

The Hon Dr David Crean MLC  
Treasurer  
Level 9  
Executive Building  
15 Murray Street  
HOBART TAS 7000

Dear Dr Crean

I have pleasure in submitting to you the Annual Report of the Government Prices Oversight Commission for the year ended 30 June 2000, in accordance with Section 40 of the *Government Prices Oversight Act 1995*.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A J Reeves', written in a cursive style.

Andrew Reeves  
COMMISSIONER

November 2000



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## Commissioner's Report

This report describes the fourth full year of the operation of the Government Prices Oversight Commission (the Commission).

The Commission commenced operations on 1 January 1996, under the authority of the *Government Prices Oversight Act 1995* (the GPO Act). Its primary function was to investigate the pricing policies of the major Tasmanian public sector monopolies<sup>1</sup>.

In 1997, the GPO Act was amended to provide the Commission with powers to investigate National Competition Policy competitive neutrality complaints.

The Commissioner's powers to investigate the pricing policies of electricity entities were transferred to the Tasmanian Electricity Regulator on 1 July 1998 and the responsibility for the electricity pricing investigation that commenced in 1997-98 was taken over by the Regulator from that date. As Commissioner of the Government Prices Oversight Commission, I also hold the office of the Tasmanian Electricity Regulator.

### Pricing Policies Investigations

During 1999-00, the Commission completed an investigation into the pricing policies of the Metro Tasmania Pty Ltd (Metro). The Commission also commenced a second review of the pricing policies of the Motor Accidents Insurance Board (MAIB).

The key objective of the prices oversight regime is to ensure that prices charged by monopoly businesses promote efficient resource allocation decisions in either the business or the wider economy.

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<sup>1</sup> The *Government Prices Oversight Act 1995* provides for the investigation of the pricing policies of certain Government Agencies, Government Business Enterprises, Local Government Bodies, statutory authorities and State-owned companies that are monopoly or near monopoly providers of goods and services in Tasmania.

To give effect to this objective, the maximum prices charged by a Government body should be no more than those which would be required to provide a commercial return by an efficient operation irrespective of ownership.

The Commission, in undertaking its investigations, is aware that there are constraints on a government owned entity compared to private sector equivalents. This was evident in the recent Metro Investigation. The Commission was required to consider the total allowable revenues for Metro for the three-year period to 1 June 2003. The choice for the Commission lay between recommending a maximum revenue based on what would prevail in a fully competitive market without the constraints provided by Government ownership or a maximum revenue based on the most efficient level of operations Metro could be expected to achieve within its operating constraints. Given the objective of the prices oversight regime, the Commission considered that the former is the more appropriate basis for setting of target maximum allowable revenues for monopoly businesses. However, in doing so, the Commission also recognises that these targets may not be achievable within the policy constraints imposed by Government.

In the context of the Metro Investigation, public sector employment terms and conditions do provide a constraint on Metro's ability to achieve higher levels of productivity. I am of the view that the constraints imposed are rightly a matter for Government and the financial impact of such arrangements are a matter between the Government and the entity. The maximum allowable revenue recommended by the Commission is sufficient for the entity to achieve a commercial return for an 'efficient' operation, with regard to both productivity and unit costs. If, as a consequence of Government ownership, efficient costs are not achievable, that will be evident in the financial returns.

The other issue raised during the Metro Investigation was the lack of an integrated transport policy for the State. Transport policy is fragmented across transport sectors and between State and local government. Further there appeared to be no integration with other government policies such as access to facilities and services by such groups in the community as the elderly and unemployed, retail and community development, traffic issues and parking. The Commission also raised this matter as an issue during the 1997 Investigation. In an attempt to redress this deficiency the Commission visited the three regions serviced by Metro to provide a forum for discussion

with the relevant local government councils. Less than half the local councils took advantage of this opportunity. Consequently, with the lack of an integrated policy or any strategic view of future service needs the Commission was only able to make its recommendations based on the current type and level of services. While the Commission has considered the efficiency of Metro's operations, there is a need for Government and Metro to consider the effectiveness of services, ie whether Metro's scheduled route services and recent innovations meet the changing transport needs of the community.

### **Conduct of Investigations**

The Commission has varied the way in which investigations are conducted. Previously, an Issues Paper based substantially on the Commission's preliminary research was prepared and submissions, including those from the body under review, were invited. The Commission now seeks a statement and proposals from the Government entity, which is used as the basis for seeking public submissions.

### **Competitive Neutrality Principles Complaints**

In addition to a number of general enquires, the Commission received four (4) formal complaints alleging breaches of the Competitive Neutrality Principles (CNPs) under the National Competition Policy (NCP). Two of these complaints involved local government business activities that were found to be outside the Commission's jurisdiction to investigate. Two complaints proceeded to formal investigation.

On 30 June 1999 the Commission received a copy of a letter alleging a breach of CNPs by the Hobart City Council (HCC) in operating the Tattersall's Hobart Aquatic Centre (THAC). A complaint against the Department of Education in relation to its hostel leasing activities also proceeded to a formal investigation.

In both instances the Commission determined that the complaint was justified and made recommendations accordingly. The Commission's recommendations were accepted by the relevant Ministers.

The Commission also recommended to the Treasurer, following the THAC/HCC Investigation, that the Application Statement and the Full Cost Attribution Guidelines be reviewed to

provide more guidance to significant government businesses on pricing. The Treasurer also requested the Department of Treasury and Finance to review the Application Statements and FCA Guidelines to provide additional guidance on pricing of goods and services by significant business activities (SBAs).

The Commission also sought legal advice in relation to two matters – the Commission’s role in investigating complaints where the business has not been declared a significant business activity and the meaning of the term ‘adversely affected’.

Advice from the Solicitor-General is that whether or not a person has been ‘adversely affected’ needs to be determined by considering whether or not the alleged act or contravention is an essential element in producing the adverse effect. This does not necessarily imply that the ‘adverse affect’ must be a direct consequence or that the Government business needs to be competing directly with the complainant.

The Solicitor-General also confirmed that the Commission has no jurisdiction in dealing with business activities that have been found to be non-SBAs. However, there is an important difference in the process of determining what are SBAs between business activities conducted by Government agencies and local government. In the case of local government, the status of a business activity is to be found from the list of SBAs endorsed by the Minister administering NCP in accordance with the prescribed process in the Application Statement for local government. This is in contrast to the process for Government business activities. The status of these activities is to be determined by the Commission.

I have brought these issues to the attention of the Treasurer and the Department of Treasury and Finance, the Department responsible for NCP.

## **Consultancies**

In addition to performing core legislative functions, the Commission was requested by the Government to undertake two consultancy projects.

The Commission commenced monitoring Tasmanian wholesale and retail petrol prices in August 1999. The scope of the monthly petrol pricing report was broadened in April 2000 to cover retail prices for diesel and autogas in Tasmania.

Following the merger announcement in March 2000 by the Commonwealth Bank of Australia (CBA) and Colonial Limited, the Commission was nominated by the State Government to monitor CBA's retail banking pricing and services in Tasmania. As a condition of Australian Competition and Consumer Commission (ACCC) approval of the merger, the CBA entered into a section 87B undertaking regarding the prices and range of services offered in Tasmania, with the Commission nominated to monitor the implementation of the undertaking. The purpose of the monitoring is to ensure the Tasmanian community will enjoy the same level of pricing, new product innovations and services standards as those offered elsewhere in Australia.

During 1998-99, the Commission undertook a consultancy on local government water pricing. The first stage was completed in June 1999. The Commission completed the second stage of the consultancy in the first quarter of this financial year, with Guidelines being issued to local councils in October 1999.

