



New South Wales

Independent Pricing and Regulatory Tribunal Amendment (Accredited State Water Regulator) Bill 2015

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Independent Pricing and Regulatory Tribunal Act 1992* to enable the Independent Pricing and Regulatory Tribunal (the **Tribunal**) to apply under the *Water Charge (Infrastructure) Rules 2010* of the Commonwealth (the **Commonwealth Water Charge Rules**) for the accreditation of arrangements under which the Tribunal approves or determines charges for the provision of certain water infrastructure services relating to water resources in that part of the Murray-Darling Basin that is located in New South Wales (**Basin water resources**). For that purpose, the Bill:

- (a) applies certain provisions of the Commonwealth Water Charge Rules as a law of New South Wales and gives those applied provisions effect during the period of accreditation, and
- (b) confers on the Tribunal the functions of a Regulator under those applied provisions, and
- (c) provides that the Tribunal is not subject to the control or direction of any Minister in the exercise of those functions, and
- (d) provides for the notification of the approval, revocation or cessation of the accreditation, and
- (e) provides for the interpretation of the applied provisions.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Independent Pricing and Regulatory Tribunal Act 1992 No 39

Schedule 1 [1] inserts Part 3B (proposed sections 24AE–24AL) into the *Independent Pricing and Regulatory Tribunal Act 1992* which contains the following provisions:

Part 3B Approval or determination of Murray-Darling Basin water charges

Proposed section 24AE defines expressions used in the proposed Part.

Proposed section 24AF applies the *Acts Interpretation Act 1901* of the Commonwealth (the *Commonwealth Interpretation Act*) as a law of New South Wales in relation to the provisions of the Commonwealth Water Charge Rules applied by proposed section 24AG (the *applied provisions*). The application of that Act to the Commonwealth Water Charge Rules is limited by section 5 of the *Water Act 2007* of the Commonwealth (the *Commonwealth Water Act*). Accordingly, the proposed section provides that the Commonwealth Interpretation Act applies to the applied provisions only to the extent to which it applies to the Commonwealth Water Charge Rules. The proposed section also provides that expressions used in the applied provisions have the same meaning as in the Commonwealth Water Act and are to be read and construed subject to that Act and so as not to exceed its rule-making power. The *Interpretation Act 1987* of New South Wales does not apply in relation to the applied provisions.

Proposed sections 24AG, 24AH, 24AI and 24AK provide for various matters that are preconditions (as set out in Schedule 5 to the Commonwealth Water Charge Rules) to the approval of an application for accreditation of arrangements. **Proposed section 24AG** applies the Commonwealth provisions as a law of New South Wales. **Proposed section 24AH** confers on the Tribunal all the functions of a Regulator under the applied provisions, which include the power to approve or determine charges for the provision of certain water infrastructure services relating to Basin water resources. **Proposed section 24AI** provides that the applied provisions have effect only during the period of the accreditation of arrangements. **Proposed section 24AK** provides that the Tribunal is not subject to Ministerial control or direction in the exercise of its functions under the applied provisions.

Proposed section 24AJ enables the Tribunal to apply to the Australian Competition and Consumer Commission for the accreditation of arrangements under which the Tribunal approves or determines charges for the provision of certain water infrastructure services relating to Basin water resources.

Proposed section 24AL provides for public notification by the Tribunal of the approval of an application for accreditation of arrangements or the revocation or cessation of such an accreditation.

Schedule 1 [2] makes it clear that the Tribunal is not required under the *Independent Pricing and Regulatory Tribunal Act 1992* to conduct investigations and make reports to the Minister on the determination of the pricing for, or a periodic review of pricing policies in respect of, certain water infrastructure services provided by Water NSW in relation to Basin water resources.



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New South Wales

Independent Pricing and Regulatory Tribunal Amendment (Accredited State Water Regulator) Bill 2015

No. , 2015

A Bill for

An Act to amend the *Independent Pricing and Regulatory Tribunal Act 1992* to enable the Tribunal to approve or determine charges for the provision of certain water infrastructure services in the Murray-Darling Basin.

