for, and the objectives of, the proposed Code of Practice;
 - (b) summarise the results of the regulatory statement;
 - (c) specify where a copy of the regulatory statement and of the proposed Code of Practice can be obtained;

- (d) invite public comments or submissions within such time (being not less than 28 days from the publication of the notice) as is specified in the notice.
- (8) The Chairperson must ensure that all comments and submissions are considered before the proposed Code of Practice is made.
- (9) The Chairperson must ensure that appropriate notice is given of the decision to make, or not to make, a proposed Code of Practice.
- (10) Before a Code of Practice is made, the Chairperson must give a certificate in writing specifying—
 - (a) that the requirements relating to regulatory statements have been complied with; and
 - (b) that in his or her opinion the regulatory statement adequately assesses the likely impact of the proposed Code of Practice.
- (11) The Chairperson must ensure that a copy of the regulatory statement and the compliance certificate is given to the Scrutiny of Acts and Regulations Committee of the Parliament as soon as practicable after the Code of Practice is made.

New s. 50
inserted by
No. 15/2008
s. 21.

50 Availability of Codes of Practice

- (1) Upon the making of a Code of Practice, the Commission must cause—
 - (a) a copy of the Code of Practice; and
 - (b) a notice specifying—
 - (i) the date of commencement of the Code of Practice; and
 - (ii) the place where copies of the Code of Practice may be obtained—

to be published in the Government Gazette.

- (2) A Code of Practice or a provision of a Code of Practice comes into operation at the beginning of the day specified in the notice under subsection (1) which must be a day that is later than the day on which the Government Gazette is published.

51 Tabling and disallowance

New s. 51
inserted by
No. 15/2008
s. 21.

- (1) On or before the 6th sitting day after notice of the making of a Code of Practice is published in the Government Gazette, the Commission must ensure that a copy of the Code of Practice is laid before each House of the Parliament.
- (2) A failure to comply with subsection (1) does not affect the operation or effect of the Code of Practice but the Scrutiny of Acts and Regulations Committee of the Parliament may report the failure to each House of the Parliament.
- (3) A Code of Practice may be disallowed in whole or in part by either House of Parliament.
- (4) Part 5 of the **Subordinate Legislation Act 1994** applies to a Code of Practice as if—
- (a) a reference in that Part to a "statutory rule" were a reference to the "Code of Practice"; and
- (b) a reference in section 23(1)(c) of that Part to "section 15(1)" were a reference to "section 51(1) of the **Essential Services Commission Act 2001**".

* * * * *

S. 52
expired by
force of
No. 62/2001
s. 47.

Part 7—General

Division 1—General enforcement

Pt 7 Div. 1
(Heading)
inserted by
No. 49/2015
s. 15(1).

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; or
- (c) a Code of Practice applying under Part 6 or under relevant legislation—

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, licence condition or Code of Practice; 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.

S. 53(1)(b)
amended by
No. 15/2008
s. 22(1)(a).

S. 53(1)(c)
inserted by
No. 15/2008
s. 22(1)(b).

S. 53(2)(a)
amended by
No. 15/2008
s. 22(2).

- (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, licence condition or Code of Practice; or
 - (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 subsection (5)(a).
- (9) A person who contravenes subsection (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.

S. 53(5)(a)
amended by
No. 15/2008
s. 22(2).

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.

S. 54A
inserted by
No. 15/2008
s. 23.

54A Civil penalty

- (1) This section applies if—
 - (a) a person has contravened or is contravening—
 - (i) a determination; or
 - (ii) 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; or
 - (iii) a Code of Practice applying under Part 6 or under relevant legislation; and
 - (b) the Commission considers that the contravention is not of a trivial nature.
- (2) The Commission may serve a notice on the person—
 - (a) requiring the person—
 - (i) to cease contravening; or
 - (ii) if the contravention has already occurred, to take such actions as are specified in the notice to rectify the contravention—

within the period specified in the notice; and
 - (b) advising the person that if the person fails to comply with the notice the person is liable to pay to the Consolidated Fund, as a pecuniary penalty, the amount specified by the Commission in the notice.

(3) Subject to subsection (3A), a pecuniary penalty imposed under this section cannot exceed an amount equal to 120 penalty units.

S. 54A(3)
amended by
No. 49/2015
s. 16(1).

(3A) A pecuniary penalty imposed under this section on an energy licensee cannot exceed an amount equal to 680 penalty units.

S. 54A(3A)
inserted by
No. 49/2015
s. 16(2).

(4) This section does not limit the application of section 53.

