

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PRODUCTIVITY COMMISSION BILL 1996

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer, the Hon Peter Costello, MP)



PRODUCTIVITY COMMISSION BILL 1996

OUTLINE

This Bill establishes the Productivity Commission (PC), which combines the Industry Commission (IC), the Economic Planning and Advisory Commission (EPAC) and the Bureau of Industry Economics. The Bill sets out the functions, powers and policy guidelines of the Commission as well as its composition and procedures.

Major Elements of the Legislation

(a) Functions of the Commission

The functions of the PC reflect the diverse activities carried out by the three former bodies. They include: to hold inquiries; to provide advice to the Minister; to provide secretariat and research services to Government bodies; to investigate competitive neutrality complaints; and to conduct its own research. The PC's inquiries, advice and its own research are specifically to be about 'matters relating to industry and productivity'. This is defined to include the productivity performance of industry or the economy as a whole, labour market issues and any legislation or administrative action that affects productivity performance.

(b) Operating Methods

The Bill provides for flexibility and a range of working methods in the performance of the Commission's functions. In referring a matter to the PC, the Minister may require it to do any or all of the following: to hold hearings, to publish a draft report, to report within a specified period, or to make recommendations. Provisions are made for the conduct of inquiries including the need for the Commission to publish a notice of hearings and inquiries, to hold all or part of a hearing in public unless the evidence is of a confidential nature and for written statements and evidence to be made public unless the material is of a confidential nature.

The Bill sets out provisions for the Minister to request advice and for Ministerial discretion to publish that advice. The Bill also permits the Minister to direct the PC to provide secretariat and research services to government bodies and permits the PC, with the Minister's consent, to conduct research services at the request of other bodies. Procedures for dealing with a competitive neutrality complaint are also described. Finally, the Bill makes provisions for the PC to mandatory access, if need be, of witnesses and information and for the protection from civil action of Officers of the Commission and witnesses (and from intimidation). The Bill also prescribes penalties where these provisions are not met.

(c) Constitution

The Commission will consist of a Chairman and between four to eleven Commissioners. The Bill prescribes the terms and conditions of appointment for both Commissioners and Associate Commissioners. As well, the Bill sets out provisions members of the Commission in relation to outside employment, remuneration and allowances, leave of absence, retirement and termination of employment. The role of the chairman, the nature and conduct of meetings and the provision for the PC to establish a Division of the Commission are also described in the Bill.

Commencement Dates

The Act shall commence immediately after the commencement of the *Productivity Commission (Repeals, Transitional and Consequential Amendments) Act 1996*.

Transitional Arrangements

These arrangements are set out in the accompanying Bill - the *Productivity Commission (Repeals, Transitional and Consequential Amendments) Act 1996*.

FINANCIAL IMPACT STATEMENT

The merger of the three advisory bodies - the Industry Commission, the Economic Planning Advisory Commission and the Bureau of Industry Economics - shall allow for increased efficiency and reduced overlap in the economic inquiry work of the Government. Therefore, the formation of a new Productivity Commission is expected to result in Budget cost savings of \$5 million in 1997-98, \$6.15 million in both 1998-99 and 1999-2000, and \$5 million each year thereafter.

ABBREVIATIONS

The following Abbreviations are used in this Explanatory Memorandum:

IC	Industry Commission
BIE	Bureau of Industry Economics
EPAC	Economic Planning Advisory Commission
PC	Productivity Commission
'Act'	The <i>Productivity Commission Act 1996</i> unless otherwise specified.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short Title

1. This clause provides for the Act to be cited as the *Productivity Commission Act 1996*.

Clause 2 - Commencement

2. The Act shall commence immediately after the commencement of the *Productivity Commission (Repeals, Transitional and Consequential Amendments) Act 1996*.

Clause 3 - Definitions

3. This clause provides for the definition of certain terms used in the Act. "Industry" is broadly defined. "Subject of Commonwealth power" follows the provisions of the Constitution.

