(Reprint No. 1)

South Australia

INDEPENDENT INDUSTRY REGULATOR ACT 1999

An Act to establish the South Australian Independent Industry Regulator; and for other purposes.

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*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **1 June 2000**.*

INDEPENDENT INDUSTRY REGULATOR ACT 1999

being

Independent Industry Regulator Act 1999 No. 51 of 1999
[Assented to 12 August 1999][1]

as amended by

District Court (Administrative and Disciplinary Division) Amendment Act 2000 No. 4 of 2000 [Assented to 20 April 2000][2]

[1] Came into operation 19 August 1999: *Gaz.* 19 August 1999, p. 882.
[2] Schedule 1 (cl. 20) came into operation 1 June 2000: *Gaz.* 18 May 2000, p. 2554.

NOTE:
- *Asterisks indicate repeal or deletion of text.*
- *For the legislative history of the Act see Appendix.*

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LEGISLATIVE HISTORY

The Parliament of South Australia enacts as follows:

PART 1
PRELIMINARY

Short title

1. This Act may be cited as the *Independent Industry Regulator Act 1999*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. In this Act—

"**Acting Industry Regulator**" means a person appointed as an Acting Industry Regulator under Part 2;

"**Associate Industry Regulator**" means a person appointed as an Associate Industry Regulator under Part 2;

"**Industry Regulator**" means the South Australian Independent Industry Regulator established under Part 2;

"**licensed entity**" means an entity licensed under a relevant industry regulation Act;

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

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

PART 2
SOUTH AUSTRALIAN INDEPENDENT INDUSTRY REGULATOR

Industry Regulator

4. (1) The *South Australian Independent Industry Regulator* is established.

(2) The Industry Regulator—

(a) is a body corporate; and

(b) has perpetual succession and a common seal; and

(c) is capable of suing and being sued in its corporate name; and

(d) has the functions assigned by or under this or any other Act.

(3) The Industry Regulator has all the powers of a natural person together with powers conferred on the Industry Regulator by or under this or any other Act.

Functions

5. (1) The Industry Regulator has the following functions:

(a) to regulate prices and perform licensing functions under relevant industry regulation Acts;

(b) to monitor and enforce compliance with and promote improvement in standards and conditions of service and supply under relevant industry regulation Acts;

(c) to make, monitor the operation of, and review from time to time, codes and rules relating to the conduct or operations of a regulated industry or licensed entities;

(d) to provide and require consumer consultation processes in regulated industries and to assist consumers and others with information and other services;

(e) to advise the Minister on any matter referred by the Minister;

(f) to administer this Act;

(g) to perform any other function assigned by or under this or any other Act.

(2) In performing the Industry Regulator's functions, the Industry Regulator must have regard to the need—

(a) to promote competitive and fair market conduct;

(b) to prevent misuse of monopoly or market power;

(c) to facilitate entry into relevant markets;

(d) to promote economic efficiency;

(e) to ensure consumers benefit from competition and efficiency;

(f) to protect the interests of consumers with respect to reliability, quality and safety of services and supply in regulated industries;

(g) to facilitate maintenance of the financial viability of regulated industries.

Industry Regulator may publish statements, reports and guidelines

6. The Industry Regulator may publish statements, reports and guidelines relating to the performance of the Industry Regulator's functions.

Independence

7. The Industry Regulator is not subject to Ministerial direction in the performance of the Industry Regulator's functions.

Industry Regulator's appointment, removal, etc.

8. (1) The Industry Regulator will be constituted of a person appointed by the Governor.

(2) The Governor may appoint a person as the Industry Regulator who is qualified for appointment because of the person's knowledge of, or experience in, one or more of the fields of industry, commerce, economics, law or public administration.

(3) The Industry Regulator will be appointed—

(a) for a term of office of—

(i) in the case of the first appointment of a person to the office—six years;

(ii) in the case of any subsequent appointment of a person to the office—five years; and

(b) on terms and conditions as to remuneration and other matters determined by the Governor.