Division 2—Energy industry enforcement and reporting

Pt 7 Div. 2
(Heading and
ss 54B–54X)
inserted by
No. 49/2015
s. 17.

Subdivision 1—Undertakings

54B Enforceable undertakings—energy licensees

S. 54B
inserted by
No. 49/2015
s. 17.

(1) The Commission may accept a written undertaking given by an energy licensee in connection with a matter in relation to which the Commission has a function or power under—

- (a) this Act; or
- (b) the **Electricity Industry Act 2000**; or
- (c) the **Gas Industry Act 2001**.

(2) An energy licensee may withdraw or vary the undertaking at any time, but only with the consent of the Commission.

54C Proceedings for alleged contravention of undertaking

S. 54C
inserted by
No. 49/2015
s. 17.

Subject to section 54D, the Commission must not take enforcement action in respect of a matter in relation to which the Commission has a function or power referred to in section 54B against an energy licensee—

- (a) who has given an undertaking under section 54B that is in effect in respect of the matter; or

(b) who has given an undertaking in respect of the matter that was in effect and which has been completely discharged.

S. 54D
inserted by
No. 49/2015
s. 17.

54D Enforcement of undertakings

- (1) If the Commission considers that an energy licensee who gave an undertaking under section 54B has contravened any of its terms, the Commission may apply to the Supreme Court for an order under subsection (2).
- (2) If the Court is satisfied that the energy licensee has contravened a term of the undertaking, the Court may make all or any of the following orders—
 - (a) an order directing the energy licensee to comply with that term of the undertaking;
 - (b) an order directing the energy licensee to pay to the Minister an amount of up to the amount of any financial benefit that the energy licensee has obtained directly or indirectly and that is reasonably attributable to the contravention;
 - (c) any order that the Court considers appropriate directing the energy licensee to compensate any person who has suffered loss or damage as a result of the contravention;
 - (d) any other order the Court considers appropriate.
- (3) Every amount received by the Minister pursuant to an order of the Supreme Court under subsection (2)(b) must be paid into the Consolidated Fund.

Subdivision 2—Energy industry penalty regime

54E Definitions

In this Subdivision—

energy industry contravention has the meaning given by section 54F;

energy industry penalty—see section 54I(1);

energy industry penalty notice means a notice served under section 54G;

Energy Retail Code means the document entitled "Energy Retail Code" published by the Commission, as amended from time to time;

penalty notice means—

- (a) an energy industry penalty notice; or
- (b) a wrongful disconnection penalty notice;

wrongful disconnection contravention means a contravention referred to in section 54H(1)(c);

wrongful disconnection penalty notice means a notice served under section 54H;

wrongful disconnection penalty—see section 54I(2).

54F Meaning of *energy industry contravention*

- (1) An *energy industry contravention* is—
- (a) a contravention of a prescribed condition of an energy licence in a prescribed circumstance; or
 - (b) a contravention of a prescribed provision of a Code of Practice.

S. 54E
inserted by
No. 49/2015
s. 17.

S. 54F
inserted by
No. 49/2015
s. 17.

- (2) However, an *energy industry contravention* does not include a wrongful disconnection contravention.

S. 54G
inserted by
No. 49/2015
s. 17.

54G Power to serve energy industry penalty notice

- (1) The Commission may serve a notice (an *energy industry penalty notice*) on an energy licensee if the Commission has reason to believe the energy licensee has engaged in conduct that constitutes an energy industry contravention.
- (2) The Commission must, however, serve an energy industry penalty notice not later than 12 months after the date on which the Commission forms a belief that the energy licensee has engaged in conduct that constitutes an energy industry contravention.

S. 54H
inserted by
No. 49/2015
s. 17.

54H Power to serve wrongful disconnection penalty notice

- (1) The Commission may serve a notice (a *wrongful disconnection penalty notice*) on an energy retailer if the Commission has reason to believe—
- (a) the supply of electricity or gas to the premises of a customer has been disconnected; and
 - (b) the energy retailer has arranged for the supply of electricity or gas to be disconnected from the customer's premises and has not complied with a requirement of the Energy Retail Code relating to disconnecting a customer's supply of electricity or gas; and
 - (c) that conduct constitutes a contravention of a condition of the energy retailer's energy licence that requires compliance with the Energy Retail Code.

- (2) The Commission must, however, serve a wrongful disconnection penalty notice not later than 12 months after the date on which the Commission forms a belief that the energy retailer has engaged in conduct that constitutes a wrongful disconnection contravention.

54I Penalties

- (1) The energy industry penalty for an energy industry contravention is \$20 000 or any lesser amount that is prescribed for that energy industry contravention.
- (2) The wrongful disconnection penalty is \$5000.