Clause 4 - Act binds Crown

4. The clause provides that the Act binds the Crown.

PART - 2 ESTABLISHMENT AND FUNCTIONS OF PRODUCTIVITY COMMISSION

Clause 5 - Establishment of Commission

5. This clause establishes the PC.

Clause 6 - Functions of the Commission

6. This clause specifies the functions of the Commission. Broadly, the PC may hold inquiries, provide advice to the Minister, and initiate its own research on matters relating to industry and productivity. It can also provide research and secretariat services to government bodies as directed by the Minister. It will also receive and investigate competitive neutrality complaints and promote public understanding on matters relating to industry and productivity. Finally, the PC shall perform any other function conferred on it by this Act and may do anything incidental to these functions. "Matters relating to industry and productivity" is broadly defined.

Clause 7 - General power of Commission

7. This clause provides the PC with the power to do everything necessary and convenient in order to perform its functions.

Clause 8 - General policy guidelines for Commission

8. This clause specifies the Government policy guidelines to which the Commission is generally to have regard in the performance of its functions. These guidelines include any other matters notified to it by the Minister.

Clause 9 - Flexibility and range of working methods in performance of Commission's functions

9. The PC, in this clause, is given flexibility in the way it chooses to perform its functions.

Clause 10 - Annual Report

10. The provision requires that the Commission prepare an annual report and that the Minister table that report within 15 sitting days of its receipt. The annual report is to report on the Commission's operations during the year, the productivity performance of industry and the economy and the effects of assistance and regulations on industry and the economy generally. After 1 July 1997 the annual report must also relate the number of competitive neutrality complaints received and their outcomes. 'Assistance' is broadly defined.

PART 3 - INQUIRIES

Division 1 - Reference to Commission for inquiry and report

Clause 11 - Reference of matters to Commission for inquiry

11. This clause specifies that the Minister may require the Commission to hold hearings, may set a reporting date, and may require the Commission to make a draft report and/or make recommendations in relation to the matter referred to it. The Minister can withdraw or amend the terms of reference for an inquiry prior to the receipt of the report. The Commission must make a written report on the inquiry unless the Minister withdraws the reference. The Commission may also inquire into any matters it considers relevant to the matter referred to it by the Minister.

Clause 12 - Report of inquiry to be tabled

12. The clause ensures the final inquiry report shall be made public as soon as possible after the Minister receives it, unless the Commission recommends a delay. The 25 sitting day period allowed for the Minister to table the report has been set to allow sufficient time for printing.

Division 2 - Conduct of Inquiries

Clause 13 - Notice of inquiry

13. The clause requires that once the Commission has received a reference to hold an inquiry it must publish, in whatever ways it thinks fit, its intention to hold the inquiry and the period during which the inquiry is to be held.

Clause 14 - Notice of hearings

14. If the Minister requires the Commission to hold hearings the Commission must publish, in whatever ways it thinks fit: the intention; the subject matter; and the times and location of the hearings.

Clause 15 - Procedure at hearings

15. The clause provides for hearings to be held in public except when the Commission considers confidential material is involved. It also provides for sections 43 and 44 to apply to a hearing as if it were a meeting of the Commission.

Clause 16 - Written statements etc. to be made public

16. This clause provides that all information made available to a Commission inquiry hearing shall be made public, in any way it thinks fit, unless the source of that information objects to it being made public and the Commission would have taken the information in private if it had been given in a hearing.

PART 4 - OTHER FUNCTIONS OF THE COMMISSION

Division 1 - Advice, research and secretariat functions

Clause 17 - Requests for advice

17. This clause states that if the Minister refers a matter to the Commission for advice the Minister may prescribe that the advice be in writing, a time frame in which the advice is to be given and any other matter the Commission is to have regard to in their advice. This reference may be withdrawn by the Minister at any time. In preparing advice requested by the Minister the Commission may also advise on any matters it considers relevant to the matter referred.

Clause 18 - Minister may publish Commission's advice

18. The Minister may publish advice in any way he or she thinks fit and with deletions if the Minister thinks this is necessary in the public interest. If advice is published with deletions, that fact must also be published.

Clause 19 - Secretariat services and research services to government bodies

19. The Minister may, in writing, direct the Commission to provide secretariat services or research services to a government body. The Minister may specify the conditions for undertaking these services.

