



New South Wales

Water Industry Competition (General) Amendment (IPART Pricing Investigations) Regulation 2012

under the

Water Industry Competition Act 2006

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

GREG PEARCE, MLC
Minister for Finance and Services

Explanatory note

The object of this Regulation is to amend the *Water Industry Competition (General) Regulation 2008* to set out the procedure to be followed by the Independent Pricing and Regulatory Tribunal when conducting investigations in connection with the exercise of its functions under the *Water Industry Competition Act 2006* with respect to the determination of pricing for water supply services and sewerage services provided by certain significant monopoly suppliers.

This Regulation is made under the *Water Industry Competition Act 2006*, including sections 91 (2) and 101 (the general regulation-making power) and clause 5 (a) of Schedule 2.

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Clause 1 Water Industry Competition (General) Amendment (IPART Pricing Investigations) Regulation 2012

**Water Industry Competition (General) Amendment
(IPART Pricing Investigations) Regulation 2012**

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Water Industry Competition Act 2006

1 Name of Regulation

This Regulation is the *Water Industry Competition (General) Amendment (IPART Pricing Investigations) Regulation 2012*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

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[1] Part 4

Insert after Part 3:

Part 4 Conduct of significant pricing investigations by IPART

Division 1 Preliminary

24A Definitions

In this Part:

draft report—see clause 24H.

investigated monopoly supplier, in relation to a significant pricing investigation, means the monopoly supplier that provides the investigated service.

investigated service, in relation to a significant pricing investigation, means the service that is the subject of the investigation.

IPART Act means the *Independent Pricing and Regulatory Tribunal Act 1992*.

IPART website means the website with the URL of www.ipart.nsw.gov.au, or any other website, used by IPART to provide public access to its reports.

issues paper—see clause 24E.

pricing methodology, in relation to a determination of pricing for an investigated service, means the methodology applied (or proposed to be applied) for the purpose of determining the appropriate pricing for the service.

public hearing, in relation to an issues paper, means a public hearing held under clause 24G on the paper.

significant methodological change, in relation to a significant pricing investigation, means any change in the pricing methodology applied (or proposed to be applied) to the investigated service that IPART considers is significantly different from the methodology previously applied to:

- (a) the determination of the pricing for the investigated service, or

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- (b) the determination of pricing for services of a kind to which the investigated service belongs.

significant pricing investigation—see clause 24B (1).

24B Application of Part

- (1) This Part applies in relation to the conduct of an investigation by IPART for a determination of the pricing (a *significant pricing investigation*) of a water supply service or sewerage service provided by a monopoly supplier that has been referred to IPART by the Minister under section 52 (1) (a) of the Act (whether before or after the commencement of this Part) if:

- (a) the investigation is begun after the commencement of this Part, and
- (b) a declaration under section 51 of the Act is in force in respect of the service, and
- (c) IPART is satisfied that, at the time it begins its investigation, the book value of the assets used by the monopoly supplier to provide the service exceeds \$1 billion (\$1,000,000,000).

Note. Section 51 of the Act enables the Minister, by order published in the Gazette, to declare that a specified licensed retail supplier or licensed network operator is a monopoly supplier in relation to a specified water supply or sewerage service, a specified area or a specified class of customers.

The book value of the assets of a business is the value given to those assets in the accounts of the business.

- (2) IPART is taken to have complied with the provisions of this Part concerning the conduct of a significant pricing investigation if it has substantially complied with (or has taken all reasonable steps to comply with) those provisions.

24C Relationship of Part to applied IPART Act provisions

- (1) In the event of an inconsistency between a provision of this Part and a provision of Division 7 of Part 3 of the IPART Act, the provision of this Part prevails to the extent of the inconsistency.

Note. Section 52 (2) of the Act provides that the provisions of Part 3 of the IPART Act in relation to government monopoly services apply to and in respect of a matter referred to IPART under section 52 of the Act in the same way as they apply to and in respect of a matter referred to IPART under section 12 of the IPART Act. However, section 91 (2) of the Act provides that the provisions of Division 7 (Investigations) of Part 3 of the IPART Act apply except to the extent that the regulations otherwise provide.

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- (2) Nothing in this Part is intended to limit the application of any other provision of Part 3 of the IPART Act in its application to significant pricing investigations.

24D Summary of procedure for conducting significant pricing investigations

- (1) The following is a summary of the procedure set out in this Part for the conduct of significant pricing investigations:
- (a) **IPART publishes issues paper and invites submissions**

IPART first publishes an issues paper on the investigation. It then invites submissions on the issues paper from the investigated monopoly supplier and other persons who wish to make submissions. See Division 2.
 - (b) **IPART holds public hearing**

IPART holds a public hearing on the issues paper it has published and hears further submissions on it. See Division 3.
 - (c) **IPART publishes draft report and invites submissions**

After holding the public hearing and considering submissions on the issues paper, IPART publishes a draft report for the investigation setting out its proposed determination of pricing, its proposed pricing methodology and responses to submissions made in relation to the issues paper. It then invites submissions on the draft report from the investigated monopoly supplier and other persons who wish to make submissions. See Division 4.
 - (d) **Requirements before IPART publishes final report**

Before IPART issues its final report for the investigation, it must consider the submissions made on the draft report and include certain matters in the report concerning its pricing methodology and approach to the investigation. See Division 5.
- (2) This clause does not affect the meaning or interpretation of any provision of this Part that it summarises.