(4) At the expiration of a term of office, the Industry Regulator will be eligible for reappointment.

(5) The conditions of office of the Industry Regulator must not, without the consent of the Industry Regulator, be varied while the Industry Regulator is in office so as to become less favourable to the Industry Regulator.

(6) The Industry Regulator must not engage, without the consent of the Minister, in any other remunerated employment.

(7) The office of the Industry Regulator becomes vacant if the Industry Regulator—

(a) dies; or

(b) resigns by written notice to the Governor or is not re-appointed at the end of a term of office; or

(c) is removed from office under this section; or

(d) is convicted of an indictable offence or sentenced to imprisonment for an offence; or

(e) becomes bankrupt or applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or

(f) becomes a member, or a candidate for election as a member, of the Parliament of the State, the Commonwealth, or any other State of the Commonwealth.

(8) The Supreme Court may, by order made on the application of the Minister, remove the Industry Regulator from office for—

(a) misconduct; or

(b) incapacity to perform satisfactorily the Industry Regulator's functions; or

(c) material contravention of or failure to comply with the requirements of this or any other Act.

(9) The Supreme Court may, by order made on the application of the Minister, suspend the Industry Regulator from office pending determination of an application for removal of the Industry Regulator.

(10) The Industry Regulator may only be removed or suspended from office as provided in this section.

Minister to act in office of Industry Regulator pending first appointment

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

Associate Industry Regulators

10. (1) The Minister may appoint persons as Associate Industry Regulators 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 Associate Industry Regulator will be appointed on terms and conditions determined by the Minister.

(3) An Associate Industry Regulator must not engage, without the consent of the Minister, in any other remunerated employment.

(4) An Associate Industry Regulator may, at any time, resign by written notice to the Minister.

(5) The Minister may, at any time, remove an Associate Industry Regulator from office.

Staff

11. The staff of the Industry Regulator (other than Associate Industry Regulators) may comprise—

(a) persons employed in the Public Service of the State and assigned to assist the Industry Regulator;

(b) persons appointed by the Industry Regulator on terms and conditions determined by the Industry Regulator.

Consultants

12. The Industry Regulator may engage consultants on terms and conditions considered appropriate by the Industry Regulator.

Advisory committees

13. The Industry Regulator may establish advisory committees to provide advice on specified aspects of the Industry Regulator's functions.

Delegation

14. (1) The Industry Regulator may delegate functions or powers to an Associate Industry Regulator or any person or body of persons that is, in the Industry Regulator's opinion, competent to perform or exercise the relevant functions or powers.

(2) A delegation under this section—

(a) must be in writing; and

(b) may be conditional or unconditional; and

(c) is revocable at will; and

(d) does not prevent the delegator from acting in any matter.

Acting Industry Regulator

15. (1) The Governor may appoint an Acting Industry Regulator to act in the office of the Industry Regulator under this section and a person so appointed has, while so acting, all the functions and powers of the Industry Regulator.

(2) An Acting Industry Regulator may act in the office of the Industry Regulator—

(a) while—

(i) the Industry Regulator is unable to perform official functions; or

(ii) the office of the Industry Regulator is vacant,

but not on a continuous basis for more than six months; or

(b) if the Industry Regulator is disqualified from acting in relation to a particular matter—in relation to that matter.

(3) The terms and conditions of appointment of an Acting Industry Regulator will be as determined by the Governor.

Conflict of interest

16. (1) The Industry Regulator, an Acting Industry Regulator or a delegate of the Industry Regulator must inform the Minister in writing of—

(a) any direct or indirect interest that the person has or acquires in any business, or in any body corporate carrying on business, in Australia or elsewhere; or

(b) any other direct or indirect interest that the person has or acquires that conflicts or may conflict with the person's functions.

(2) The Industry Regulator, Acting Industry Regulator or delegate must take steps to resolve a conflict or possible conflict between a direct or indirect interest and the person's functions in relation to a particular matter, and, unless the conflict is resolved to the Minister's satisfaction, the Industry Regulator, Acting Industry Regulator or delegate is disqualified from acting in relation to the matter.