Andrew Reeves  
COMMISSIONER

November 2000



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# The Government Prices Oversight Commission

## Establishment of the Commission

The Government Prices Oversight Commission (the Commission) is an independent statutory body. It was established in 1996 following the commencement of the *Government Prices Oversight Act 1995* (the GPO Act) on 1 January 1996. Its role is to investigate the pricing policies of Government Business Enterprises (GBEs), agency activities and local government businesses that are monopoly providers of goods and services in Tasmania.

The establishment of the Commission was part of Tasmania's commitment to the National Competition Policy (NCP) Agreements that were signed by the Council of Australian Governments (COAG) in April 1995.

The COAG Competition Principles require that the source of prices oversight advice have the following characteristics:

- (a) it should be independent from the Government Business Enterprise whose prices are being assessed;
- (b) its prime objective should be one of efficient resource allocation but with regard to any explicitly identified and defined community service obligations imposed on a business enterprise by the Government or legislature of the jurisdiction that owns the enterprise;
- (c) it should apply to all significant Government Business Enterprises that are monopoly, or near monopoly, suppliers of goods or services (or both);
- (d) it should permit submissions by interested persons; and
- (e) its pricing recommendations and the reasons for them should be published.

The Tasmanian Government Prices Oversight Commission was set up according to these principles.

The GPO Act was amended in 1997 to provide the Commission with powers to investigate alleged breaches of the National

Competition Policy Competitive Neutrality Principles by State and local government business activities.

The Competition Principles Agreement (CPA) requires Government businesses to operate within a framework that ensures that they do not enjoy any net competitive advantage simply as a result of their public ownership. This is the concept of competitive neutrality. The competitive neutrality principles (CNP) are set out in clause 3 of the CPA. As a general principle, significant state and local government businesses should reflect full Commonwealth and State taxes or tax equivalents, debt guarantee fees, face the same regulatory framework as their private sector counterparts and earn a commercial return on the capital invested in them. The CPA also requires that there be a mechanism to consider complaints relating to the application of the CPA.

The complaint mechanism, applicable to Tasmanian State and local government businesses, is contained in the *Government Prices Oversight Regulations 1998*. The Commission does not have the power to investigate complaints in regard to Commonwealth government businesses or private sector businesses.

### **Objectives of the Commission**

The National Competition Policy Agreements through the GPO Act define the Commission's principal objectives, being to ensure that prices charged by government businesses promote efficient resource allocation decisions by the business, government and thus the wider economy.

As an independent regulatory body, the Commission does not have a primary role in policy development. However, the Commission through its papers and reports does seek to promote discussion of issues that will inform or impact on its various investigations and recommendations.

The Commission's strategic and operational activities, roles and responsibilities are determined by the GPO Act

### **The Roles of the Commission**

Under the Act, the Commission has two key roles:

⇒ prices oversight of government monopolies; and

⇒ investigation of competitive neutrality complaints.

In addition to performing the key legislative functions, the Commission undertakes consultancy projects at the request of the Government. Consultancies undertaken at the request of the Government during 1999-00 included:

⇒ monitoring of fuel prices; and

⇒ monitoring of CBA retail banking activities.

During 1999-2000 the Commission also completed its consultancy for local government on the introduction of two part water pricing.

### **Prices Oversight**

In providing prices oversight of Government monopolies the Commission is required to investigate prices charged by government bodies for monopoly services and to recommend maximum prices to apply for the ensuing three-year period. An investigation is initiated on receipt of the terms of reference issued by the Minister administering the GPO Act, currently the Treasurer. The Commission is required to take account of the terms of reference and the specific matters set out in Section 31 of the GPO Act. These matters include:

⇒ the cost of supplying or providing the monopoly service;

⇒ interstate benchmarks for prices and costs;

⇒ the need to protect consumers from the adverse effects of the exercise of monopoly power;

⇒ the need for the monopoly provider to be financially viable;

⇒ the need for a reasonable return to the State, including the payment of dividends;

⇒ the Ministerial Charter of the GBE prepared in accordance with Section 36 of the *Government Business Enterprises Act 1995* (GBE Act);

⇒ any community service obligations; and

⇒ the quality of the supply of the monopoly service.

In essence, the Commission is required to consider and recommend maximum prices based primarily on grounds of

economic efficiency. These outcomes do not always accord with the Government's social and economic objectives, and the Government has the opportunity to reflect its policies in the Minister's determination of maximum prices, which is set out in an Order.

The creation of the Commission was not intended to take away the Government's ability to use prices of Government monopoly services as instruments of policy, but to bring greater transparency.

The GBE Act provides for the identification and payment of community service obligations (CSOs) where it requires a GBE to undertake a non-commercial activity. Non-commercial activities could include providing services at a concessional rate to a particular class of customer. The Ministerial Charter may also require a GBE to carry out certain activities required by the Government. Non-commercial activities or community service activities (CSAs) undertaken by a State-owned corporation (SOC) are performed under contract with the State Government.

Nevertheless, there is an expectation that the Commission will address social and other issues in its investigations. In practice, the Commission meets these expectations by accepting submissions not only on matters that specifically address the terms of reference, but also on related issues. These issues are then raised for the information of the Government in the Commission's reports. The Commission expects that this treatment will assist the Government to make better-informed decisions when maximum prices are prescribed.

To assist it in undertaking its price investigation role, the Commission seeks the expert contributions of persons appointed as Assistant Commissioners and its consultants. It also draws upon the experience of other regulators, similar investigations in other jurisdictions, and informed comment from the community and stakeholders.

### **Competitive Neutrality**

The CPA requires that the State has a complaint mechanism in place to consider complaints relating to the application of the competitive neutrality principles. The prescribed process for making and investigating complaints is contained in the *Government Prices Oversight Regulations 1998* (the Regulations).

Any person who believes it is adversely affected by the failure of a government business activity to comply with CNP may now lodge a complaint with the Commission.

In February 1999, the Commission issued *National Competition Policy Competitive Neutrality Principles Complaints Mechanism Guidelines* (the Guidelines). The purpose of these Guidelines is to set out the processes for the review of complaints from persons about alleged breaches of, and non-compliance with, competitive neutrality principles. The Guidelines also describe the role of the Commission in relation to the review of complaints, the procedures to be followed by complainants and the internal review process required of government bodies in relation to complaints made against its business activities.

Potential complainants are encouraged by the Commission to discuss concerns relating to the application of the CNPs with the government body providing the business activity in question. Some complaints will be resolved informally by the complainant obtaining further information about the costing structure and regulatory environment of the government body business activity. However, in other instances the complainant may wish to take the matter further by lodging a formal complaint with the Commission concerning the manner in which a business activity is undertaken by a government body.

Within 30 days of receiving a complaint, the Commission will acknowledge receipt of each complaint it accepts. As noted above, the Commission will only accept complaints where it is satisfied that:

- ⇒ the complaint contains matter to support the allegation that the CNPs have been contravened;
- ⇒ the complainant appears to have been adversely affected by the contravention by the Government body; and
- ⇒ the complaint is not vexatious or frivolous.

If the Commission does not accept the complaint, the complainant will be advised of the reasons.