S. 54I
inserted by
No. 49/2015
s. 17.

54J Form of penalty notice

A penalty notice must state the following—

- (a) the date of the notice;
- (b) in the case of an energy industry penalty notice—
- (i) that it is alleged that the energy licensee has engaged in conduct that constitutes an energy industry contravention; and
 - (ii) the nature, and a brief description, of the alleged energy industry contravention; and
 - (iii) the date on which the Commission formed the belief that the energy licensee engaged in the conduct that constitutes the alleged contravention; and
 - (iv) the condition of the energy licensee's energy licence or the provision of the Code of Practice that it is alleged the energy licensee has contravened;

S. 54J
inserted by
No. 49/2015
s. 17.

- (c) in the case of a wrongful disconnection penalty notice—
- (i) that it is alleged that the energy retailer has engaged in conduct that constitutes a wrongful disconnection contravention; and
 - (ii) the nature, and a brief description, of the circumstances of the disconnection and the requirement of the Energy Retail Code with which it is alleged the energy retailer has not complied; and
 - (iii) the date and time when the disconnection of the supply of electricity or gas to the premises occurred; and
 - (iv) the address of the premises referred to in subparagraph (iii); and
 - (v) the condition of the energy retailer's energy licence requiring the energy retailer to comply with the Energy Retail Code;
- (d) the amount of the energy industry penalty or wrongful disconnection penalty for the alleged contravention;
- (e) the manner in which the energy industry penalty or wrongful disconnection penalty may be paid;
- (f) the time (being not less than 28 days after the date on which the notice is served) within which the energy industry penalty or wrongful disconnection penalty must be paid;
- (g) that, if the amount of the energy industry penalty or wrongful disconnection penalty is paid before the end of the time specified in

the notice, relevant enforcement action will not be taken by the Commission in relation to the alleged energy industry contravention or wrongful disconnection contravention unless the notice is withdrawn before the end of that time in accordance with section 54N;

- (h) that the person is entitled to disregard the notice and defend any proceeding relating to the alleged energy industry contravention or wrongful disconnection contravention;
- (i) any other prescribed particulars.

54K Service of penalty notices

S. 54K
inserted by
No. 49/2015
s. 17.

A penalty notice may be served on an energy licensee or energy retailer—

- (a) by delivering it personally to the registered office or usual or last known place of business of the energy licensee or energy retailer; or
- (b) by sending it by post to the energy licensee or energy retailer at its registered office or usual or last known place of business.

54L Commission must not take enforcement action while penalty notice on foot or until time for payment has expired

S. 54L
inserted by
No. 49/2015
s. 17.

On serving a penalty notice, the Commission must not take any relevant enforcement action in relation to the contravention for which the notice was served if—

- (a) the time for payment stated in the notice has not expired; and
- (b) the notice has not been withdrawn by the Commission in accordance with section 54N.

S. 54M
inserted by
No. 49/2015
s. 17.

54M Late payment

The Commission may accept payment of an energy industry penalty or a wrongful disconnection penalty even after the expiration of the time for payment stated in the relevant penalty notice if—

- (a) relevant enforcement action has not been taken in relation to the contravention to which the penalty relates; and
- (b) the notice has not been withdrawn by the Commission in accordance with section 54N.

S. 54N
inserted by
No. 49/2015
s. 17.

54N Withdrawal of penalty notice

- (1) The Commission may withdraw a penalty notice at any time before the end of the time for payment specified in the notice by serving a withdrawal notice on the energy licensee or energy retailer served with the penalty notice.
- (2) A withdrawal notice may be served on an energy licensee or energy retailer—
 - (a) by delivering it personally to the registered office or usual or last known place of business of the energy licensee or energy retailer; or
 - (b) by sending it by post to the energy licensee or energy retailer at its registered office or usual or last known place of business.
- (3) A penalty notice may be withdrawn even if the relevant energy industry penalty or wrongful disconnection penalty has been paid.

S. 54O
inserted by
No. 49/2015
s. 17.

54O Refund of penalty

If a penalty notice is withdrawn in accordance with section 54N, the amount of any energy industry penalty or wrongful disconnection penalty paid must be refunded by the Minister and

the Consolidated Fund is appropriated by the necessary extent.

54P Payment expiates contravention

No enforcement action may be taken by the Commission against an energy licensee or energy retailer on whom a penalty notice was served in relation to an alleged energy industry contravention or alleged wrongful disconnection contravention if—

- (a) the energy industry penalty or wrongful disconnection penalty is paid within the time for payment stated in the notice and the notice is not withdrawn by the Commission within the time for payment stated in the notice in accordance with section 54N; or
- (b) the energy industry penalty or the wrongful disconnection penalty is accepted in accordance with section 54M.