(3) This section does not apply if the interest is as a result of the supply of goods or services that are available to members of the public on the same terms and conditions.

(4) A failure to comply with this section does not affect the validity of an act or decision of the Industry Regulator, Acting Industry Regulator or delegate.

Application of money received by Industry Regulator

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

Budget

18. (1) The Industry Regulator must, from time to time, prepare and submit to the Minister a budget showing estimates of the Industry Regulator's receipts and expenditures for the next financial year or for some other period determined by the Minister.

(2) The budget must conform with any requirements of the Minister as to its form and the information that it is to contain.

(3) The Minister may approve a budget submitted under this section with or without modification.

Accounts and audit

19. (1) The Industry Regulator must ensure that proper accounting records are kept of the Industry Regulator's receipts and expenditures.

(2) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Industry Regulator.

PART 3
PRICE REGULATION

Price regulation

20. (1) The Industry Regulator may make determinations regulating prices, conditions relating to prices and price-fixing factors for goods and services in a regulated industry.

(2) The Industry Regulator may only make a determination if authorised to do so by a relevant industry regulation Act or by regulation under this Act.

(3) A determination may regulate prices, conditions relating to prices or price-fixing factors in a regulated industry in any manner the Industry Regulator considers appropriate, including—

(a) fixing a price or the rate of increase or decrease in a price;

(b) fixing a maximum price or maximum rate of increase or minimum rate of decrease in a maximum price;

(c) fixing an average price for specified goods or services or an average rate of increase or decrease in an average price;

(d) specifying pricing policies or principles;

(e) specifying an amount determined by reference to a general price index, the cost of production, a rate of return on assets employed or any other specified factor;

(f) specifying an amount determined by reference to quantity, location, period or other specified factor relevant to the supply of goods or services;

(g) fixing a maximum revenue, or maximum rate of increase or minimum rate of decrease in maximum revenue, in relation to specified goods or services.

(4) In making a determination, the Industry Regulator must (in addition to having regard to the general factors specified in Part 2) have regard to—

(a) the costs of making, producing or supplying the goods or services;

(b) the costs of complying with laws or regulatory requirements;

(c) the return on assets in the regulated industry;

(d) any relevant interstate and international benchmarks for prices, costs and return on assets in comparable industries;

(e) the financial implications of the determination;

(f) any factors specified by a relevant industry regulation Act or by regulation under this Act;

(g) any other factors that the Industry Regulator considers relevant.

(5) Subsections (3) and (4) have effect in relation to a regulated industry subject to the provisions of the relevant industry regulation Act for that industry.

(6) In this section—

"**price**" includes a price range.

Making and effect of determinations

21. (1) Before making a determination, the Industry Regulator may send a copy of a draft of the determination—

(a) to the Minister; and

(b) to each licensed entity to which the determination will apply; and

(c) to any other person the Industry Regulator considers appropriate.

(2) A determination must include a summary of the information on which the determination is based and a statement of the reasons for the making of the determination.

(3) The Industry Regulator must—

(a) send a copy of a determination—

(i) to the Minister; and

(ii) to each licensed entity to which the determination applies; and

(iii) to any person who made a submission to an inquiry to which the determination relates and who has asked for a copy of the determination; and

(b) ensure that copies of the determination are available for inspection and purchase by members of the public.

(4) Notice of the making of a determination must be published—

(a) in the *Gazette*; and

(b) in a newspaper circulating generally in the State.

(5) The notice must include a brief description of the nature and effect of the determination, details of when the determination takes effect and how a copy of the determination may be inspected or purchased.

(6) A determination takes effect on the date on which notice of its making is published in the *Gazette* or a later date of commencement specified in the determination.

(7) A determination has effect until it is revoked or until an expiry date specified in the determination.

(8) A licensed entity must comply with a determination or part of a determination that applies to the entity.

(9) A determination may be varied or revoked by subsequent determination.