The Commission is required to refer the complaint to the relevant Government body for review. Following this review the Government body is required to prepare and forward to the Commission, a statement of facts regarding the alleged breaches. The Commission then reviews this statement and, if necessary, will seek additional information from the

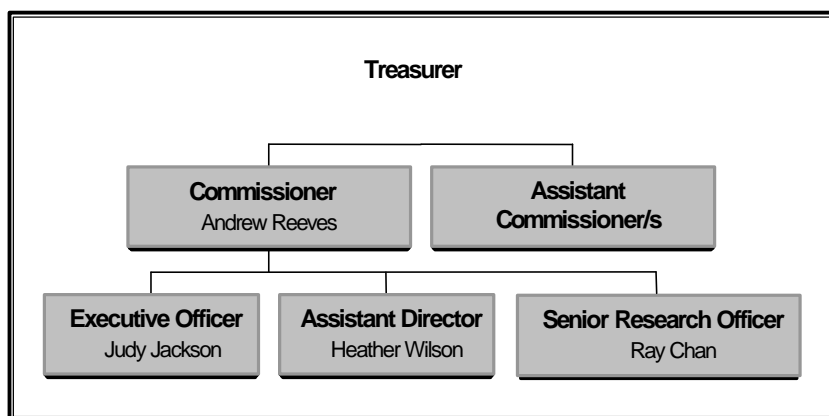
Government body or other relevant bodies prior to preparing a final report.

The final report containing a summary of findings and recommendations in relation to each matter is then forwarded to the relevant Government body, the complainant, the Minister and Treasurer. The findings of the Commissioner are final.

A more detailed outline of the complaints mechanism is provided in Appendix B. The Guidelines are also available from the Commission or its web site [www.gpoc.tas.gov.au](http://www.gpoc.tas.gov.au).

## Composition of the Commission

### Commission Organisation Chart



Note: The Executive Officer, Assistant Director and Senior Research Officer are employees of the Department of Treasury and Finance.

The Commission consists of the Commissioner (appointed for three years from 1 January 1996) and any Assistant Commissioner/s appointed for a particular investigation.

The first Commissioner, Mr Andrew Reeves was appointed for an initial three-year term on 1 January 1996. This appointment was renewed for a further three-year period from 1 January 1999.

To assist the Commission in performing its functions and powers, the Department of Treasury and Finance provides staff to the Commission under Section 19(1) of the GPO Act.

From 1 July 1998, the Commissioner was also appointed as the independent Regulator under the *Electricity Supply Industry Act 1995* (ESI Act). While the Commissioner and the Regulator are separate and discrete statutory entities, in practice there is a

common set of core skills required. The staff of the Commission is co-located with the Office of the Tasmanian Electricity Regulator. The Regulator's staff are also employees of the Department of Treasury and Finance and the sharing of resources improves the efficiency and experience of the two organisations. Under the ESI Act and the Tasmanian Electricity Code the Regulator is required to prepare a separate Annual Report.

The Department of Treasury and Finance also provides assistance and facilities to the Commission for human resource management, information technology and accounting services.

### **Prices Oversight Scope**

The GPO Act provides for the investigation of the major public sector, State and Local Government, monopolies in Tasmania at least once in every three years. The Commission may also be required to investigate any other monopoly service provided by a State or Local Government body. To date the following investigations have been completed:

- |   |                             |
|---|-----------------------------|
| ⇒ Hydro-Electric Commission   | 30 August 1996 <sup>1</sup> |
| ⇒ Metropolitan Transport Trust (MTT)  | 28 February 1997            |
| ⇒ Motor Accidents Insurance Board <sup>2</sup>  | 29 August 1997              |
| ⇒ Hobart Regional Water Authority<br>North West Regional Water Authority<br>Esk Water Authority | 23 December 1998            |
| ⇒ Metro Tasmania Pty Ltd (previously MTT) <sup>3</sup>  | 2 June 2000                 |

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<sup>1</sup> As noted above, responsibility for investigation of the pricing policies of electricity entities in Tasmania (including those of the former Hydro-Electric Commission) was transferred to the Tasmanian Electricity Regulator on 1 July 1998.

<sup>2</sup> The second investigation into MAIB's pricing policies commenced in March 2000. An Issues Paper and Draft Report were released in May and July respectively for public consultation. At the time of publication of the Annual Report, the Final Report had been completed and tendered to the relevant Ministers for consideration.

<sup>3</sup> The Government corporatised MTT on 2 February 1998 as part of its transport reform package.

The Commission also commenced a second investigation into the pricing policies of the Hydro-Electric Corporation in 1998. However, this investigation was transferred to the Office of the Tasmanian Regulator following the establishment of that Office and was subsequently deferred following the election of a new State Government in August 1999.

The *Government Prices Oversight (Amendment Act) 1998* further extended the scope of the Commission to provide for investigations of prices charged by statutory authorities and State-owned companies, and local government monopoly businesses.

### **Conduct of Investigations**

The procedures for the conduct of major investigations, the requirements for reports and the procedures for setting of prices are described in Appendix A to this Report.

### **Public Consultation**

Public consultation is an important component of the Commission's work.

Assistant Commissioner/s are appointed for their expertise on the matter under investigation, however the Commission also draws on business and community knowledge to identify the particular issues of each investigation.

Each investigation has included the release of a background or issues paper to encourage initial submissions and a draft report with the Commission's proposals. The draft report becomes the focus for further submissions, which are then taken into account in preparing the final report and recommendations.

While the GPO Act provides for the Commission to convene public hearings no formal hearings were convened during the year. Rather, the Commission has preferred to meet separately with interested parties. The formality of a public hearing is daunting for some and the process, while effective in some circumstances for gathering information, gives less opportunity for meaningful exchange than consultations with interested parties.

The Commission has established a website ([www.gpoc.tas.gov.au](http://www.gpoc.tas.gov.au)) to assist access to reports and submissions.

### **Information Gathering**

Submissions from the monopoly business whose pricing policies are under investigation are a major source of information. In addition, the Commission has powers under Section 29 of the GPO Act to require material to be provided. The following number of section 29 requests were issued in 1999-2000:

<b>Investigation</b>	<b>Number of Section 29 Requests</b>
Metro Tasmania Pty Ltd	17
MAIB (as at 30 June 2000)	25

The Commission also held regular briefings and consultations with officers of each organisation under review.



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# **Report on the Performance of the Commission's Functions and Powers: 1999-00**

## **Pricing Investigations**

### **Metro Tasmania Pty Ltd Pricing Policies Investigation**

In October 1999, the Treasurer issued terms of reference for an investigation into the pricing policies of Metro Tasmania Pty Ltd (Metro). This was the second investigation into the pricing policies of Metro. The first investigation was undertaken prior to Metro being corporatised under the Corporations Law, and was completed in 1997. Under the terms of reference for this Investigation the Final Report was to be completed by 2 June 2000.

The Commission for this Investigation comprised Mr Andrew Reeves, Commissioner and Mr Paul Baxter, (Chairman, Independent Competition and Regulatory Commission, (ACT) Assistant Commissioner.

Following receipt of the terms of reference for the Investigation, Metro provided the Commission with a submission. This detailed submission described Metro's operations and performance since the previous Investigation and also raised issues and factors that Metro wished to be considered by the Commission in making its recommendations. Metro's submission and the Commission's Issues Paper were released for public comment in February 2000. Submissions were sought from a range of persons and organisations on the matters raised in both Metro's submission and the Commission's Issues Paper. Ten (10) submissions were received in response to the Issues Paper. In addition, the Commission held meetings with local government representatives in all areas covered by Metro's operations and meet with Metro staff and a number of interested parties before releasing its Draft Report.

The Draft Report was released for comment in April 2000. Five (5) submissions were received in response to the Draft Report. Following consideration of all the matters raised in the course of the Investigation, the Commission presented the Minister

and the Treasurer with its Final Report and Recommendations on 2 June 2000.

The Commission recommended that Metro be provided with a maximum revenue (including fare-box receipts and payments from the Government) of \$26.1 million per annum (from 1 July 2000) in to be adjusted annually to take account of changes in the components of Metro's costs. It was also recommended that this amount should be adjusted if in the future the Government requires Metro to modify the services from those provided at the time the Report was finalised.