S. 54P
inserted by
No. 49/2015
s. 17.

54Q Payment not to have certain consequences

- (1) The payment of an energy industry penalty under this Part is not and must not be taken to be an admission of an energy industry contravention or an admission of liability for the purpose of any enforcement action taken in relation to the contravention.
- (2) The payment of a wrongful disconnection penalty under this Part is not and must not be taken to be an admission of a wrongful disconnection contravention or an admission of liability for the purpose of any enforcement action taken in relation to the contravention.

S. 54Q
inserted by
No. 49/2015
s. 17.

S. 54R
inserted by
No. 49/2015
s. 17.

54R Multiple contraventions

- (1) Subject to subsection (3), if the conduct of an energy licensee constitutes 2 or more energy industry contraventions, an energy industry penalty notice may be served on the energy licensee in relation to each energy industry contravention.
- (2) Subject to subsection (3), if the conduct of an energy retailer constitutes 2 or more wrongful disconnection contraventions, a wrongful disconnection penalty notice may be served on the energy retailer in relation to each wrongful disconnection contravention.
- (3) An energy licensee or energy retailer is not liable to pay more than one energy industry penalty or one wrongful disconnection penalty in relation to the same conduct.

S. 54S
inserted by
No. 49/2015
s. 17.

54S Proceedings

- (1) The Commission may apply to the Supreme Court for an order under subsection (3) in respect of an energy licensee or energy retailer on whom a penalty notice has been served if—
 - (a) the Commission has withdrawn the notice under section 54N; or
 - (b) the Commission has not withdrawn the notice and—
 - (i) the energy licensee or energy retailer has not paid the energy industry penalty or the wrongful disconnection penalty before the time stated in the notice for payment; or
 - (ii) the Commission has not accepted payment of the energy industry penalty or the wrongful disconnection penalty under section 54M.

- (2) The Court may make an order under subsection (3) if the Court is satisfied that—
- (a) in the case of an energy industry penalty notice, the energy licensee has engaged in conduct that constitutes an energy industry contravention; or
 - (b) in the case of a wrongful disconnection penalty notice, the energy retailer has engaged in conduct that constitutes a wrongful disconnection contravention.
- (3) The Court may make all or any of the following orders—
- (a) an order directing the energy licensee or energy retailer on whom the penalty notice was served—
 - (i) to pay to the Minister the energy industry penalty or the wrongful disconnection penalty; or
 - (ii) to pay to the Minister an amount of up to the amount of any financial benefit that the energy licensee or energy retailer has obtained directly or indirectly and that is reasonably attributable to the energy industry contravention or wrongful disconnection contravention;
 - (b) any order that the Court considers appropriate directing the energy licensee or energy retailer to compensate any person who has suffered loss or damage as a result of the energy industry contravention or wrongful disconnection contravention;
 - (c) any other order that the Court considers appropriate.

S. 54T
inserted by
No. 49/2015
s. 17.

54T Penalties and other amounts payable to the Minister must be paid into Consolidated Fund

- (1) An energy industry penalty or wrongful disconnection penalty is to be paid to the Minister who must then pay it into the Consolidated Fund.
- (2) Every energy industry penalty or wrongful disconnection penalty or other amount received by the Minister pursuant to an order of the Supreme Court under section 54S must be paid into the Consolidated Fund.

Subdivision 3—Energy industry compliance and enforcement reporting

S. 54U
inserted by
No. 49/2015
s. 17.

54U Publication of notices of enforcement action

- (1) The Commission must cause a notice of any enforcement action it takes in respect of an energy licensee to be published on its Internet site.
- (2) A notice under subsection (1) must state—
 - (a) the name of the energy licensee; and
 - (b) the nature of the enforcement action taken in respect of the energy licensee; and
 - (c) the status of any proceeding commenced, or action taken, in relation to the enforcement action.
- (3) The Commission may also cause a notice that contains an update of the status of any proceeding commenced, or action taken, in relation to the enforcement action, to be published on its Internet site.