Enforcement of determinations

22. (1) If the Industry Regulator forms the opinion that a person is contravening or is likely to contravene a determination of the Industry Regulator under this Part and that the contravention is not of a trivial nature, the Industry Regulator may, by written order, require the person to comply with the determination.

(2) An order may be a provisional order or a final order.

(3) Unless withdrawn earlier by the Industry Regulator, a provisional order has effect for a period of seven days commencing on the day that it is served.

(4) The Industry Regulator may serve another provisional order on the expiry of a preceding provisional order.

(5) If the Industry Regulator has made a provisional order, the Industry Regulator must not make a final order if—

(a) the person has given an undertaking as to compliance with the determination and the Industry Regulator has accepted the undertaking; or

(b) the Industry Regulator becomes satisfied that the provisional order should not have been made having regard to the factors to which the Industry Regulator is required to have regard under this Act or the relevant industry regulation Act.

(6) The Industry Regulator must not make a final order unless the Industry Regulator 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 Industry Regulator.

(7) The Industry Regulator must as soon as possible after serving a provisional order or a final order on a person publish a copy of the order in the *Gazette*.

(8) A person must comply with—

(a) a provisional order or a final order served on the person under this section; or

(b) an undertaking given by the person and accepted by the Industry Regulator under this section.

Maximum penalty: $250 000.

(9) If a person profits from a contravention of subsection (8), the Industry Regulator may recover an amount equal to the profit from the person—

(a) on application to a court convicting the person of an offence under that subsection; or

(b) by action in a court of competent jurisdiction.

PART 4
INDUSTRY CODES AND RULES

Codes and rules

23. (1) The Industry Regulator may make codes or rules relating to the conduct or operations of a regulated industry or licensed entities.

(2) The Industry Regulator may vary or revoke a code or rules made under this section.

(3) The Industry Regulator must, before making, varying or revoking a code or rules, consult with the Minister and such representative bodies and participants in the regulated industry as the Industry Regulator considers appropriate.

(4) A code or rules may apply or incorporate, wholly or partially and with or without modification, a document referred to in the code or rules, as in force from time to time or as in force at a particular time.

(5) The Industry Regulator must—

(a) give notice of the making, variation or revocation of a code or rules—

(i) to the Minister; and

(ii) to each licensed entity to which the code or rules apply; and

(b) ensure that copies of the code or rules (as in force from time to time) are available for inspection and purchase by members of the public.

(6) Notice of the making of a code or rules, or the variation or revocation of a code or rules, must be published in the *Gazette*.

(7) A code or rule, or variation or revocation of a code or rule, takes effect on the date on which it is notified in the *Gazette* or a later date specified by the Industry Regulator in the code or a rule.

(8) The Industry Regulator must keep the contents and operation of codes and rules under review with a view to ensuring their continued relevance and effectiveness.

PART 5
COLLECTION AND USE OF INFORMATION

Industry Regulator's power to require information

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

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

Maximum penalty: $10 000 or imprisonment for 2 years.

(3) A person cannot be compelled to give information under this section if the information might tend to incriminate the person of an offence.

Obligation to preserve confidentiality

25. (1) Information gained under this Part that—

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

(b) is commercially sensitive for some other reason,

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

Maximum penalty: $10 000 or imprisonment for 2 years.

(2) Confidential information may be disclosed if—

(a) the disclosure is made to another who is also performing a function under this Act or a relevant industry regulation Act; or

(b) the disclosure is made with the consent of the person who gave the information or to whom the information relates; or

(c) the disclosure is authorised or required under any other Act or law; or

(d) the disclosure is authorised or required by a court or tribunal constituted by law; or

(e) the disclosure is authorised by regulation.

(3) The Industry Regulator may disclose confidential information if the Industry Regulator is of the opinion that the public benefit in making the disclosure outweighs any detriment that might be suffered by a person in consequence of the disclosure.

