

Water Industry Competition (Access to Infrastructure Services) Regulation 2007

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Water Industry Competition Act 2006*.

Premier

Explanatory note

The object of this Regulation is to make provision with respect to the scheme established by Part 3 of the *Water Industry Competition Act 2006*, including provision with respect to coverage and non-coverage declarations, access undertakings, access agreements and access determinations under that Part.

This Regulation is made under the *Water Industry Competition Act 2006*, including section 101 (the general power to make regulations) and various other provisions referred to in the Regulation.

1 Name of Regulation

This Regulation is the *Water Industry Competition (Access to Infrastructure Services) Regulation 2007*.

2 Commencement

This Regulation commences on the commencement of Part 3 of the Act.

3 Definitions

- (1) In this Regulation: "ACN" (short for "Australian Company Number") has the same meaning as it has in section 9 of the *Corporations Act 2001* of the Commonwealth. "contact details" includes postal and email addresses and telephone and fax numbers. "the Act" means the *Water Industry Competition Act 2006*.
- (2) Notes included in this Regulation do not form part of this Regulation.

4 Notice to be given by IPART in relation to certain applications

If an application that purports to have been made under section 24, 28 or 32 of the Act has not been duly completed, IPART must notify the applicant of that fact.

See section 80 of the *Interpretation Act 1987* with respect to the due completion of forms.

5 Coverage applications: section 25

- (1) For the purposes of section 25 (1) (b) of the Act, the following persons are prescribed as persons from whom submissions are to be invited in relation to a coverage application for an infrastructure service:
 - (a) the service provider for the service, except where the application has been made by the service provider,
 - (b) the Minister administering the *Protection of the Environment Operations Act 1997*,
 - (c) the Minister administering the *Public Health Act 1991*,
 - (d) the Minister administering Part 3 of the *Water Industry Competition Act 2006* and, if a different Minister administers Part 2 of that Act, that Minister also,
 - (e) the Minister administering the *Water Management Act 2000*.

(2) When inviting submissions from the persons referred to in subclause (1), IPART must notify them of:

- (a) the date on which the application was made, and
- (b) the date (4 months later) by which IPART must endeavour to furnish a report on the application to the Minister, as referred to in section 25 (4) of the Act.

An application will not have been made until it has been lodged in duly completed form (as to which, see clause 4).

(3) If at any time it appears to IPART that it will not be practicable for its report on the application to be provided to the Minister:

- (a) by the date notified under subclause (2) (b), or
- (b) if a later date has been notified under this subclause, by that later date,

IPART must notify the applicant, and the persons referred to in subclause (1), of the date by which IPART now expects the report to be provided.

6 Revocation applications: section 29

(1) For the purposes of section 29 (1) (b) of the Act, the following persons are prescribed as persons from whom submissions are to be invited in relation to a revocation application for an infrastructure service:

- (a) the service provider for the service, except where the application has been made by the service provider,
- (b) the applicant for the coverage application pursuant to which the service is currently the subject of a coverage declaration,
- (c) the Minister administering the *Protection of the Environment Operations Act 1997*,
- (d) the Minister administering the *Public Health Act 1991*,
- (e) the Minister administering Part 3 of the *Water Industry Competition Act 2006* and, if a different Minister administers Part 2 of that Act, that Minister also,
- (f) the Minister administering the *Water Management Act 2000*.

(2) When inviting submissions from the persons referred to in subclause (1), IPART must notify them of:

- (a) the date on which the application was made, and
- (b) the date (4 months later) by which IPART must endeavour to furnish a report on the application to the Minister, as referred to in section 29 (4) of the Act.

An application will not have been made until it has been lodged in duly completed form (as to which, see clause 4).

(3) If at any time it appears to IPART that it will not be practicable for its report on the application to be provided to the Minister:

- (a) by the date notified under subclause (2) (b), or
- (b) if a later date has been notified under this subclause, by that later date,

IPART must notify the applicant, and the persons referred to in subclause (1), of the date by which IPART now expects the report to be provided.

7 Binding non-coverage applications: section 33

(1) For the purposes of section 33 (1) (b) of the Act, the following persons are prescribed as persons from whom submissions are to be invited in relation to a binding non-coverage application for an infrastructure service:

- (a) the Minister administering the *Protection of the Environment Operations Act 1997*,
- (b) the Minister administering the *Public Health Act 1991*,
- (c) the Minister administering Part 3 of the *Water Industry Competition Act 2006* and, if a different Minister administers Part 2 of that Act, that Minister also,
- (d) the Minister administering the *Water Management Act 2000*.

(2) When inviting submissions from the persons referred to in subclause (1), IPART must notify them of:

- (a) the date on which the application was made, and
- (b) the date (4 months later) by which IPART must endeavour to furnish a report on the application to the Minister, as referred to in section 33 (4) of the Act.

An application will not have been made until it has been lodged in duly completed form (as to which, see clause 4).

(3) If at any time it appears to IPART that it will not be practicable for its report on the application to be provided to the Minister:

- (a) by the date notified under subclause (2) (b), or
- (b) if a later date has been notified under this subclause, by that later date,

IPART must notify the applicant, and the persons referred to in subclause (1), of the date by which IPART now expects the report to be provided.

8 Negotiation of access to infrastructure services

(1) IPART must have regard to the provisions of this clause in determining whether or not the parties to a dispute have, in good faith, attempted to resolve the dispute by negotiation, as referred to in section 40 (2) of the Act.