Clause 20- Research services on request of other bodies

20. The Commission may, with the written agreement of the Minister, undertake a specified research project for a body or person (other than a government body). The Minister may specify the conditions for undertaking this research project.

Division 2 - Competitive neutrality complaints

Clause 21 - Commission to receive complaints

21. This clause allows for a person to complain, in writing, to the Commission that competitive neutrality arrangements are either not being met by a Commonwealth Government business or business activity or have not been applied to it. Competitive neutrality arrangements are defined as those referred to in the *Commonwealth Competitive Neutrality Statement* of June 1996. The Competitive Neutrality Statement specifies that a business or business activity is an activity which has the following characteristics: (a) there is user-charging for goods or services (the user may be in the private sector or public sector); (b) there is an actual or potential competitor (either in the private or public sector) ie, users are not restricted by law or policy from choosing alternative sources of supply; and (c) managers of the activity have a degree of independence in relation to the production or supply of the good or service and the price at which it is provided.

Clause 22 - Fees

22. This clause provides that regulations may prescribe fees to be paid in relation to complaints. The Commission shall not proceed with a complaint until the prescribed fee has been paid.

Clause 23 - Commission procedures for dealing with complaint

23. This clause specifies the procedures for dealing with complaints. The Commission must investigate the complaint to determine whether there is a strong possibility that competitive neutrality arrangements are not being met or should be applied to a government business or business activity.

(The Productivity Commission may consider that there is a strong possibility that competitive neutrality arrangements are not being followed or should be implemented if a government business or business activity fails to cooperate with the Commission's investigations.) If so, the Commission must make a written report to the Minister of its findings and make a copy available to the complainant. The report may recommend that a further full inquiry be conducted under section 11, or that specific steps be taken to address the complaints. This clause also specifies a procedure for dealing with a complaint which, after initial investigation, is not found to warrant a report to the Minister. This would include a situation where the competitive neutrality arrangements have been complied with or where the government business or business activity takes steps to comply with the competitive neutrality arrangements. In these cases the Commission must make a written report to the complainant and will include a reference to the matter in the Commission's annual report.

Clause 24 - Minister's response to complaint

24. This clause sets out that the Minister must publish a report to the Minister prepared under section 23 and his or her response within 90 days of receiving the report. Before publishing the response, the Minister must consult with the Minister responsible for the government business or business activity that is the subject of the complaint. The Minister must also table a copy of the report and the response in each House of parliament within 15 sitting days of each House after the response is published.

Clause 25 - Minister's response to Commission inquiry into complaint

25. If the Minister refers a matter for inquiry under section 11 in response to a report prepared under section 23, the Minister must within 90 days of receiving a report publish his or her response to the inquiry report in whatever way he or she thinks fit. Before publishing the response, the Minister must consult with the Minister responsible for the government business or business activity (that is the subject of the complaint).

Clause 26 - Discretion not to investigate certain complaints

26. This clause allows the Commission not to pursue a complaint under certain conditions. The Commission must inform the complainant of a decision not to investigate the complaint.

PART 5 - CONSTITUTION OF COMMISSION

Division 1 - Structure of Commission

Clause 27 - Constitution of Commission

27. The clause sets out that the Commission will consist of a chairman and between 4 to 11 Commissioners. The functions and powers of the Commission, however, are not affected because of a vacancy in the Office of Chairman or if the number of Commissioners falls below 5 for a period of not more than 3 months.

Clause 28 - Appointment of Commissioners

28. Commissioners are to be appointed by the Governor-General. A Commissioner is only to be appointed if the Governor-General considers he or she has relevant qualifications and experience to the Commission's functions.

Clause 29 - Appointment of Associate Commissioners

29. This clause provides that the Minister may appoint Associate Commissioners to the PC after having consulted the Chairman.

Clause 30 - Terms and conditions of appointment of members

30. This clause states that Commissioners and Associate Commissioners of the Commission, with the exception of the Chairman, may be appointed on a full-time or part-time basis for not longer than 5 years. After this period they are eligible for re-appointment. The Chairman must be appointed on a full-time basis. A member's appointment is subject to the terms and conditions set out in the instrument of appointment.