(4) If a person, when giving information to the Industry Regulator in response to a notice under this Part, claims that the information is confidential information, the Industry Regulator must, before disclosing the information otherwise than as referred to in subsection (2), give the person written notice of the proposed disclosure and the reasons for the disclosure.

(5) A person performing a function under this Act or a relevant industry regulation Act must not use confidential information for the purpose of securing a private benefit for himself or herself or for some other person.

Maximum penalty: $10 000 or imprisonment for 2 years.

(6) Information classified by the Industry Regulator as being confidential under subsection (1) is not liable to disclosure under the *Freedom of Information Act 1991*.

PART 6
REVIEWS AND APPEALS

Review by Industry Regulator

26. (1) An application may be made to the Industry Regulator—

(a) by the Minister, or by a licensed entity to which the determination applies, for a review of a determination of the Industry Regulator under Part 3; or

(b) by a person who has been required by written notice under Part 5 to give information to the Industry Regulator for a review of the decision of the Industry Regulator to make that requirement; or

(c) by a person who has been given written notice under Part 5 of the proposed disclosure of information that the person claimed to be confidential information for a review of the decision of the Industry Regulator to disclose the information.

(2) An application for a review must—

(a) be in writing; and

(b) set out the determination or part of the determination, or the decision, to which the application relates; and

(c) set out in detail the grounds on which the applicant seeks review and the decision sought on the review; and

(d) be accompanied by any information that the applicant considers should be taken into account by the Industry Regulator on the review; and

(e) be lodged with the Industry Regulator within 10 working days after the determination is published or after receipt of the written notice referred to in subsection (1) (as the case requires).

(3) If an application is made for a review of a determination of the Industry Regulator under Part 3—

(a) the Industry Regulator must give a copy of the application to each other person who could also have applied for review of the determination; and

(b) invite each such person to join as a party to the review and make submissions on the matter the subject of the review in a manner and within a period specified by the Industry Regulator.

(4) The Industry Regulator may stay the operation of the determination or decision to which the application relates.

(5) If a determination is stayed, the Industry Regulator must cause notice of the stay of the determination—

(a) to be given to the Minister and to each licensed entity to which the determination applies; and

(b) to be published in the *Gazette*.

(6) A review must be decided within six weeks of the application being lodged with the Industry Regulator.

(7) If a review is not decided within that period, the Industry Regulator is to be taken to have confirmed the determination or decision.

(8) After considering the application, the Industry Regulator may confirm, vary or substitute the determination or decision.

(9) The Industry Regulator must give the applicant and any other person who joins as a party to the review written notice of the Industry Regulator's decision, and the reasons for the decision, on the review.

(10) If the Industry Regulator decides on a review of a determination to vary or substitute the determination, the Industry Regulator must vary or substitute the determination by a further determination in accordance with Part 3 but that further determination may not be made the subject of an application for a review under this section.

Appeal

27. (1) The applicant for a review under this Part, or any other party to the review who made submissions on the review, who is dissatisfied with the determination or decision as confirmed, varied or substituted by the Industry Regulator on the review may appeal to the Administrative and Disciplinary Division of the District Court (**the Court**) against the determination or decision.

(2) The Court must sit with experts selected in accordance with the Schedule.

(3) An appeal must be made—

(a) within 10 working days after receipt of the written notice of the decision on the review; or

(b) if the Industry Regulator failed to make a decision on the review within the allowed period, within 10 working days after the end of that period,

(which period cannot be extended).

(4) If an appeal is made under this section, any other party to the review who made submissions on the review must be given notice of the appeal and may, on application, be joined as a party to the appeal.

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(6) If a determination is stayed by the Industry Regulator or the Court, the Industry Regulator or the Court must cause notice of the stay of the determination—

(a) to be given to the Minister and to each licensed entity to which the determination applies; and

(b) to be published in the *Gazette*.

(7) On an appeal, the Court is only to consider the information on which the Industry Regulator based the determination or decision that was the subject of the review and any information put before the Industry Regulator on the review.