The Commission did not consider that it was required to make a recommendation on Metro fares since the level of fares is effectively determined by Government policy on public transport subsidies. However it did note that Metro's adult fares had not been increased since July 1996 and they were the lowest of all but one of the Australian capital cities. It considered an increase of about 7 per cent would have been necessary to account for changes in the Consumer Price Index (CPI) from December 1996 to December 1999 and to pass through the estimated 4.3 per cent net impact of the Commonwealth's new tax system. However, in the light of the existing environment of declining patronage, the Commission was reluctant to propose any substantial increases in fares even where they could be justified on economic grounds. On this basis, it considered that adult fares should increase by no more than 20 cents for 1-2 section tickets up to 50 cents for 11-15 section tickets. The Commission also considered that it would be appropriate to index fares to reflect changes in Metro's costs. To allow Metro to recover additional revenue from small changes in the index, while retaining its policy of rounding fares to the nearest 10 cents, the Commission suggested that an indexed weighted average fare be specified.

The Government accepted the Commission's recommendations and a new Government Prices Oversight (Metro Fares) Order 2000 was Gazetted on 30 August 2000.

In accordance with the requirements under the GPO Act, the Commission is to make available to the public a copy of any Draft Report, the Final Report and all submissions. All or part of a submission can be withheld from public release if a submittant requests that it remains confidential. It is the Commission's policy to publish any Issues Paper, Draft Report, Final Report and all non-confidential submissions on the internet. A copy of the Metro Investigation Issues Paper, Draft

and Final Reports and all public submissions are available at the Commission's website [www.gpoc.tas.gov.au](http://www.gpoc.tas.gov.au).

## **Motor Accidents Insurance Board Pricing Policies Investigation**

In February 2000 the Treasurer issued terms of reference for an investigation into the pricing policies of the Motor Accidents Insurance Board (MAIB). This was the second investigation into the pricing policies of the MAIB, the first investigation having been completed in 1997. Under the terms of reference the Final Report was to be completed by 31 August 2000.

The Commission for this Investigation comprised Mr Andrew Reeves, Commissioner and Mr Bernard Rowley, Assistant Commissioner.

Following receipt of the terms of reference for the investigation, the MAIB provided the Commission with a comprehensive submission for consideration by the Commission. The MAIB submission and the Commission's Issues Paper were released for public comment in April 2000. Submissions were sought from a range of persons and organisations on the matters raised in both the MAIB's submission and the Commission's Paper. Thirteen (13) submissions were received in response to the Issues Paper. In addition the Commission met with the MAIB and a number of interested parties before releasing its Draft Report for comment on 30 June 2000.

Prior to preparing its submission to the Commission the MAIB commissioned its consulting actuaries, Trowbridge Consulting Pty Ltd, to provide two reports in relation to:

- ⇒ the calculation of MAIB's break-even premium; and
- ⇒ a review of the MAIB's premium relativities.

The Commission's Draft Recommendations were:

- ⇒ that the scheme be protected from the impact of very large claims by limiting compensation for loss of earnings to \$2 000 (after tax) per week and the placement of a cap on the scheduled disability benefit;
- ⇒ that the maximum average premium be set at the prevailing level, increased annually to reflect changes in

average weekly ordinary times earnings for each of the three years from 1 December 2000;

- ⇒ increases of 15 per cent in addition to inflation for medium and large passenger vehicles, heavy goods vehicles and taxis to better reflect risks associated with these classes,
- ⇒ no increases other than inflation linked increases for all other premiums; and
- ⇒ a reduced premium only be available to off road vehicles used for farm and other work purposes.

As at 30 June 2000, the investigation was continuing<sup>1</sup>.

In accordance with the requirements under the Act, the Commission is to make available to the public a copy of any Draft Report, the Final Report and all submissions, unless the submittant requests that their submission remains confidential. It is the Commission's policy to publish these documents on the internet. A copy of the MAIB Investigation Issues Paper, Draft and Final Reports and all public submissions are available at the Commission's website [www.gpoc.tas.gov.au](http://www.gpoc.tas.gov.au).

### **Competitive Neutrality**

During 1999-00 there were four (4) formal competitive neutrality complaints lodged with the Commission. However, two of these complaints were determined to fall outside the scope of the competitive neutrality complaint mechanism. The other two complaints proceeded to investigation. These complaints related to:

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<sup>1</sup> The Final Report was completed and submitted to the Treasurer and the Minister for Infrastructure, Energy and Resource by the due date, 31 August 2000. The Recommendations contained in the Final Report broadly reflected the Draft Report proposals. The notable changes to the Commission recommendations included: premium increases for classes 3, 6, 7 and 16 be phased in over three years; pensioner discounts only being available for a single registration for a vehicle used by the pensioner for non work related purposes; and a number of changes in relation to vehicle classifications for MAIB premium purposes. The Final Report also included recommendations in relation to calculation of half-yearly and quarterly premiums.

- ⇒ The Tattersall's Hobart Aquatic Centre and the Hobart City Council; and
- ⇒ Clarence House and the Department of Education.

### **The Tattersall's Hobart Aquatic Centre – Hobart City Council**

On 30 June 1999 the Commission received a copy of a letter alleging a breach of the CNPs by the Hobart City Council (HCC) in operating the Tattersall's Hobart Aquatic Centre (THAC). At the request of the complainant, no action was taken pending the outcome of a meeting between the complainant and the HCC. Following this meeting the complainant lodged a formal complaint on 9 July 1999.

The complainant alleged that the breaches of CNP related to the non-application of full cost attribution (FCA) to the services and programs that the THAC offers to the general public. Consequently, Dockside Fitness (which at that time was the lessee of the fitness centre facilities within the THAC) was directly benefiting from this situation by enjoying a reduced rate for their members gaining access to the pool of the THAC. The complainant further alleged that this was also contrary to the public assurances provided by the THAC management that Dockside members would pay 'less than, but not significantly less than' what the general public would pay. In addition, the complainant alleged that the corporate memberships and deals with other health clubs offered by the THAC management did not reflect the full cost of providing access to the THAC.

Following the investigation the Commission, in accordance with the Regulations, prepared a report to the Minister for Local Government (being the relevant Portfolio Minister) and the Treasurer (being the Minister responsible for National Competition Policy) recommending that:

- ⇒ the HCC and THAC review their costing and pricing policies to correctly take account of the requirements under NCP and the CNPs, including the establishment of FCA for the THAC and that all subsidies be made transparent; and
- ⇒ the Application Statement and the FCA Guidelines be reviewed and consideration be given to the provision of additional guidance in relation to the determination of prices in a competitive environment.

In response to the Commission's report, the Treasurer advised that the Department of Treasury and Finance would undertake a review of the Application Statements and the FCA Guidelines in relation to both State government agencies and local government activities. This review was due to be completed by 30 April 2000. However, the Commission has been advised that as at 30 June 2000 the review had not been completed. The Commission has not been advised of the revised due date for the completion of the review or the distribution of the revised Application Statement and FCA Guidelines.

The Commission was also advised that the Premier, as Minister for Local Government, wrote to the HCC directing them to apply FCA to the THAC. In addition, the HCC was to provide additional FCA information on the THAC in its Annual Report.

The HCC has advised that:

⇒ in relation to publication of the 1998-99 Financial Statements, the Council has:

- caused the Statement to be published on Council's Internet site, and
- advertised the site in the April advertisement placed by the Council in the Mercury newspaper. The Statement was also placed on the Council's Public Notice Board; and

⇒ The Council engaged consultants to provide the Council with advice on the application of FCA to the pricing structure at the Centre.