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Division 2 Issues paper

24E IPART to publish issues paper

- (1) IPART must, as soon as it considers appropriate after the commencement of a significant pricing investigation, prepare an issues paper concerning the investigation.
- (2) The issues paper must set out the following matters:
 - (a) the pricing methodology and the general approach that IPART proposes to adopt in conducting the investigation,
 - (b) any significant methodological changes that IPART proposes to consider,
 - (c) the date or dates on which it proposes to hold public hearings on the paper.
- (3) The issues paper may include such other matters as IPART considers appropriate.
- (4) A copy of the issues paper must be:
 - (a) given to the investigated monopoly supplier, and
 - (b) published on the IPART website for access by members of the public.
- (5) Without limiting the application of section 22A (3) of the IPART Act, written submissions about the issues paper made by the investigated monopoly supplier are to be made available to members of the public on the IPART website.

Note. Section 22A (3) of the IPART Act enables IPART to restrict the disclosure of information contained in documents that it makes available.

24F Invitation to make submissions on issues paper

- (1) IPART must invite submissions to be made concerning the issues paper published for a significant pricing investigation from:
 - (a) the investigated monopoly supplier, and
 - (b) any other person who wishes to make a submission.
- (2) IPART must also invite submissions to be made concerning submissions made by the investigated monopoly supplier on the issues paper.
- (3) Submissions are to be made in writing unless they are made orally at a public hearing on the issues paper.
- (4) IPART is to specify a final date for the making of submissions.

- (5) IPART may specify different final dates for submissions by the investigated monopoly supplier and submissions by other persons and may extend the time for making submissions if it considers it appropriate to do so.

Division 3 Public hearing

24G IPART to hold public hearing on issues paper

- (1) IPART must hold a public hearing to hear submissions on an issues paper that it has published on a significant pricing investigation.
- (2) IPART may hold a public hearing over one or more hearing days.
- (3) IPART may hear oral submissions on the issues paper at the public hearing from the investigated monopoly supplier and such other persons as IPART considers appropriate.

Division 4 Draft report

24H IPART to publish draft report

- (1) IPART is to prepare a draft report for a significant pricing investigation as soon as it considers appropriate after the conclusion of its public hearing on the issues paper for the investigation.
- (2) Before preparing the draft report, IPART must consider all submissions made to it on the issues paper for the investigation, and on the investigated monopoly supplier's submissions, that it considers material.
- (3) The draft report must include the following matters:
 - (a) the determination of pricing that IPART proposes to make,
 - (b) the pricing methodology for the proposed determination,
 - (c) any significant methodological changes and the reasons for those changes,
 - (d) the assumptions that IPART has made for the proposed determination and the reasons for those assumptions,
 - (e) IPART's response to submissions it has received on the issues paper that IPART considers material, including the reasons for accepting or not accepting (whether wholly or in part) material submissions made by the investigated monopoly supplier.

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- (4) The draft report may include such other matters as IPART considers appropriate.
- (5) A copy of the draft report must be:
 - (a) given to the investigated monopoly supplier, and
 - (b) published on the IPART website for access by members of the public.

24I Invitation to make submissions on draft report

- (1) IPART must invite submissions to be made concerning the draft report published for a significant pricing investigation from:
 - (a) the investigated monopoly supplier, and
 - (b) any other person who wishes to make a submission.
- (2) Submissions must be made in writing.
- (3) IPART is to specify a final date for the making of submissions.
- (4) IPART may specify different final dates for submissions by the investigated monopoly supplier and submissions by other persons and may extend the time for making submissions if it considers it appropriate to do so.

Division 5 Final report

24J Requirements before final report is issued

- (1) Before IPART issues its final report for a significant pricing investigation, IPART must:
 - (a) consider all submissions made to it on the draft report for the investigation that it considers material, and
 - (b) ensure that the matters referred to in subclause (2) are included in the report.
- (2) The final report must include the following matters:
 - (a) the pricing methodology applied for the determination of pricing that IPART has made,
 - (b) any significant methodological changes and the reasons for those changes,
 - (c) the assumptions that IPART has made for the determination and the reasons for those assumptions,
 - (d) IPART's response to submissions it has received on the draft report that IPART considers material, including the reasons for accepting or not accepting (whether wholly or

in part) material submissions made by the investigated
monopoly supplier.

- (3) The final report may include such other matters as IPART
considers appropriate.

[2] Part 4, heading

Omit the heading. Insert instead:

Part 5 Miscellaneous