(8) The Court may, on an appeal—

(a) affirm the decision appealed against; or

(b) remit the matter to the Industry Regulator for consideration or further consideration in accordance with any directions of the Court.

(9) An appeal under the *District Court Act 1991* will lie against a decision of the Court under this section on a question of law (but not on a question of fact).

Exclusion of other challenges to determinations

28. The validity of a determination of the Industry Regulator under Part 3 may not be challenged in a prosecution or other proceedings concerning non-compliance with the determination or by any other proceedings apart from a review or appeal under this Part.

PART 7
INQUIRIES AND REPORTS

Inquiry by Industry Regulator

29. The Industry Regulator may, after consultation with the Minister, conduct an inquiry if the Industry Regulator considers an inquiry is necessary or desirable for the purpose of carrying out the Industry Regulator's functions.

Minister may refer matter for inquiry

30. (1) The Industry Regulator must conduct an inquiry into any matter that the Minister, by written notice, refers to the Industry Regulator.

(2) The written notice must specify the terms of reference for the inquiry.

(3) The Minister may—

(a) require that a report on the inquiry be delivered to the Minister within a specified period; and

(b) require the Industry Regulator to make a draft report publicly available or available to specified persons or bodies during the inquiry; and

(c) require the Industry Regulator to consider specified matters; and

(d) give the Industry Regulator specific directions in respect of the conduct of the inquiry.

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

Notice of inquiry

31. (1) The Industry Regulator must, after notifying the Minister, publish notice of an inquiry in a newspaper circulating generally in the State.

(2) The notice must specify—

(a) the purpose of the inquiry; and

(b) the period during which the inquiry is to be held; and

(c) the period within which, and the form in which, members of the public may make submissions, including details of public hearings; and

(d) the matters that the Industry Regulator would like submissions to deal with.

(3) If the inquiry relates to a matter referred to the Industry Regulator by the Minister, the notice must include the terms of reference and any requirements or directions of the Minister relating to the inquiry.

(4) The Industry Regulator must publish a further notice if the Minister varies the terms of reference or any requirement or direction relating to the inquiry.

(5) The Industry Regulator must send a copy of a notice published under this section to licensed entities in the regulated industry concerned and any person or body that the Industry Regulator considers should be notified.

Conduct of inquiry

32. (1) Subject to any requirement or direction of the Minister under this Part, an inquiry—

(a) may be conducted in such manner as the Industry Regulator considers appropriate; and

(b) may (but need not) involve public hearings.

(2) The Industry Regulator is not, in the conduct of an inquiry, bound by the rules of evidence.

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

Reports

33. (1) The Industry Regulator must deliver a copy of the Industry Regulator's final report on an inquiry to the Minister.

(2) The Industry Regulator may, during the course of an inquiry, deliver a special report to the Minister on any matter that the Industry Regulator considers should be the subject of such a report.

(3) The Industry Regulator must identify in a report any information contained in the report that the Industry Regulator considers is confidential information in accordance with Part 5.

(4) The Minister must cause a copy of a report (excluding any information identified under subsection (3) as confidential information) to be laid before both Houses of Parliament within 12 sitting days after receipt of the report.

(5) The Minister must, after a report has been laid before both Houses of Parliament or, if Parliament is not sitting, within 28 days after receiving a report ensure that copies of the report (excluding any information identified under subsection (3) as confidential information), are available for public inspection.

(6) After the Minister has made a report publicly available, the Industry Regulator must ensure that copies (excluding any information identified under subsection (3) as confidential information) are available for purchase by members of the public.

(7) If information is excluded from a report as being confidential information, a note to that effect must be included in the report at the place in the report from which the information is excluded.

PART 8
MISCELLANEOUS

Annual report

34. (1) The Industry Regulator must, within three months after the end of each financial year, deliver to the Minister a report on the administration of this Act during that financial year.

(2) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after receipt of the report.

False or misleading information

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

Maximum penalty: If the person made the statement knowing that it was false or misleading—$10 000 or imprisonment for 2 years.
In any other case—$5 000.