Clause 31 - Outside employment

31. This clause limits the ability of full-time Commissioners and Associate Commissioners to engage in paid employment outside of their offices, except with the Minister's consent. Similarly, part-time Commissioners and Associate Commissioners should not engage in paid employment that, in the Minister's opinion, conflicts with their duties as a member of the PC.

Clause 32 - Remuneration and allowances

32. This clause states that the remuneration and allowances of Commissioners and Associate Commissioners is to be determined by the Remuneration Tribunal, or as prescribed.

Clause 33 - Leave of absence for full-time members

33. The clause states that full time members of the Commission are eligible for recreation leave as determined by the Remuneration Tribunal. It also enables the Minister to grant leave of absence (other than recreation leave) to a full-time member and to delegate authority to the Chairman to grant leave of absence to a full-time member.

Clause 34 - Leave of absence for part-time members

34. This clause allows the Chairman to grant leave of absence to a part-time member.

Clause 35 - Deputy Chairman

35. This clause provides that the Chairman may appoint a full-time Commissioner to be Deputy Chairman, who will assist the Chairman in his or her duties. The Deputy Chairman will hold office until his or her term of office expires, or he or she ceases to be a Commissioner or the Chairman ends the appointment, whichever first happens. A Commissioner may also resign an appointment as Deputy Chairman but this will only become effective once it is accepted by the Chairman.

Clause 36 - Acting appointments

36. This clause provides the grounds on which, the Deputy Chairman or another Commissioner may act as the Chairman and a person may act as a Commissioner. It also provides that the actions taken by acting appointee are not invalid if the proper appointment procedures were not followed.

Clause 37 - Resignation of member

37. This clause provides for the resignation of Commissioners and Associate Commissioners.

Clause 38 - Retirement of member

38. The clause provides for the retirement of Commissioners and Associate Commissioners on the grounds of invalidity.

Clause 39 - Termination of member

39. The clause specifies the grounds on which, the Governor-General may terminate a Commissioner's and an Associate Commissioner's appointment.

Clause 40 - Removal taken to be retirement on ground of invalidity

40. This clause specifies that if a member is removed under clause 39 on the grounds of physical or mental incapacity and is covered under the *Superannuation Act 1976* or the *Superannuation Act 1990*, he or she is taken to have retired on the grounds of invalidity.

Clause 41 - Retirement on ground of invalidity under the Superannuation Acts

41. This clause provides that a member (who has not reached his or her maximum retiring age) can only retire on invalidity grounds if the relevant Superannuation Board (the CSS or the PSS) of the two Superannuation Acts has given a to that affect.

Division 2 - Operation of Commission

Clause 42 - Role of Chairman

42. This clause specifies the Chairman's role of managing the Commission and ensuring the Commission's functions are performed efficiently.

Clause 43 - Meetings of Commission

43. The clause provides for the Chairman to convene whatever meetings he or she thinks are necessary and to decide the procedures to be followed in meetings. The Chairman must preside at all meetings. It also specifies quorum numbers and that in the event of disagreement questions can be decided by the Chairman. This clause is subject to clauses 44 and 45.

Clause 44 - Commission may sit in Divisions

44. This clause provides the authority and procedures for the Commission to form a Division.

Clause 45 - Constitution of Division by one member in exceptional circumstances

45. This clause provides that where only one member of the Division is able to attend a hearing, because of accident, illness or other reasons beyond the control of the other members, the Division is taken to consist of that sole member for purposes of the hearing.

Clause 46 - Delegation by Chairman

46. This clause provides for the Chairman to delegate all or any of his powers and functions to a member of the Commission.

Clause 47 - Disclosure of interests

47. The clause provides for the disclosure of interests by the Chairman and members of the Commission and prescribes the procedures to be followed in dealing with potential situations of conflict of interest.

PART 6 - STAFF AND CONSULTANTSClause 48 - Staff

48. The clause provides for the staff of the Commission to be appointed under the *Public Service Act 1922*. The Chairman is to have all the powers of a Secretary under the *Public Service Act 1922*.