The consultants provided a full and comprehensive report to the THAC Board. Following consideration of the report, the Board recommended to the Council an increase in fees of 3 per cent plus the goods and services tax (GST) to apply from 1 July 2000. However, the Council rejected the Board's recommendation and decided to continue with the existing fees plus GST until 1 February 2001.

The Commission was also advised that Dockside Fitness withdrew from operating the gymnasium facilities at the THAC and this business has been incorporated into the operations of the THAC.

## **Clarence Lodge and the Newstead College – Department of Education**

On 28 January 2000, a complaint was lodged with the Commission alleging breaches of CNPs by the Department of Education (DoE) concerning the leasing out of a student hostel (The Villas) to Newstead College Council Inc (the Council). The Council is an association incorporated under the *Association Incorporation Act 1964*. The complainants alleged that DoE had leased out The Villas to the Council at a non-commercial rent. As a result of the low rent, the Council has been able to charge below a market rate for its accommodation, hence, adversely affecting the complainant's business.

The Villas was leased to the Council at a nominal rent of \$1.00 in 1999. When the Council requested to renew the lease for another year and was told that the full commercial rent of \$67 600 pa would apply, it indicated that it could not operate The Villas at this rate and offered \$8 000 for extending the lease. The Minister, following advice from the Valuer-General later accepted the Council's offer.

Upon analysis, there were two business activities that had the potential to adversely affect the Complainants' student lodge business. One was the operating of The Villas and the other the leasing of The Villas to the Council.

The Commission formed the view that the operation of The Villas, in particular, the setting of the alleged non-commercial room rates, has the potential to adversely affect the complainant's student lodge business. However, The Villas was operated by the Council, which was an incorporated association and not part of DoE.

The Commission determined that:

- ⇒ the leasing out of The Villas at an alleged non-commercial rate was an essential element in producing the adverse effect that the complainants were claiming; and
- ⇒ if it was not for the non-commercial rent in the lease terms, the Council would not have been able to operate The Villas and set its room rates at a level that may have adversely affected the complainants.

The leasing activity had not been identified or listed as SBA. The Commission recognised that the costs and revenue associated with the leasing of The Villas are relatively

insignificant when considered in the context of the operation of DoE. However, the significance of a Government business activity is not determined purely on the basis of financial materiality – ie on the basis of the financial size of the activity in relation of the total expenditure and revenue of the Department. Financial size is a necessarily arbitrary measure and the impact of the activity on the relevant market is a more appropriate indicator. To determine whether the activity is a SBA, one should look to the objective of the CNPs. The fundamental objective of CNPs is to ‘promote resource use efficiency in business activities’ and in particular ‘to ensure the resources are not misallocated by virtue of systemic distortions in the regulatory and pricing arrangements of Government businesses arising from their public sector ownership’. Thus the failure to apply CNPs to the lease activity of DoE had the potential to create market distortion in the Launceston student hostel market and result in an inefficient use of resources.

The Commission was of the view that in determining whether the leasing activity was a SBA, DoE should have also considered the impact of the activity on the relevant market. Further, as a consequence of failing to identify the leasing activity as a SBA, DoE had not applied FCA to the leasing activity as required under the CNPs.

The Commission recommended that DoE be directed by the Minister of Education to review its leasing arrangement in relation to The Villas and other similar student hostel operations to ensure the compliance with the CNPs.

The Minister for Education has advised the Commission that:

- ⇒ the Department will fully review its leasing arrangements for hostels to ensure full compliance with the CNPs in future leasing arrangements;
- ⇒ the Department had discussed the findings of the Commission with the Principal of Newstead College;
- ⇒ the current lease for The Villas expires in late 2000; and
- ⇒ in this setting, the findings of the report will be implemented in future lease arrangements.

## Other Matters

A further two formal complaints were received, which did not proceed to the formal investigation stage. These were:

- ⇒ *Clarence City Council and the Clarence Swim Centre* – the Commission was advised that the Swim Centre was leased to a private sector operator. Thus the operations of the Centre was not an activity to which the CNPs applied. Further the leasing activity had not been declared a significant business activity and thus was outside the Commission's jurisdiction (Refer to 'Other Issues' below for further discussion) ; and
- ⇒ *The Launceston City Council trading as Total Workforce* – Following preliminary investigation it was determined that activity had not been declared a significant business activity and thus was outside of the Commission's jurisdiction.

In addition a further three matters, which did not proceed to the formal complaint stage, were raised with the Commission. These matters were in relation to:

- ⇒ *Community Online Access Centres* – as these are community owned and operated bodies then the matter was not a competitive neutrality complaint within the terms of the CPA;
- ⇒ *Wind Farm Development* – it was determined that the matter was not a competitive neutrality complaint within the terms of the CPA; and
- ⇒ *Government Valuation Services* – a formal complaint was not pursued following resolution of the issue to the satisfaction of the potential complainant following discussions between the complainant, the relevant business unit and the Commission.

## Other Issues

The complaints raised with the Commission in the period since the last Annual Report, have raised a number of issues.

The Commission sought legal advice in relation to two matters – the Commission's role in investigating complaints where the

business has not been declared a SBA and the meaning of the term 'adversely affected'.

In relation to the meaning of 'adversely affected', legal opinion from the Solicitor-General states that whether or not a person has been 'adversely affected' is a question of fact which must be determined according to the circumstances of each case. The approach to this issue is to determine whether or not the alleged act or contravention can be properly seen as an essential element in producing the adverse effect.<sup>2</sup> This does not necessarily imply that the 'adverse effect' must be a direct consequence or that the Government business needs to be competing directly with the complainant, ie in the same business as the complainant. For example, in The Villa's case the complaint alleged that the leasing out of The Villas at a non-commercial rate was having an adverse effect on a person conducting a student hostel accommodation business. Thus although the two business activities were not in direct competition, nevertheless the non-application of CNPs by the DoE in its leasing activity was an essential element in producing the adverse effect for the complainant.

The advice in relation to the first matter was unequivocal in stating that Commission has no jurisdiction in dealing with business activities that have been found to be non-SBAs. However, the Commission was advised that there is an important difference in the process of determining what are SBAs between business activities conducted by Government agencies and local government, hence, the power of the Commission to investigate these business activities.

In the case of local government, the status of a business activity is to be found from the list of SBAs endorsed by the Minister administering NCP in accordance with the prescribed process in the Application Statement for local government. Further, there appears to be no process for reviewing the status of business activities over time or if and when circumstances change.

This is in contrast to the process for Government business activities. The status of these activities is to be determined by the Commission. This is due to the fact that neither the legislation nor the Application Statement for Government agencies prescribed a process for identifying or declaring SBAs.

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<sup>2</sup> *Yates Security Services v Keating* (1990) 98 ALR 68, per Morling J, p89.

Thus through the complaints investigation process there is a mechanism to review the status of Government business activities.

This issue has been brought to the attention of the Department of Treasury and Finance, the Department that provides the policy advice to the Treasurer, the Minister responsible for NCP.

## **Consultancies**

### **Local Government Water Pricing**

In December 1998 the Commission was engaged by the Department of Primary Industries, Water and Environment to investigate the cost-effectiveness of local councils implementing two-part pricing for urban water services. The consultancy also addressed other Local Government water reforms required under the COAG Water Reform Agenda.

The first stage of this consultancy was completed in 1998-99 with the Commission developing a set of guidelines to establish measurable criteria that would assist local councils to individually assess whether the implementation of a two-part pricing structure was cost-effective. The report was delivered in June 1999 and was followed up by a workshop with Local Government representatives.

The second part of the brief required the Commission to develop a set of principles which would assist local councils to meet the asset renewal and asset maintenance requirements of the ARMCANZ Water Pricing Guidelines. The Commission engaged Mr Ross Kelly to assist with this work.