**54V Compliance and enforcement report—energy
retailers**

S. 54V
inserted by
No. 49/2015
s. 17.

- (1) The Commission must, as soon as practicable after 30 June (but on or before 30 November) in each year publish on its Internet site a report (a *compliance and enforcement report*) on the matters referred to in subsection (2) in respect of the period of 12 months ending with 30 June in that year.
- (2) A compliance and enforcement report must include the following (in relation to the period to which the report relates)—
 - (a) a report on all enforcement action taken by the Commission in respect of each energy retailer;
 - (b) a report on the extent to which each energy retailer has complied, or failed to comply, with its obligations under its energy licence conditions and the provisions of any Code of Practice;
 - (c) a report on the performance of each energy retailer measured against the performance indicators;
 - (d) any other matters the Commission considers appropriate.
- (3) The Commission, after each quarter must update the report in respect of that quarter. The Commission must do so before the end of the next quarter.
- (4) In this section—

performance indicators means the indicators for the performance of an energy retailer determined by the Commission under section 54W;

quarter means the period of 3 months ending on 30 September, 31 December, 31 March or 30 June in any year.

S. 54W
inserted by
No. 49/2015
s. 17.

54W Performance indicators for compliance and enforcement reports

For the purposes of a compliance and enforcement report under section 54V, the Commission must determine—

- (a) indicators for the performance of an energy retailer in relation to—
 - (i) disconnections and reconnections of the supply of electricity or gas to the premises of customers; and
 - (ii) the extent to which the energy retailer has complied with the deemed licence condition in section 40B of the **Electricity Industry Act 2000** or section 48A of the **Gas Industry Act 2000**; and
 - (iii) the number of wrongful disconnection penalty notices (if any) served on the energy retailer under Subdivision 2 and the status of any proceeding commenced, or action taken, in relation to those wrongful disconnection penalty notices; and
- (b) any other indicators for the performance of an energy retailer the Commission determines.

S. 54X
inserted by
No. 49/2015
s. 17.

54X Reporting of systemic issues referred to Commission

- (1) A person administering a customer dispute resolution scheme may refer a matter in relation to an energy licensee to the Commission if the person believes that there is a problem with, or change in, the energy licensee's policy, practice or

conduct that adversely affects, or has the potential to adversely affect, a number of customers (a *systemic issue*).

- (2) Without limiting subsection (1), a systemic issue includes any of the following—
- (a) a change to the energy licensee's billing, metering, supply or other systems;
 - (b) an absence of a policy, procedure or guideline in relation to a matter;
 - (c) inadequate policies, procedures or guidelines;
 - (d) a failure to comply with applicable legislation (including any regulations) or licence conditions or Codes of Practice;
 - (e) the conduct of the energy licensee's employee, agent, officer or contractor.
- (3) If a person administering a customer dispute resolution scheme refers a systemic issue to the Commission, the Commission must—
- (a) as soon as practicable after receiving the referral, provide a copy of the referral to the Minister; and
 - (b) report to the Minister—
 - (i) the action (if any) it proposes to take to address the systemic issue; and
 - (ii) the time within which it intends to take that action; and
 - (c) as soon as practicable after the period referred to in paragraph (b)(ii) ends, report to the Minister the outcome of the action referred to in paragraph (b)(i).

- (4) The Minister may direct the Commission to give a copy of a report given to the Minister under subsection (3)(c) to the person who made the referral under subsection (1).
- (5) A person who refers a systemic issue to the Commission must also provide any information about the systemic issue that is available to the person to the Commission.
- (6) In this section—

applicable legislation means—

- (a) this Act; or
(b) the **Electricity Industry Act 2000**; or
(c) the **Gas Industry Act 2001**;

customer dispute resolution scheme means a customer dispute resolution scheme approved by the Commission referred to in—

- (a) section 28 of the **Electricity Industry Act 2000**; or
(b) section 36 of the **Gas Industry Act 2000**.

Division 3—Appeals

Pt 7 Div. 3
(Heading)
inserted by
No. 49/2015
s. 15(2).

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; or **S. 55(1)(c) amended by No. 10/2016 s. 170(1)(a).**
- (d) a decision of the Commission contained in a final published report (as defined in section 45 of the **Port Management Act 1995**) that a provider of prescribed services (as defined in that section) has not complied with a port Pricing Order in a significant and sustained manner; or **S. 55(1)(d) inserted by No. 10/2016 s. 170(1)(b).**
- (e) a Commission port Pricing Order decision; or **S. 55(1)(e) inserted by No. 10/2016 s. 170(1)(b).**
- (f) a decision of the Commission under section 69 of the **Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016**; or **S. 55(1)(f) inserted by No. 10/2016 s. 170(1)(b).**
- (g) a determination of the Commission under section 49ZA of the **Port Management Act 1995**— **S. 55(1)(g) inserted by No. 10/2016 s. 170(1)(b).**

may appeal against the requirement, decision or determination in accordance with this section.

