



New South Wales

Water Industry Competition (Access to Infrastructure Services) Regulation 2021

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*.

DOMINIC PERROTTET, MP
Treasurer

Explanatory note

The object of this Regulation is to remake, without significant changes, the provisions of the *Water Industry Competition (Access to Infrastructure Services) Regulation 2007*, which is repealed on 1 September 2021 by the *Subordinate Legislation Act 1989*, section 10(2).

The Regulation makes provision for the scheme established by the *Water Industry Competition Act 2006*, Part 3, including the following matters—

- (a) coverage declarations and non-coverage declarations,
- (b) access undertakings,
- (c) access agreements,
- (d) access determinations under that Part.

Contents

	Page
1 Name of Regulation	3
2 Commencement	3
3 Definitions	3
4 Notice to be given by IPART in relation to certain applications	3
5 Coverage applications—the Act, s 25	3
6 Revocation applications—the Act, s 29	4
7 Binding non-coverage applications—the Act, s 33	4
8 Negotiation of access to infrastructure services	5
9 Timelines for arbitration	6
10 Basis on which dispute may be determined	6
11 Application of regulations under the IPART Act	6
12 Information to be included in the register of infrastructure services—the Act, s 44	7
13 Saving	7

Water Industry Competition (Access to Infrastructure Services) Regulation 2021

under the

Water Industry Competition Act 2006

1 Name of Regulation

This Regulation is the *Water Industry Competition (Access to Infrastructure Services) Regulation 2021*.

2 Commencement

This Regulation commences on 1 September 2021 and is required to be published on the NSW legislation website.

Note— This Regulation replaces the *Water Industry Competition (Access to Infrastructure Services) Regulation 2007*, which is repealed on 1 September 2021 by the *Subordinate Legislation Act 1989*, section 10(2).

3 Definitions

In this Regulation—

ACN, short for Australian Company Number, has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth, section 9.

contact details includes the following—

- (a) postal and email addresses,
- (b) telephone and fax numbers.

the Act means the *Water Industry Competition Act 2006*.

Note— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application 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 the Act, section 24, 28 or 32 has not been duly completed, IPART must notify the applicant of that fact.

Note— See the *Interpretation Act 1987*, section 80, about the completion of forms.

5 Coverage applications—the Act, s 25

- (1) For the purposes of the Act, section 25(1)(b), 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 2010*,
 - (d) the Minister administering the *Water Industry Competition Act 2006, Part 3*, and, if a different Minister administers Part 2 of that Act, also that Minister,

- (e) the Minister administering the *Water Management Act 2000*.
- (2) When inviting submissions from the persons referred to in subsection (1), IPART must notify the persons of—
 - (a) the date on which the application was made, and
 - (b) the date, 4 months later, by which IPART must endeavour to provide a report on the application to the Minister, referred to in the Act, section 25(4).

Note— An application is not made until it has been duly completed—see section 4.
- (3) If it appears to IPART that it will not be practicable for the report on the application to be provided to the Minister, IPART must notify the applicant, and the persons referred to in subsection (1), of the revised date by which IPART expects the report to be provided—
 - (a) by the date notified under subsection (2)(b), or
 - (b) if a later date has been notified under this subsection—by the later date.

6 Revocation applications—the Act, s 29

- (1) For the purposes of the Act, section 29(1)(b), 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 under 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 2010*,
 - (e) the Minister administering the *Water Industry Competition Act 2006*, Part 3, and, if a different Minister administers Part 2 of that Act, also that Minister,
 - (f) the Minister administering the *Water Management Act 2000*.
- (2) When inviting submissions from the persons referred to in subsection (1), IPART must notify the persons of—
 - (a) the date on which the application was made, and
 - (b) the date, 4 months later, by which IPART must endeavour to provide a report on the application to the Minister, referred to in the Act, section 29(4).

Note— An application is not made until it has been duly completed—see section 4.
- (3) If it appears to IPART that it will not be practicable for the report on the application to be provided to the Minister, IPART must notify the applicant, and the persons referred to in subsection (1), of the revised date by which IPART expects the report to be provided—
 - (a) by the date notified under subsection (2)(b), or
 - (b) if a later date has been notified under this subsection—by the later date.

7 Binding non-coverage applications—the Act, s 33

- (1) For the purposes of the Act, section 33(1)(b), 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 2010*,
 - (c) the Minister administering the *Water Industry Competition Act 2006, Part 3*, 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 subsection (1), IPART must notify the persons of—
- (a) the date on which the application was made, and
 - (b) the date, 4 months later, by which IPART must endeavour to provide a report on the application to the Minister, referred to in the Act, section 33(4).
- Note—** An application is not made until it has been duly completed—see section 4.
- (3) If it appears to IPART that it will not be practicable for its report on the application to be provided to the Minister, IPART must notify the applicant, and the persons referred to in subsection (1), of the revised date by which IPART expects the report to be provided—
- (a) by the date notified under subsection (2)(b), or
 - (b) if a later date has been notified under this subsection, by the later date.

