



New South Wales

Independent Pricing and Regulatory Tribunal Regulation 2017

under the

Independent Pricing and Regulatory Tribunal Act 1992

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Independent Pricing and Regulatory Tribunal Act 1992*.

GLADYS BEREJIKLIAN, MP
Premier

Explanatory note

The object of this Regulation is to repeal and remake, without substantial alteration, the *Independent Pricing and Regulatory Tribunal Regulation 2012*. That Regulation would otherwise be repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation modifies the application of the *Commercial Arbitration Act 2010* to the arbitration of disputes (relating to a public infrastructure access regime) under Part 4A of the *Independent Pricing and Regulatory Tribunal Act 1992*. The modifications concern the right to legal representation, the private hearing of disputes, the recovery of the fees and expenses of the Independent Pricing and Regulatory Tribunal and appeals to the Supreme Court on questions of law.

The provisions of this Regulation also apply to the arbitration of disputes under section 40 of the *Water Industry Competition Act 2006*—see section 40 of that Act and clause 11 of the *Water Industry Competition (Access to Infrastructure Services) Regulation 2007*.

This Regulation is made under the *Independent Pricing and Regulatory Tribunal Act 1992*, including sections 24A (Arbitration of access disputes) and 29 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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1 Name of Regulation

This Regulation is the *Independent Pricing and Regulatory Tribunal Regulation 2017*.

2 Commencement

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

Note. This Regulation repeals and replaces the *Independent Pricing and Regulatory Tribunal Regulation 2012* which would otherwise be repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

dispute means a dispute referred to in section 24A of the Act.

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

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Object of Regulation

The object of this Regulation is, in accordance with section 24A (2) of the Act, to modify the application of the *Commercial Arbitration Act 2010* to the arbitration of a dispute.

5 Legal representation

(1) A party to a dispute may be represented in proceedings before an arbitrator by an Australian legal practitioner only by leave granted by the arbitrator.

(2) An arbitrator may grant leave only if he or she is of the opinion:

(a) that representation of the party by an Australian legal practitioner is likely to shorten the hearing of the dispute or to reduce the costs of the dispute, or

(b) that the party would be unfairly disadvantaged if the party were not represented by an Australian legal practitioner, or

(c) that representation of the party by an Australian legal practitioner would assist the arbitrator in the conduct of the arbitration.

(3) This clause has effect instead of section 24A of the *Commercial Arbitration Act 2010*.

6 Private hearing of disputes

Despite sections 27E–27I of the *Commercial Arbitration Act 2010*, a dispute is to be heard in private, unless the arbitrator otherwise directs.

7 Costs of arbitration

For the purposes of section 33B of the *Commercial Arbitration Act 2010*, and without limiting the fees or expenses of the arbitrator or arbitrators, the fees and expenses of the arbitrator or arbitrators are taken to include:

- (a) all costs incurred by the arbitrator or arbitrators, and
 - (b) all costs incurred by the Tribunal,
- in relation to the arbitration of a dispute, including administrative costs, costs incurred in engaging consultants and expert witnesses, and witnesses' expenses.

8 Appeals against awards

- (1) A party to a dispute may, with the leave of the Supreme Court, appeal to that Court on a question of law arising out of an award.
- (2) Subclause (1) has effect instead of section 34A (1) and (2) of the *Commercial Arbitration Act 2010*.

9 Repeal and savings

- (1) The *Independent Pricing and Regulatory Tribunal Regulation 2012* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Independent Pricing and Regulatory Tribunal Regulation 2012*, had effect under that Regulation continues to have effect under this Regulation.