(2) Within 14 days after receiving a request from an access seeker for information under this subclause, a service provider that provides any infrastructure service that is the subject of a coverage declaration or access undertaking must make the following package of information available to the access seeker:

- (a) a list of all such services that are provided by the service provider, as described in the relevant coverage declaration or access undertaking,
- (b) information as to the procedure to be followed to obtain access to each such service, and as to the time it is likely to take to negotiate access (assuming the matter does not go to arbitration),
- (c) a copy of IPART's negotiation protocols, together with a statement to the effect that, unless otherwise agreed between the parties, those protocols will apply to any negotiations for access to any such service,
- (d) such information as IPART's negotiation protocols require to be provided,
- (e) such other information as the service provider considers appropriate to include in the package.

(3) IPART's negotiation protocols must include the following:

- (a) an obligation on each party to negotiate in good faith,
- (b) an obligation on the service provider to use all reasonable endeavours to accommodate the access seeker's requirements,
- (c) a statement of the information to be included in the service provider's package of information, as referred to in subclause (2) (d),
- (d) protocols as to the exchange of information between the parties, including:
 - (i) an obligation on the service provider to provide the access seeker with such information as is necessary to understand the derivation of any derived elements that occur in any proposed access agreement, and
 - (ii) an obligation on each party to give such undertakings as to confidentiality as the other party may reasonably require,
- (e) protocols as to the notice (if any) to be given to third parties in relation to the negotiations,
- (f) protocols as to the dispute resolution procedures to be attempted before an application is made to IPART for the dispute to be determined by arbitration.

(4) The parties to the dispute must give written notice to IPART of any agreement under which they undertake to use negotiation protocols other than IPART's.

9 Timelines for arbitration

(1) As soon as practicable after accepting an application for a dispute to be determined by arbitration pursuant to section 40 of the Act, IPART must notify the parties to the dispute, and the Minister, of:

- (a) the date on which the application was accepted, and
 - (b) the date (6 months later) by which the arbitrator must endeavour to determine the dispute, as referred to in section 40 (8) of the Act.
- (2) If at any time it appears to the arbitrator that it will not be practicable for the dispute to be determined:
- (a) by the date notified under subclause (1) (b), or
 - (b) if a later date has been notified under this subclause, by that later date,
- the arbitrator must give written notice to the parties to the dispute, and to the Minister, of the date by which the arbitrator now expects the dispute to be determined.

10 Basis on which dispute may be determined

- (1) For the purpose of determining a dispute by the date currently notified under clause 9, the arbitrator may make his or her determination on the basis of the information then available and on any assumptions that it is reasonable to make as to any information not then available.
- (2) For the purpose of determining a dispute between a service provider and an access seeker with respect to an infrastructure service the subject of a coverage declaration or access undertaking, the arbitrator may assume, in the absence of evidence to the contrary, that the service provider is able to provide the access seeker with such access to the service as is sought by the access seeker.
- (3) Before determining a dispute, the arbitrator must give written notice to the parties to the dispute:
- (a) of any assumptions that the arbitrator proposes to make for the purposes of his or her determination, and
 - (b) of each party's right to make submissions to the arbitrator with respect to any of those assumptions, and
 - (c) of the date by which any such submissions should be lodged with the arbitrator.
- (4) Failure to give such notice does not affect the validity of the arbitrator's determination.

See section 40 (10) of the Act which requires the arbitrator to give effect to any relevant access undertaking and prohibits the arbitrator from making a determination that would put the service provider in breach of its other legal obligations.

11 Application of regulations under the IPART Act

The provisions of the regulations under the *Independent Pricing and Regulatory Tribunal Act 1992* that modify the application of the *Commercial Arbitration Act 1984* to the arbitration of disputes under section 24A (2) of the firstmentioned Act apply to the arbitration of disputes under section 40 of the *Water Industry Competition Act 2006*.

12 Information to be included in the register of infrastructure services: section 44

- (1) The information to be included in the register of infrastructure services referred to in section 44 of the Act must include the information referred to in subclauses (2)-(4), and may include such other information as IPART considers appropriate.
- (2) The information to be included in relation to an infrastructure service the subject of a coverage declaration is as follows:
- (a) a description of the service,
 - (b) the name, ACN and contact details of the service provider for the service,
 - (c) the date on which the declaration was first made,
 - (d) the date on which any subsequent renewal of the declaration was made,
 - (e) the period for which the declaration is to have effect, and its expiry date.
- (3) The information to be included in relation to an infrastructure service the subject of a binding non-coverage declaration is as follows:

- (a) a description of the service,
 - (b) the name, ACN and contact details of the service provider for the service,
 - (c) the period for which the declaration is to have effect, and its expiry date.
- (4) The information to be included in relation to an infrastructure service the subject of an access undertaking is as follows:
- (a) a description of the service,
 - (b) the name, ACN and contact details of the service provider for the service,
 - (c) the date on which the undertaking took effect (that is, the date on which it was approved by IPART),
 - (d) the period for which the undertaking is to have effect, and its expiry date,
 - (e) a statement as to where the undertaking is available for inspection by members of the public (including, where appropriate, a link to the relevant website),
 - (f) a statement as to how copies of the undertaking may be obtained from the service provider.

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
ClI	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments *Water Industry Competition (Access to Infrastructure Services) Regulation 2007 (576)*. GG No 180 of 7.12.2007, p 9258. Date of commencement, 8.8.2008, cl 2 and GG No 95 of 8.8.2008, p 7438.