- (1A) For the purposes of subsection (1) as it applies to an appeal against a requirement, decision or determination contemplated by subsection (1)(a), (b) or (c), a person who represents a consumer or user group is to be taken to be a person who is entitled to appeal against the requirement, decision or determination in accordance with this section. **S. 55(1A) inserted by No. 15/2008 s. 24(1), amended by No. 10/2016 s. 170(2).**

- (2) The only ground for an appeal—
- (a) under subsection (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 subsection (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 subsection (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;
 - (d) under subsection (1)(d) is that the decision—
 - (i) was not made in accordance with the law; or
 - (ii) is unreasonable having regard to all the relevant circumstances;
 - (e) under subsection (1)(e) is that the decision—
 - (i) was not made in accordance with the law; or
 - (ii) is unreasonable having regard to all the relevant circumstances;
 - (f) under subsection (1)(f) is that the decision—
 - (i) was not made in accordance with the law; or

S. 55(2)(c)(ii)
amended by
No. 10/2016
s. 170(3)(a).

S. 55(2)(d)
inserted by
No. 10/2016
s. 170(3)(b).

S. 55(2)(e)
inserted by
No. 10/2016
s. 170(3)(b).

S. 55(2)(f)
inserted by
No. 10/2016
s. 170(3)(b).

- (ii) is unreasonable having regard to all the relevant circumstances;
- (g) under subsection (1)(g) is that the decision—
- (i) was not made in accordance with the law; or
 - (ii) is unreasonable having regard to all the relevant circumstances.
- (3) A person must lodge notice of the appeal with the Registrar—
- (a) in the case of an appeal under subsection (1)(a) or (1)(b), within 14 working days after the person is given the notice; or
 - (b) in the case of an appeal under subsection (1)(c), within 21 working days after the determination is published; or
 - (c) in the case of an appeal under subsection (1)(d), within 21 working days after the final report in which the decision is contained is laid before each House of the Parliament or a copy is made available for public inspection under section 45; or
 - (d) in the case of an appeal under subsection (1)(e), within 14 working days after the Commission port Pricing Order decision is made; or
 - (e) in the case of an appeal under subsection (1)(f), within 21 working days after the decision is made; or
 - (f) in the case of an appeal under subsection (1)(g), within 21 working days after the determination is made.

S. 55(2)(g)
inserted by
No. 10/2016
s. 170(3)(b).

S. 55(3)(a)
amended by
No. 15/2008
s. 24(2)(a).

S. 55(3)(b)
amended by
Nos 15/2008
s. 24(2)(b),
10/2016
s. 170(4)(a).

S. 55(3)(c)
inserted by
No. 10/2016
s. 170(4)(b).

S. 55(3)(d)
inserted by
No. 10/2016
s. 170(4)(b).

S. 55(3)(e)
inserted by
No. 10/2016
s. 170(4)(b).

S. 55(3)(f)
inserted by
No. 10/2016
s. 170(4)(b).

- S. 55(5)
inserted by
No. 15/2008
s. 24(3).
- S. 55(6)
inserted by
No. 15/2008
s. 24(3).
- S. 55(7)
inserted by
No. 10/2016
s. 170(5).
- S. 55(8)
inserted by
No. 10/2016
s. 170(5).
- S. 55(9)
inserted by
No. 10/2016
s. 170(5).
- S. 55(10)
inserted by
No. 10/2016
s. 170(5).
- (4) If a person lodges an appeal under subsection (1)(a), the person need not comply with the requirement until the appeal is withdrawn or dismissed.
- (5) If a person lodges an appeal under subsection (1)(b), the Commission must not take any action to give effect to the decision until the appeal is determined.
- (6) If a person lodges an appeal under subsection (1)(c), the determination continues in effect until the appeal is determined.
- (7) If a person lodges an appeal under subsection (1)(d), the decision of the Commission contained in a final published report (as defined in section 45 of the **Port Management Act 1995**) continues in effect until the appeal is determined.
- (8) If a person lodges an appeal under subsection (1)(e), the Commission port Pricing Order decision continues in effect until the appeal is determined.
- (9) If a person lodges an appeal under subsection (1)(f), the decision of the Commission under section 69 of the **Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016** continues in effect until the appeal is determined.
- (10) If a person lodges an appeal under subsection (1)(g), the determination of the Commission under section 49ZA of the **Port Management Act 1995** continues in effect until the appeal is determined.