The *Urban Water Pricing Guidelines, Consistent with the COAG Water Reforms of Local Government in Tasmania* were completed in September 1999 and issued to Local Government in October 1999. The Guidelines were presented in two parts – Full Cost Recovery Guidelines and Two Part Tariff Guidelines. The Two Part Tariff Guidelines are only applicable where the councils have determined that it would be cost effective to apply two part tariffs.

## **Monitoring of Petroleum Prices**

At the request of the Treasurer, the Commission has been monitoring Tasmanian wholesale and retail petrol prices since August 1999 in an effort to address community concerns about the higher petrol prices paid by Tasmanians relative to mainland motorists. A monthly report is published on the Commission's website at the beginning of each month.

At the Treasurer's request, the Commission broadened the scope of the monthly pricing report in April 2000 to cover average retail prices for diesel and LPG (autogas) in Tasmania. The new monitoring regime tracks the monthly average retail price movement of diesel and LPG in Hobart, Launceston, and north west Tasmania, using Melbourne as a reference point.

## **Monitoring of the Commonwealth Bank's Undertaking**

In March 2000, the Commonwealth Bank of Australia (CBA) and Colonial Limited (Colonial) announced their intention to merge.

The Tasmanian Government and ACCC, among others, expressed concerns that the proposed merger might have a detrimental impact on retail banking services throughout the State. To address these concerns, CBA gave a commitment to the Tasmanian Government that Tasmanian customers will receive the same prices, new product innovations and services standards as those enjoyed by customers elsewhere in Australia. That commitment was subsequently incorporated in an enforceable undertaking given to the ACCC as a condition of approval of the merger. The same undertaking was given in relation to regional New South Wales, a region identified by ACCC as another market that might also be adversely affected by the merger.

As part of the undertaking, CBA agreed to appoint independent Monitors for Tasmania and New South Wales to ensure CBA comply with the undertaking. The Monitors' roles are to monitor CBA compliance and to report to ACCC every six months. The Tasmanian Government has nominated the Commission as the Monitor for Tasmania. To assist the Monitors, CBA also agreed to appoint an independent Reporter in accordance with the Reporting and Monitoring Guideline proposed by the Commission.

At the time of the publication of the Annual Report, the Commission had commenced preliminary work in setting up the monitoring and reporting framework in collaboration with the ACCC, CBA and the Independent Competition and Regulatory Commission, the Monitor appointed for regional New South Wales.



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## **Office Administration**

### **Human Resource Management and Policies**

Staff of the Government Prices Oversight Commission (excluding the Commissioner who is employed under the GPO Act) are employees of the Department of Treasury and Finance and are made available to the Commissioner (on a full-time basis). As such, Commission staff are subject to the same human resource management policies and procedures as applies in Treasury. Readers are referred to Treasury's Annual Report for any information in this regard.

### **Asset Management and Risk**

The Commission is co-located with the Office of the Tasmanian Electricity Regulator and all assets are shared between the two bodies. Major corporate support services for the Office, including the management of assets, are undertaken by Department of Treasury and Finance. Readers are referred to Treasury's Annual Report for any information in this regard.

### **Pricing Policies**

Under section 23 of the GPO Act a monopoly provider that is the subject of an investigation is liable for the whole or part of the reasonable expenses incurred by the Commission arising from the conduct and reporting of that investigation. On this basis the Commission is able to recover from the relevant entity(ies) all reasonable costs, including overheads, associated with the conduct of an investigation. From 1 July 2000 goods and services tax (GST) is required to be added to the invoice for services.

The Commission's competitive neutrality activities are undertaken free of charge to either the complainant or the entity subject to the complaint. However, the Regulations require a deposit of \$100 to be lodged with the Commission at the time a complainant lodges the complaint. This amount is refundable if the complaint is found to be justified.

Consultancy work is generally undertaken on a fee for service basis. However, the monitoring of petroleum product prices is undertaken on behalf of the Government and is funded through the Consolidated Fund. Monitoring of CBA compliance with the ACCC undertaking is funded by CBA.

### **Payments to Consultants**

The following payments were made to consultants during 1999-2000.

<b>Consultant</b>	<b>Amount \$</b>	<b>Work Undertaken</b>
Ross Kelly	11 250	Local Government Water Pricing
Corporate Communications	2 657	Professional Services – Media Conferences
Informed Sources	1 678	Provision of Petroleum Product Prices
PriceWaterhouseCooper (Paul Baxter)	2 196	Assistant Commissioner, Metro Pricing Investigation
A &R Vasiljuk	210	Compilation of Metro Pricing Investigation Report

### **Freedom of Information Act 1991**

During 1999-00 no requests for information were made of the Commission under the *Freedom of Information Act 1991*.

## Publications by the Commission during 1999-00

<b>Publication</b>	<b>Released</b>
<i>Urban Water Pricing Guidelines, Consistent with the COAG Water Reforms of Local Government in Tasmania</i>	October 1999
<i>Investigation into the Pricing Policies of Metro Tasmania Pty Ltd – Issues Paper</i>	February 1999
<i>Investigation into the Pricing Policies Metro Tasmania Pty Ltd – Draft Report</i>	April 1999
<i>Investigation into the Pricing Policies of Metro Tasmania Pty Ltd – Final Report</i>	June 2000
<i>Investigation into the Pricing Policies of the Motor Accidents Insurance Board – Issues Paper</i>	May 1999
<i>Petrol Pricing Monitoring Reports – published monthly on the Commission’s website</i>	September 1999 to June 2000



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## **FINANCIAL STATEMENTS**

For the period ended 30 June 2000

The following financial statements are included:

- ⇒ Certification
- ⇒ Audit Report
- ⇒ Notes to the Statement of Expenditure and Receipts
- ⇒ Statement of Expenditure and Receipts.

# Government Prices Oversight Commission

## **Certification of Financial Statements For the period ended 30<sup>th</sup> June 2000**

The accompanying Financial Statements of the Government Prices Oversight Commission have been prepared in compliance with the provisions of the *Government Prices Oversight Act 1995*. The statements are in agreement with the relevant accounts and records so as to present fairly the financial transactions for the period ended 30<sup>th</sup> June 2000 and such components of financial position as at 30<sup>th</sup> June 2000 which the Minister requires under section 40(3) of the *Government Prices Oversight Act 1995* to be disclosed in the Financial Statements.

At the date of signing I am not aware of any circumstances which would render the particulars included in the Financial Statements misleading or inaccurate.



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Andrew Reeves  
COMMISSIONER

22 August 2000

**INDEPENDENT AUDIT REPORT****To the Members of the Government Prices Oversight Commission****Scope**

I have audited the special purpose financial report comprising a financial statement prepared on the cash basis of accounting, including notes and supplementary information, of the Government Prices Oversight Commission for the year ended 30 June 2000. The Members of the Government Prices Oversight Commission are responsible for the preparation of the financial report on the cash basis of accounting in accordance with the direction given under the provisions of Section 42 (2) of the Financial Management and Audit Act 1990. I have conducted an independent audit of the financial report in order to express an opinion on it to the Members.

The audit has been conducted in accordance with Australian Auditing Standards and used procedures which included examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial report, and the evaluation of significant accounting estimates. These procedures have been undertaken to form an opinion whether in all material respects, the financial report is presented fairly in accordance with the cash basis of accounting which does not require the application of Accounting Standards and other mandatory professional reporting requirements.

The audit opinion expressed in this report has been formed on the above basis.

**Audit Opinion**

In my opinion the financial report presents fairly, in accordance with the cash basis of accounting the financial transactions of the Government Prices Oversight Commission for the year ended 30 June 2000 and such components of financial position at that date as are disclosed in the financial report.