Statutory declarations

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

General defence

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

Offences by bodies corporate

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

Continuing offence

39. (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—

(a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-fifth of the maximum penalty prescribed for that offence; and

(b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-fifth of the maximum penalty prescribed for the offence.

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

Immunity from personal liability

40. (1) No personal liability attaches to any person engaged in the administration or enforcement of this Act for an act or omission in good faith in the performance or exercise, or purported performance or exercise, of a function or power under this Act.

(2) A liability that would, but for subsection (1), lie against a person lies instead against the Crown.

Evidence

41. (1) If, in any legal proceedings, a person is alleged to have held a specified appointment under this Act at a specified time, the allegation is taken to have been proved in the absence of proof to the contrary.

(2) In any legal proceedings, an apparently genuine document purporting to be a certificate of the Industry Regulator certifying as to the making and contents of a delegation, determination, requirement, decision, order, undertaking, code or rules under this Act constitutes proof of the matters so certified in the absence of proof to the contrary.

Service

42. (1) A notice or other document required or authorised to be given to or served on a person under this Act may be given or served—

(a) by delivering it personally to the person or an agent of the person; or

(b) by leaving it for the person at the person's place of residence or business with someone apparently over the age of 16 years; or

(c) by posting it to the person or agent of the person at the person's or agent's last known place of residence or business.

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

Regulations

43. (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Without limiting subsection (1), the regulations may deal with the following matters:

(a) fees to be paid in respect of any matter under this Act and the recovery, refund, waiver or reduction of such fees; and

(b) penalties not exceeding $5 000 for contravention of a regulation.

(3) The regulations may—

(a) be of general application or limited in application according to the persons, areas, times or circumstances to which it is expressed to apply;

(b) provide that a matter or thing in respect of which regulations may be made is to be determined, regulated or prohibited according to the discretion of the Minister or the Industry Regulator.

Review of Act

44. (1) The Minister is to review this Act to determine the effectiveness of the work of the Industry Regulator and the attainment of the objects of this Act.

(2) The review is to be undertaken as soon as possible after the period of three years from the date of assent to this Act and a report on the outcome of the review is to be completed within six months after that period of three years.

(3) The Minister must cause a copy of the report on the outcome of the review to be tabled in each House of Parliament within 12 sitting days after its completion.

SCHEDULE

Appointment and Selection of Experts for Court

(1) The Minister must establish a panel of experts who may sit as assessors with the Court consisting of persons with knowledge of, or experience in, a regulated industry or in the fields of commerce or economics.

(2) A member of a panel is to be appointed by the Minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.

(3) A member of a panel is, on the expiration of a term of office, eligible for reappointment.

(4) Subject to subclause (5) and except in the case of an appeal limited to a question of law, a judicial officer of the Court must select two members from the panel to sit with the Court on an appeal.

(5) A member of a panel who has a direct or indirect pecuniary or other interest in a matter before the Court is disqualified from participating in the hearing of the matter.

(6) Subclause (5) 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.

(7) If a member of a panel sitting with the Court dies or is for any reason unable to continue with any proceedings, the Court constituted of the judicial officer who is presiding at the proceedings and the other member of the panel sitting with the Court may, if the judicial officer so determines, continue and complete the proceedings.

(8) If proceedings are reheard, the Court may have regard to any record of proceedings made in the earlier proceedings (including a record of evidence taken in those proceedings).

APPENDIX

LEGISLATIVE HISTORY

Section 27(1):	substituted by 4, 2000, s. 9(1) (Sched. 1 cl. 20(a))
Section 27(2):	amended by 4, 2000, s. 9(1) (Sched. 1 cl. 20(b))
Section 27(3):	amended by 4, 2000, s. 9(1) (Sched. 1 cl. 20(c))
Section 27(5):	repealed by 4, 2000, s. 9(1) (Sched. 1 cl. 20(d))
Section 27(8):	substituted by 4, 2000, s. 9(1) (Sched. 1 cl. 20(e))