8 Negotiation of access to infrastructure services

- (1) For the purposes of the Act, Schedule 2, section 4(b), IPART must have regard to the provisions of this section 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 the Act, section 40(2).
- (2) Within 14 days after receiving a request from an access seeker for information under this subsection, a service provider that provides an infrastructure service that is the subject of a coverage declaration or access undertaking must make the following information available to the access seeker—
- (a) a list of the services provided by the service provider, as described in the relevant coverage declaration or access undertaking,
 - (b) information about the procedure to be followed to obtain access to each of the services, and 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, the protocols will apply to the negotiations for access to the service,
 - (d) the information required by IPART's negotiation protocols to be provided,
 - (e) other information the service provider considers appropriate.
- (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 provided by the service provider, referred to in subsection (2)(d),
 - (d) protocols about the exchange of information between the parties, including—
 - (i) an obligation on the service provider to provide the access seeker with the information necessary to understand the derivation of the derived elements that occur in a proposed access agreement, and
 - (ii) an obligation on each party to give the undertakings about confidentiality that the other party may reasonably require,

- (e) protocols about the notice, if any, to be given to third parties in relation to the negotiations,
 - (f) protocols about 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 an agreement under which the parties undertake to use negotiation protocols other than IPART's negotiation protocols.

9 Timelines for arbitration

- (1) As soon as practicable after accepting an application for a dispute to be determined by arbitration under the Act, section 40, 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, referred to in the Act, section 40(8).
- (2) If it appears to the arbitrator that it will not be practicable for the dispute to be determined, the arbitrator must give written notice to the parties to the dispute and the Minister of the revised date by which the arbitrator expects the dispute to be determined—
- (a) by the date notified under subsection (1)(b), or
 - (b) if a later date has been notified under this subsection—by the later date.

10 Basis on which dispute may be determined

- (1) For the purpose of determining a dispute by the date notified under section 9, the arbitrator may make the determination on the basis of the available information and on assumptions that are reasonable to make about information not available at the time.
- (2) For the purpose of determining a dispute between a service provider and an access seeker about an infrastructure service the subject of a coverage declaration or access undertaking, the arbitrator may assume, in the absence of evidence to the contrary, the service provider is able to provide the access seeker with the access to the service sought by the access seeker.
- (3) Before determining a dispute, the arbitrator must give written notice to the parties to the dispute of the following matters—
- (a) assumptions the arbitrator proposes to make for the purpose of the arbitrator's determination,
 - (b) each party's right to make a submission to the arbitrator about the assumptions,
 - (c) the date by which the submissions should be lodged with the arbitrator.
- (4) Failure to give written notice does not affect the validity of the arbitrator's determination.

Note— See the Act, section 40(10), which requires the arbitrator to give effect to relevant access undertakings and prohibits the arbitrator from making a determination that would put the service provider in breach of the provider's 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 2010* to the arbitration of disputes under the *Independent Pricing and Regulatory*

Tribunal Act 1992, section 24A(2) apply to the arbitration of disputes under the *Water Industry Competition Act 2006*, section 40.

12 Information to be included in the register of infrastructure services—the Act, s 44

- (1) For the purposes of the Act, section 44(2), the information to be included in the register of infrastructure services—
 - (a) must include the information referred to in subsections (2)–(4), and
 - (b) may include other information IPART considers appropriate.
- (2) The following information must be included in relation to an infrastructure service the subject of a coverage declaration—
 - (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 a subsequent renewal of the declaration was made,
 - (e) the period for which the declaration is to have effect, and the declaration’s expiry date.
- (3) The following information must be included in relation to an infrastructure service the subject of a binding non-coverage declaration—
 - (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 the declaration’s expiry date.
- (4) The following information must be included in relation to an infrastructure service the subject of an access undertaking—
 - (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 was approved by IPART,
 - (d) the period for which the undertaking is to have effect, and its expiry date,
 - (e) a statement about where the undertaking is available for inspection by members of the public, including, where appropriate, a link to the relevant website,
 - (f) a statement about how copies of the undertaking may be obtained from the service provider.

13 Saving

Any act, matter or thing that, immediately before the repeal of the *Water Industry Competition (Access to Infrastructure Services) Regulation 2007*, had effect under that Regulation continues to have effect under this Regulation.