C M Stanton  
**SENIOR AUDIT MANAGER**

18 October 2000

**HOBART**

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# Government Prices Oversight Commission

## Notes to the Statement of Expenditure and Receipts

### 1. Basis of Accounting

The Financial Statements have been prepared in accordance with the *Government Prices Oversight Act 1995* and Ministerial Directives under section 40(3) of that Act.

The transactions of the Government Prices Oversight Commission are funded through the Consolidated Fund. The records are maintained on the cash basis of accounting by the Department of Treasury and Finance on behalf of the Commission.

Figures presented have been rounded to the nearest thousand dollars.

### 2. Non-Current Assets

The Commission has a policy of recording all assets regardless of value in its asset register. These assets are recorded at cost and are not depreciated. However, for reporting purposes assets with a value greater than \$5 000 and an estimated useful life greater than two years are shown below.

As at 30<sup>th</sup> June 2000 the Commission did not have any assets which met the above reporting criteria.

### 3. Debtors

As at 30<sup>th</sup> June 2000 the Commission had no outstanding debtors.

### 4. Creditors

As at 30<sup>th</sup> June 2000 creditors for the Commission amounted to \$245.

# Government Prices Oversight Commission

## The Consolidated Fund Statement of Expenditure and Receipts For the year ended 30 June 2000

	1999 \$'000	2000 \$'000
<b>Receipts</b>		
Fees and Recoveries	347	72
<b>Total Receipts</b>	<b>347</b>	<b>72</b>
<b>Expenditure</b>		
Employee Entitlements	160	81
Supplies and Consumables	10	7
Rentals and Other Accommodation Related Outgoings	80	21
Communications	9	6
Travel and Transport	19	10
Consultancies	26	...
Information Technology	4	8
Other Expenses	20	7
<b>Total Expenditure</b>	<b>328</b>	<b>140</b>



## **Government Prices Oversight Commission: Summary of Procedures**

This appendix summarises the Commission's Investigation procedures and the procedures for setting of prices following an investigation.

### **Conduct of Investigations**

#### **The Notice**

An investigation is initiated by the Minister administering the Act (now the Minister for Finance) with the agreement of the Portfolio Minister (the Minister with responsibility for the 'monopoly provider'). Upon receiving the requirement to conduct an investigation, the Commission is required to give notice to the monopoly provider and in Tasmanian daily newspapers.

Such a notice must include the terms of reference and specify the purpose of the investigation, how submissions may be made to the Commission and the matters that the Commission would like submissions to address.

#### **Matters To Be Considered**

In addition to issues specifically mentioned in the Terms of Reference, Section 31 of the Act requires the Commission to consider certain matters. These include:

- ⇒ the cost of providing the monopoly service;
- ⇒ interstate or international benchmarks for prices, costs, revenues and return on assets;
- ⇒ the need to protect consumers from any adverse exercise of monopoly power;
- ⇒ any community service obligations of the monopoly provider;
- ⇒ the need for efficiency in the provision of the monopoly service and for the monopoly provider to be financially viable; and

⇒ the impact on pricing policies of any borrowing, capital, dividend and tax equivalent obligations of the monopoly provider, including obligations to renew or increase assets.

## **The Investigation Process**

In conducting an investigation, the Commission may receive written and oral submissions, consult with any person, hold hearings and seminars and conduct workshops.

Preliminary notice of any hearing is required to be advertised in the Tasmanian daily newspapers. The hearing is to be held in public unless the Commission considers that for reasons of public interest, or because the evidence to be presented is likely to be confidential or commercially sensitive, the hearing should be held in private.

## **Freedom of Information Act 1991**

The *Freedom of Information Act 1991* (FOI Act) applies to the activities of the Prices Oversight Commission. However, where the Commission gives directions prohibiting or restricting the publication of information provided to it, the FOI Act will not apply in respect of that information.

## **Section 29 Requests**

The Commission may require any person, normally an Agency or GBE, to supply information by a request under Section 29(1) of the Act. This information may be in oral or written form. Section 30(2) enables the Commission to give directions prohibiting or restricting the publication of all or part of this information.

As noted above, where the Commission gives such a direction under Section 30(2), the FOI Act will not apply in respect of that information or to records relating to the production of such information.

If information is provided in response to a Section 29 requirement and the provider of the information requests that the Commission give a direction under Section 30(2) to prohibit or restrict the publication of that information, the Commission will not make that information available to any person without prior consultation with the provider.

## **Reports and Recommendations**

### **Draft Report**

The Commission may prepare a draft report when required by the terms of reference, or by the Minister and Portfolio Minister, or by its own decision. If a draft report is made public, any person may make submissions. The Commission is required to take these submissions into consideration before making a final report.

### **Final Report**

The Commission must prepare a final report containing a recommendation in relation to the appropriate maximum prices chargeable by the monopoly provider for the monopoly service during the three years after completion of the report.

Section 4 of the Act sets out the form in which maximum prices may be expressed. These include:

- ⇒ maximum prices or the maximum rate of increase or the minimum rate of decrease in maximum prices;
- ⇒ average prices or average rates of increase or decrease in such average prices;
- ⇒ pricing policies or principles; and
- ⇒ by reference to a general price index, the cost of production, revenue, a rate of return on assets or any other factor.

### **Price-setting**

The Portfolio Minister must lay a copy of the Final Report before each House of Parliament within 20 sitting days of receiving the report. Copies are to be available for purchase by members of the public.

Where the monopoly provider sets its prices by statutory rule, or has been declared a "prescribed monopoly provider", then the process for price-setting includes Parliamentary oversight as described below:

- ⇒ Within 60 days of receiving the final report, the Portfolio Minister is required to consult with each Minister of the Crown and the monopoly provider in relation to the recommendations of the Commission. The Portfolio Minister must either accept the Commission's recommendations in relation to the

maximum prices, or take some alternative decision about those maximum prices.

- ⇒ The Portfolio Minister must then make an order (which is disallowable in Parliament) that gives effect to that decision.
- ⇒ The Act further requires that the monopoly provider must, during the 60 days between when the order is made and when it takes effect, re-determine its prices, tariffs or charges so that new arrangements are in place to conform with the order from the day it commences.
- ⇒ In re-setting its prices and in varying those prices at any time during the next three years, the monopoly provider must obtain a certificate from the Commission to the effect that the proposed prices are within the maximum prices, which have been established by the order.

In all other cases, the Act simply requires that after receiving a final report the Portfolio Minister, after consulting with each Minister of the Crown and the monopoly provider, must determine the maximum prices to be charged by the monopoly provider during the next three years and take such action as is necessary to ensure that those maximum prices are met.

### **Government Prices Oversight Commission: Complaints Mechanism**

The CPA requires that the State have in place a complaint mechanism to consider complaints relating to the application of the competitive neutrality principles<sup>1</sup>.

The Government decided that the Commission would be responsible for overseeing the complaints mechanism within Tasmania in addition to its existing function of oversight of the prices charged by public sector businesses that are monopoly, or near monopoly, suppliers of goods or services.

The Commission was empowered to administer the complaints mechanism by the inclusion of this function under Section 10 of the *Government Prices Oversight Act 1995* (the GPO Act) and by procedures set out in the *Government Prices Oversight Regulations 1998* (the Regulations).

Under the Regulations the Commission will:

- ⇒ only consider complaints by ‘a person who believes that a Government body has contravened any of the principles and is adversely affected by that supposed contravention’<sup>2</sup>; and
- ⇒ only formally consider complaints after the person ‘has discussed that supposed contravention with the Government body’<sup>3</sup> against which the complaint is made.

On the completion of an investigation into an alleged breach, the Commission is to report on its findings to the Treasurer and the Portfolio Minister and make its recommendations public in an annual report.