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.
- (2A) When constituting an appeal panel, the Registrar must use his or her best endeavours to constitute the appeal panel consisting of—
 - (a) a chairperson who has experience in conducting contested hearings; and
 - (b) at least one member who has technical or industry experience or knowledge relevant to the appeal.
- (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

S. 56(2A)
inserted by
No. 15/2008
s. 25(1).

S. 56(4)(b)
amended by
No. 10/2016
s. 171(1).

- (b) in the case of an appeal under section 55(1)(c), 55(1)(d) or 55(1)(e), 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 subsection (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 subsection (6), the appeal panel—
 - (a) in the case of an appeal under section 55(1)(a), may in granting the appeal—
 - (i) cancel the requirement; or
 - (ii) vary the requirement; or
 - (iii) set aside the requirement and remit it to the Commission for amendment of the requirement in accordance with the decision and recommendations (if any) of the appeal panel;

S. 56(7)(a)
substituted by
No. 15/2008
s. 25(2).

- (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;
- (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

S. 56(7)(d)(iii)
amended by
No. 10/2016
s. 171(2)(a).

S. 56(7)(e)
inserted by
No. 10/2016
s. 171(2)(b).

- decision and recommendations (if any) of the appeal panel; and
- (e) in the case of an appeal under section 55(1)(d), may in granting the appeal—
- (i) affirm the decision of the Commission; or
 - (ii) vary the decision of the Commission; or
 - (iii) set aside the decision of the Commission and remit it to the Commission for amendment of the decision and the final report which contains the decision in accordance with the decision and recommendations (if any) of the appeal panel; and

S. 56(7)(f)
inserted by
No. 10/2016
s. 171(2)(b).

- (f) in the case of an appeal under section 55(1)(e), may in granting the appeal—
- (i) affirm the Commission port Pricing Order decision; or
 - (ii) vary the Commission port Pricing Order decision; or
 - (iii) set aside the Commission port Pricing Order decision and remit it to the Commission for amendment of the decision in accordance with the decision and recommendations (if any) of the appeal panel; and

S. 56(7)(g)
inserted by
No. 10/2016
s. 171(2)(b).

- (g) in the case of an appeal under section 55(1)(f), may in granting the appeal—
- (i) affirm the decision of the Commission under section 69 of the **Delivering Victorian Infrastructure (Port of**

**Melbourne Lease Transaction)
Act 2016; or**

- (ii) vary the decision; or
 - (iii) set aside the decision and remit it to the Commission for amendment of the decision in accordance with the decision and recommendations (if any) of the appeal panel; and
- (h) in the case of an appeal under section 55(1)(g), may in granting the appeal—
- (i) affirm the determination of the Commission under section 49ZA of the **Port Management Act 1995**; or
 - (ii) vary the determination; or
 - (iii) set aside the determination 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 subsection (10), the Commission must give an appeal panel such information as the appeal panel may request.
- (9A) Subject to subsection (10), a party to an appeal must give an appeal panel any information that the appeal panel may request.
- (10) An appeal panel can only consider evidence in accordance with the regulations.

S. 56(7)(h)
inserted by
No. 10/2016
s. 171(2)(b).

S. 56(9A)
inserted by
No. 15/2008
s. 25(3).

S. 56(11)
amended by
No. 10/2016
s. 171(3).

- (11) On the hearing of an appeal under section 55(1)(a), 55(1)(b), 55(1)(d), 55(1)(e), 55(1)(f) or 55(1)(g), 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 subsection (2)(a); or

- (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 subsection (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 subsection (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 subsection (1) for the purposes of the hearing.

- (3) If subsection (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 subsection (2), direct that the determination 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.

Pt 7 Div. 4
(Heading)
inserted by
No. 49/2015
s. 15(3).

Division 4—Miscellaneous

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 subsection (1) attach to a person referred to in that subsection 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.

- (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, subsection (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.
- (2) The Commission is entitled to perform the role of a contradictor in any proceedings brought on the grounds specified in subsection (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 subsection (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.

- (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 Australian Bureau of Statistics 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

S. 65(3)(d)(ii)
amended by
No. 44/2014
s. 33(Sch.
item 11).

- (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
 - (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

S. 66(1)
substituted by
No. 15/2008
s. 26.

- (1) The Minister must ensure that a further review of this Act is completed by 31 December 2016.
- (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).

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.

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.

- (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.

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

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative 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.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

Essential Services Commission Act 2001
No. 62 of 2001
Endnotes

2 Table of Amendments

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

Where a provision has expired, the provision has been omitted and an explanatory sidenote included.