Clause 49 - Consultants

49. The clause allows for the Chairman to appoint suitably qualified consultants to the Commission and to determine the terms and conditions under which they are engaged.

PART 7 - OFFENCES ETCClause 50 - Hindering or disrupting Commission

50. This clause provides that a person must not obstruct or hinder a member of the Commission in the performance of the Commission's functions or disrupt a Commission hearing. The clause prescribes the penalty for failing to comply - being a maximum penalty of 6 months imprisonment.

Clause 51 - Intimidation etc.

51. This clause protects persons who propose to give or have given assistance, evidence or information to the Commission from intimidation, threats, coercion, damage or loss. The clause prescribes the penalty for failing to comply - being a maximum penalty of 6 months imprisonment.

Clause 52 - Notice to person to provide information and documents

52. This clause gives the Chairman the power to obtain, by written notice, relevant information and documents for the purposes of an inquiry under section 11 (including for the purposes of a competitive neutrality complaint). The information and/or documentation must be forwarded within the period specified by the Chairman (at least 14 days) in the notice. The clause prescribes the penalty for failing to comply - being a maximum penalty of 6 months imprisonment.

Clause 53 - Summons to person to attend meeting

53. This clause provides for the Chairman to summons a person, in writing, to give evidence at a hearing and to provide specified documents. The clause prescribes the penalty for failing to comply - being a maximum penalty of 6 months imprisonment.

Clause 54 - Refusal to answer questions or produce documents

54. This clause prescribes that a witness at a hearing must not fail to answer a question as required by the Chairman or provide documents, as required by a summons under clause 53. The clause prescribes the penalty for failing to comply - being a maximum penalty of 6 months imprisonment.

Clause 55 - Preservation of the privilege against self-incrimination

55. This clause exempts a person from complying with clauses 52 and 54 if a statement or a response to a question would tend to incriminate the person or result in further attempts to obtain information that would tend to incriminate the person. This does not apply if a person has waived his or her right under this clause.

Clause 56 - False or misleading evidence or information

56. This clause provides that a person must not knowingly provide false or misleading material or information at hearings for the purposes of an inquiry or an inquiry held under section 11 (including for the purposes of a competitive neutrality complaint). The clause prescribes the penalty for failing to comply - being a maximum penalty of 6 months imprisonment.

Clause 57 - Restrictions on publication of evidence

57. This clause gives the Commission power to restrict the publication of evidence given before a hearing or of documents provided to the Commission in connection with a hearing. The clause prescribes the penalty for contravening any such direction - being a maximum penalty of 6 months imprisonment.

Clause 58 - Documents produced in relation to inquiry

58. The clause provides that the Commission may take possession of documents tendered under this Part for purposes of an inquiry, may keep them as long as necessary for the purposes of an inquiry and must permit them to be inspected by people who would be entitled to inspect them if they were not in the possession of the Commission.

Clause 59 - Allowances to witnesses

59. The clause provides for the payment of a person's travelling and other prescribed expenses when that person attends a hearing of the Commissions as a result of being summoned.

Clause 60 - Limitation of powers under this Part

60. This clause sets out the limitations of the Chairman's and Commission's powers under this Part. For example, to obtain information and documents from any person, is limited to the extent that the subject matter relates to a subject of Commonwealth power. However, a power must not be exercised to the extent that it would impair the capacity of a State to exercise its constitutional powers.

PART 8 - MISCELLANEOUSClause 61 - Protection from civil actions

61. This clause provides that civil action cannot be taken against a member of the Commission in relation to any loss or damage etc suffered by a person in the course of fulfilling the Commission's functions or powers. Similarly, civil proceedings cannot be brought against a person who, in good faith, provided a submission, statement or material to the Commission which caused another person loss, damage or injury.

