



New South Wales

Independent Pricing and Regulatory Tribunal Regulation 2022

under the

Independent Pricing and Regulatory Tribunal Act 1992

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

VICTOR DOMINELLO, MP
Minister for Customer Service and Digital Government

Explanatory note

The object of this Regulation is to repeal and remake, without significant amendments, the *Independent Pricing and Regulatory Tribunal Regulation 2017*, which would otherwise be repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation modifies the application of the *Commercial Arbitration Act 2010* to the arbitration of disputes relating to public infrastructure access regimes under the *Independent Pricing and Regulatory Tribunal Act 1992*, Part 4A.

The modifications relate to the following matters—

- (a) the right to legal representation,
- (b) the private hearing of disputes,
- (c) the recovery of the costs of arbitration,
- (d) appeals to the Supreme Court on questions of law.

The provisions of this Regulation also apply to the arbitration of disputes under the *Water Industry Competition Act 2006*, section 40 and the *Water Industry Competition (Access to Infrastructure Services) Regulation 2021*, section 11.

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1 Name of Regulation

This Regulation is the *Independent Pricing and Regulatory Tribunal Regulation 2022*.

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repeals and replaces the *Independent Pricing and Regulatory Tribunal Regulation 2017*, which would otherwise be repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

3 Definitions

In this Regulation—

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

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.

4 Object of Regulation

The object of this Regulation is to modify, for the Act, section 24A, 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 by an Australian legal practitioner in proceedings before an arbitrator only if leave is granted by the arbitrator.
- (2) An arbitrator may grant leave only if, in the arbitrator's opinion—
 - (a) representation of the party by an Australian legal practitioner—
 - (i) is likely to shorten the hearing of the dispute, or
 - (ii) is likely to reduce the costs of the dispute, or
 - (iii) will assist the arbitrator in the conduct of the arbitration, or
 - (b) the party will be unfairly disadvantaged if the party is not represented by an Australian legal practitioner.
- (3) This section has effect instead of the *Commercial Arbitration Act 2010*, section 24A.

6 Private hearing of disputes

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

7 Costs of arbitration

- (1) For the purposes of the *Commercial Arbitration Act 2010*, section 33B, the fees and expenses of the arbitrator or arbitrators are taken to include all costs in relation to the arbitration of a dispute incurred by—
 - (a) the arbitrator or arbitrators, and
 - (b) the Tribunal.
- (2) For subsection (1), *costs* include the following—
 - (a) administrative costs,
 - (b) costs of engaging consultants and expert witnesses,
 - (c) witnesses' expenses.
- (3) Subsections (1) and (2) do not limit the fees or expenses of the arbitrator or arbitrators.

8 Appeals against awards

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

9 Repeal and savings

- (1) The *Independent Pricing and Regulatory Tribunal Regulation 2017* is repealed.
- (2) An act, matter or thing that, immediately before the repeal of the *Independent Pricing and Regulatory Tribunal Regulation 2017*, had effect under that Regulation continues to have effect under this Regulation.