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 the 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**

Victorian Energy Efficiency Target Act 2007, No. 70/2007

Assent Date: 11.12.07
Commencement Date: Ss 77, 78 on 1.1.09: s. 2(2)
Current State: This information relates only to the provision/s amending the **Essential Services Commission Act 2001**

Essential Services Commission Amendment Act 2008, No. 15/2008

Assent Date: 23.4.08
Commencement Date: Ss 3–26 on 1.7.08: Government Gazette 26.6.08 p. 1388
Current State: This information relates only to the provision/s amending the **Essential Services Commission Act 2001**

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Transport Integration Act 2010, No. 6/2010 (as amended by No. 45/2010)

Assent Date: 2.3.10
Commencement Date: S. 203(1)(Sch. 6 item 20) on 1.7.10: Special Gazette (No. 256) 30.6.10 p. 1
Current State: This information relates only to the provision/s amending the **Essential Services Commission Act 2001**

Accident Towing Services Amendment Act 2011, No. 40/2011

Assent Date: 6.9.11
Commencement Date: Ss 23, 24 on 7.9.11: s. 2
Current State: This information relates only to the provision/s amending the **Essential Services Commission Act 2001**

Water Legislation Amendment (Water Infrastructure Charges) Act 2011, No. 63/2011

Assent Date: 15.11.11
Commencement Date: Ss 7, 8 on 16.11.11: s. 2
Current State: This information relates only to the provision/s amending the **Essential Services Commission Act 2001**

Fire Services Property Levy Act 2012, No. 58/2012

Assent Date: 16.10.12
Commencement Date: Ss 92, 93 on 17.10.12: s. 2(1)
Current State: This information relates only to the provision/s amending the **Essential Services Commission Act 2001**

Fire Services Levy Monitor Act 2012, No. 81/2012

Assent Date: 18.12.12
Commencement Date: S. 113(1) on 19.12.12: s. 2(1); s. 113(2) on 30.12.14: s. 2(2)
Current State: This information relates only to the provision/s amending the **Essential Services Commission Act 2001**

Transport Legislation Amendment (Foundation Tax and Hire Car Reforms) Act 2013, No. 43/2013

Assent Date: 28.6.13
Commencement Date: S. 31(1)(3)(4) on 1.2.14: Special Gazette (No. 17) 28.1.14 p. 1; s. 31(2) on 30.6.14: s. 2(4)
Current State: This information relates only to the provision/s amending the **Essential Services Commission Act 2001**

Treasury Legislation and Other Acts Amendment Act 2014, No. 44/2014

Assent Date: 27.6.14
Commencement Date: S. 33(Sch. item 11) on 30.6.14: s. 2(5)
Current State: This information relates only to the provision/s amending the **Essential Services Commission Act 2001**

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Energy Legislation Amendment (Consumer Protection) Act 2015, No. 49/2015

Assent Date: 13.10.15
Commencement Date: Ss 13–17 on 1.1.16: Special Gazette (No. 403)
15.12.15 p. 1
Current State: This information relates only to the provision/s
amending the **Essential Services Commission
Act 2001**

Local Government Amendment (Fair Go Rates) Act 2015, No. 65/2015

Assent Date: 1.12.15
Commencement Date: Ss 10–12 on 2.12.15: s. 2
Current State: This information relates only to the provision/s
amending the **Essential Services Commission
Act 2001**

**Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction)
Act 2016, No. 10/2016**

Assent Date: 22.3.16
Commencement Date: Ss 168–171 on 7.6.16: Special Gazette (No. 177)
7.6.16 p. 1
Current State: This information relates only to the provision/s
amending the **Essential Services Commission
Act 2001**

3 Amendments Not in Operation

This publication does not include amendments made to the **Essential Services Commission Act 2001** by the following Act/s.

Fire Services Property Levy Act 2012, No. 58/2012

<i>Assent Date:</i>	16.10.12
<i>Commencement Date:</i>	Ss 134, 135 on 31.12.16: s. 2(8)
<i>Current State:</i>	This information relates only to the provision/s amending the Essential Services Commission Act 2001

At the date of this publication, the following provisions amending the **Essential Services Commission Act 2001** were Not in Operation:

Amending Act/s:

Fire Services Property Levy Act 2012, No. 58/2012

134 Amendment of section 10—Functions of the Commission

Section 10(1a) of the **Essential Services Commission Act 2001** is repealed.

135 Amendment of section 38—Restriction on disclosure of confidential information

- (1) In section 38(1)(a) of the **Essential Services Commission Act 2001**—
 - (a) for "or" after subparagraph (ii) substitute "and";
 - (b) subparagraph (iii) is **repealed**.
- (2) In section 38(2)(c)(iii) of the **Essential Services Commission Act 2001** omit "or section 91 of the **Fire Services Property Levy Act 2012**".
- (3) In section 38(3)(c) of the **Essential Services Commission Act 2001** omit "or section 91(3) of the **Fire Services Property Levy Act 2012**".

4 Explanatory details

No entries at date of publication.