Clause 62 - Charges for services

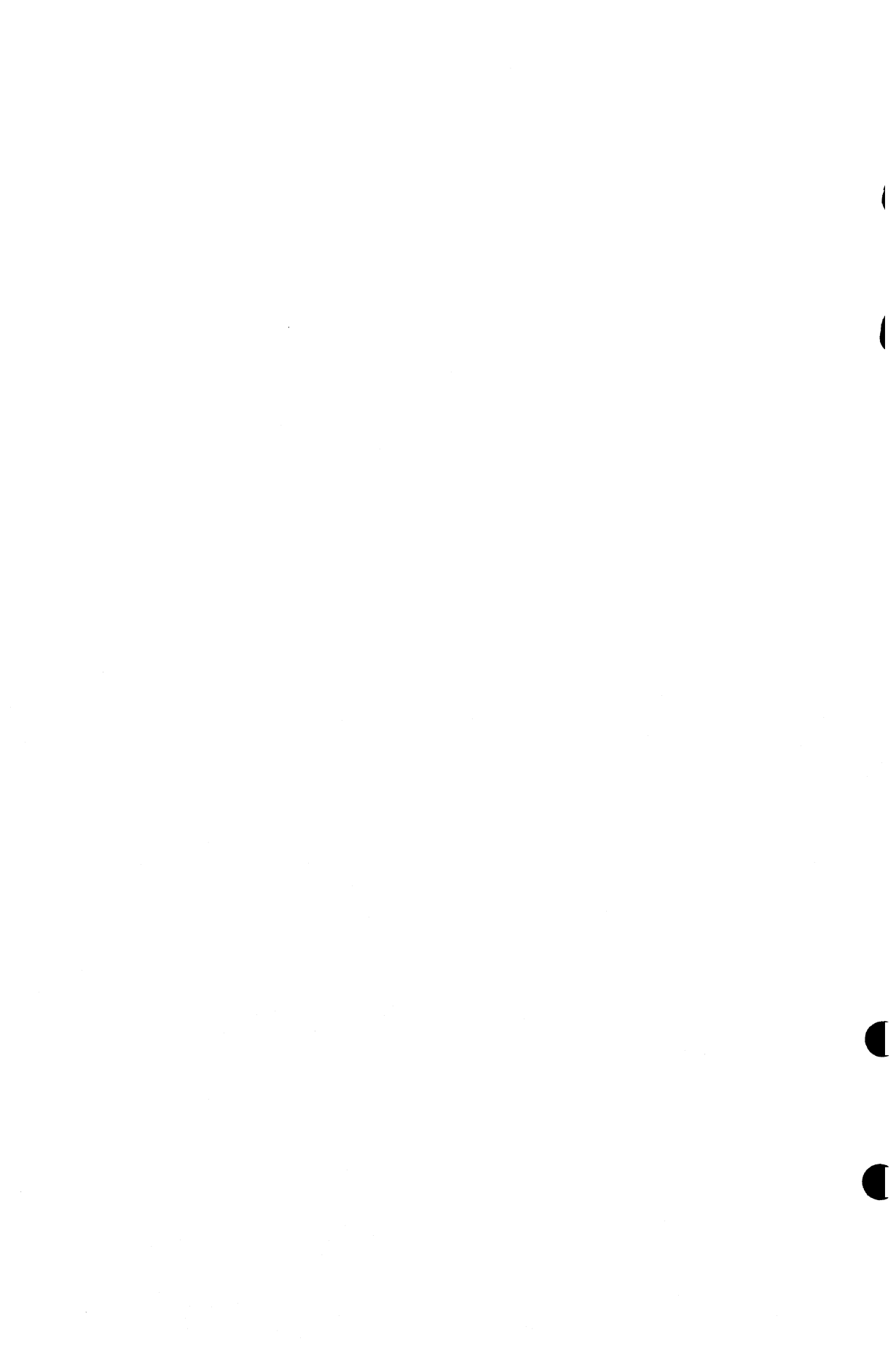
62. This clause allows the Commission to charge fees in relation to services it provides in the course of performing functions referred to in clauses 6(1)(f), (g) and (h).

Clause 63 - Conduct by directors, employees or agents

This clause describes when the conduct of directors, employees and agents shall be interpreted as being taken on behalf of another person or a body corporate - for purposes of proceedings for an offence against this Act.

Clause 64 - Regulations

63. This clause provides that the Governor-General may make regulations required or permitted by this Act or necessary or convenient to give effect to this Act.



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