Where a complaint is lodged concerning a government business activity which, in accordance with the relevant Application Statement, is not subject to the competitive neutrality principles, the Commission will consider whether the

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<sup>1</sup> The national competition policy competitive neutrality principles as set out in clause 3 of the Competition Policy Agreements.

<sup>2</sup> See clause 4 of the *Government Prices Oversight Regulations 1998*.

<sup>3</sup> See clause 4 of the *Government Prices Oversight Regulations 1998*.

person has been adversely affected by the failure to apply the competitive neutrality principles to that business activity.

The process, which governs the review of complaints concerning the application of the competitive neutrality principles, can be divided into three stages:

*Stage 1 - Identification and Lodgement of a Complaint:* by the body or person adversely affected by the alleged non-compliance with the competitive neutrality principles. Prior to formal lodgement the complainant is required to discuss the complaint with the relevant government body.

*Stage 2 - Investigation of the Complaint:* by the Commissioner. As part of the investigation the government body subject of the complaint is required to provide the Commission with a statement of facts in response to each of the alleged breaches of the CNPs. The Commissioner is also able to seek additional material from the complainant and the body subject to the complaint and from any other relevant body.

*Stage 3 - Reporting on the Review Outcomes:* to the Minister responsible for the Government business (in the case of a local Government body to the Minister for Local Government) and the Minister responsible for administering NCP. The report may contain recommendations in relation to the application of the CNPs by the government body that was the subject of the complaint and or, in relation to the Application Statement itself. Where the Commission has made a recommendation in relation to the application of CNP, the relevant government body and Responsible Minister are required to advise the Commission of action being taken as a result of the Commission's findings and recommendations. Where the Commission has made a recommendation in relation to the Application Statement, the Treasurer is required to advise the Commission of action he/she intends to take in relation to the recommendation.

Under Regulation 18, the Commission in its Annual Report must include:

- ⇒ particulars of any contravention of the CNPs admitted by a government body in response to a complaint or determined by the Commission; and
- ⇒ include particulars of action taken by a government body as a result of such an admission or determination of a contravention of the CNPs.

The Commission may also include any other matters it considers appropriate to include or other matters that the Minister requires to be included.

To assist government bodies and potential complainants to understand the complaint mechanism process, the Commission released the *Competitive Neutrality Complaints Mechanism under National Competition Policy Guidelines* in early 1999. A copy of this document is available on the Commission's website. In addition the Commission's staff meet with potential complainants to discuss the process and requirements under the Regulations.

## Glossary of Terms

<b>Term</b>	<b>Meaning within the Context of this Report</b>
ACCC	Australian Competition and Consumer Commission
Application Statements	<i>Application of the Competitive Neutrality Principles under National Competition Policy and Application of the National Competition Policy to Local Government</i> both issued June 1996
ARMCANZ	Agriculture and Resource Management Council of Australia and New Zealand
CBA	Commonwealth Bank of Australia
CNPs	Competitive Neutrality Principles as defined in clause 3 of the CPA and the <i>Application Statements</i>
COAG	Council of Australian Governments
Commission	The Government Prices Oversight Commission unless otherwise specified
CPA	Competition Principles Agreement
CPI	Consumer Price Index (collated by the Australian Bureau of Statistics)
CSA	Community Service Activity – being a non-commercial activity undertaken by a State-owned Corporation under contract with the State Government
CSO	Community Service Obligations (as defined in the GBE Act 1995)
DoE	Department of Education
ESI Act	Electricity Supply Industry Act 1995
FCA	Full Cost Attribution (as defined in the <i>Guidelines for Implementing Full Cost Attribution Principles</i> separately issued to Tasmanian Government Agencies and Local Government in 1997)
GBE	Government Business Enterprise, being a wholly owned Government business subject to the GBE Act
GBE Act	<i>Government Business Enterprises Act 1995</i>
GST	the Commonwealth Government's Goods and Services Tax
GPO Act	<i>Government Prices Oversight Act 1995</i>

GPOC	Government Prices Oversight Commission
HCC	Hobart City Council
LPG	liquefied petroleum gas
MAIB	Motor Accidents Insurance Board
Metro	Metro Tasmanian Pty Ltd (established in February 1998)
MTT	Metropolitan Transport Trust (prior to 1998)
NCP	National Competition Policy
THAC	Tattersall's Hobart Aquatic Centre
the Regulations	the Government Prices Oversight Regulations 1998.

## **Compliance Index**

This compliance index has been compiled in response to the Auditor-General's Special Report No. 4 of May 1993, Standard of Annual Reporting by Government Departments.

The three columns in the index have the following meanings:

### **Reference:**

This refers to statutory disclosure requirements in Tasmanian public sector legislation.

FMAA: *Financial Management and Audit Act 1990*

TSS: *Tasmanian State Service Act 1984*

TSS(AR)R: Statutory Rule No. 123 of the Tasmanian State Service (Agency Reporting) Regulations

TI: Treasurer's Instructions

### **Description:**

This is a brief statement of the instruction, clause, section or subsection of the corresponding statutory disclosure requirement.

### **Location:**

This states where in this Annual Report the requirement is satisfied. In some instances the requirement is complied with by the report in its entirety.

Reference	Description	Location
<b>Overview</b>		
TSS (AR)R 3(a)(i)	Overall mission and objectives of Department, including its strategic plan and related programs	p8
FMAA s.27(1)(a) TSS s.33AB(1)(a)	A report on the performance of the functions and powers of the Head of Agency under any written law.	p17
FMAA s.27(1)(b) subject to s.27(2) TSS s.33AB(1)(b)	A report by any statutory office-holder employed in or attached to the Department, except where required to report under any other Act.	p1
TSS(AR)R3(a)(v)	Major initiatives taken to develop and give effect to Government policy.	p8
<b>Statutory/non-statutory bodies and companies</b>		
	A list of statutory and non-statutory bodies.	n.a.
<b>Legislation administered and major documents produced</b>		
TSS(AR)R 3(e)	A list of legislation administered by the Department.	p7
TSS(AR)R 3(d)(i)	A list of major documents or publications produced.	p31
<b>Performance information</b>		
TI701 (1)(a) & (e)	Consideration should be given to the following: <ul style="list-style-type: none"> <li>▪ performance measures (qualitative/quantitative)</li> <li>▪ any Ministerial directives in relation to financing or investment activities</li> <li>▪ relationships between performance reported and strategic objectives referred to in the corporate/strategic plan.</li> </ul>	p17
<b>Human resource management</b>		
TSS(AR)R 3(c)(i)	Staffing information as at 30 June.	p29
TSS(AR)R 3(c)(iii)	Equal employment opportunity.	p29
TSS(AR)R 3(c)(iv) TSS(AR)R 3(d)(iii)	Industrial democracy plans with outline of process available for appeals against decisions by Department.	p29
TSS(AR)R 3(c)(v)	Occupational health and safety strategies.	p29
<b>Asset management and risk policies</b>		
TI 701 (1)(g)	Asset management policies, strategies and initiatives.	p29
TI 701 (1)(c)	Pricing policies of goods and services.	p29
TI 701 (1)(f)	Risk management policies, activities or initiatives.	p29
<b>External/internal scrutiny</b>		
	Consultants engaged during the period.	p30
<b>Public access and awareness of services provided</b>		
TSS(AR)R 3(d)(ii)	A list of contact officers and points of public access.	piii
TSS(AR)R 3(d)(i)	Activities undertaken to develop community awareness of the services the Department provides.	p40
	Freedom of Information details.	p30
<b>Financial statements</b>		
TI 701 (1)(h) & (j)	Financial statements of the Department, including statements of any public body not required to report under any other Act, together with the audit opinion on those statements.	p33