The Legislature of New South Wales enacts:

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1 Name of Act

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This Act is the *Independent Pricing and Regulatory Tribunal Amendment (Accredited State Water Regulator) Act 2015*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Independent Pricing and Regulatory Tribunal Act 1992 No 39	1 2
[1] Part 3B		3
Insert after Part 3A:		4
	Part 3B Approval or determination of Murray-Darling Basin water charges	5 6
24AE	Definitions	7
	In this Part:	8
	ACCC means the Australian Competition and Consumer Commission established by section 6A of the <i>Competition and Consumer Act 2010</i> of the Commonwealth.	9 10 11
	accredited arrangements has the same meaning as in the Commonwealth Water Charge Rules.	12 13
	applied provisions means the Commonwealth provisions as applied by section 24AG.	14 15
	Basin water resources has the same meaning as State water resources has in the Commonwealth Water Charge Rules in relation to New South Wales.	16 17
	Commonwealth provisions has the same meaning as applied provisions has in rule 59 (2) of the Commonwealth Water Charge Rules.	18 19
	Commonwealth Water Charge Rules means the <i>Water Charge (Infrastructure) Rules 2010</i> of the Commonwealth.	20 21
	Part 6 operator has the same meaning as in the Commonwealth Water Charge Rules.	22 23
	Part 7 operator has the same meaning as in the Commonwealth Water Charge Rules.	24 25
	regulated charge has the same meaning as in the Commonwealth Water Charge Rules.	26 27
	Regulator has the same meaning as in the Commonwealth Water Charge Rules.	28 29
24AF	Interpretation of applied provisions	30
	(1) Subject to subsection (2), the <i>Acts Interpretation Act 1901</i> of the Commonwealth applies as a law of this State in relation to the applied provisions as if the applied provisions were a Commonwealth Act and each rule of the applied provisions were a section of a Commonwealth Act.	31 32 33 34
	(2) The <i>Acts Interpretation Act 1901</i> of the Commonwealth applies to the applied provisions only to the extent to which that Act applies to the Commonwealth Water Charge Rules.	35 36 37
	(3) The following provisions apply to the applied provisions:	38
	(a) expressions used in the applied provisions have the same meaning as in the <i>Water Act 2007</i> of the Commonwealth,	39 40
	(b) the applied provisions are to be read and construed subject to the <i>Water Act 2007</i> of the Commonwealth and so as not to exceed the rule-making power in section 92 of that Act or any other ancillary rule-making powers in that Act,	41 42 43 44

	(c) if a provision of the applied provisions would, but for paragraph (b), be construed as being in excess of any rule-making power referred to in that paragraph, it is taken to have effect to the extent to which it does not exceed that rule-making power.	1 2 3 4
	(4) The <i>Interpretation Act 1987</i> of New South Wales does not apply in relation to the applied provisions.	5 6
24AG	Application of Commonwealth provisions	7
	In respect of Basin water resources, the Commonwealth provisions, as in force from time to time, apply as a law of this State.	8 9
24AH	Functions of Tribunal	10
	The Tribunal has all the functions conferred on a Regulator under the applied provisions.	11 12
24AI	Operation of applied provisions	13
	Without limiting section 24AG, the applied provisions have effect only while the arrangements referred to in section 24AJ (a) are accredited arrangements.	14 15
24AJ	Application for accreditation	16
	The Tribunal may:	17
	(a) apply to the ACCC for section 24AH (to the extent to which it provides for the approval or determination by the Tribunal of regulated charges of Part 6 operators and Part 7 operators relating to Basin water resources in accordance with the applied provisions) to be accredited as accredited arrangements, and	18 19 20 21 22
	(b) do anything else necessary to enable those arrangements to be so accredited.	23 24
24AK	Tribunal not subject to Ministerial control in exercise of functions	25
	Despite any provision of this Act or any other law to the contrary, the Tribunal is not subject to the control or direction of any Minister in the exercise of its functions under the applied provisions.	26 27 28
24AL	Notification of approval, revocation or cessation of accreditation	29
	(1) If the ACCC approves an application for accreditation of the arrangements referred to in section 24AJ (a) as accredited arrangements, the Tribunal must publish notice of that approval within 7 days after that approval.	30 31 32
	(2) A notice under subsection (1) must:	33
	(a) be published in the Gazette and on the Tribunal's website, and	34
	(b) include a copy of the ACCC's decision to approve the application and the date on which the accreditation takes effect.	35 36
	(3) If the ACCC revokes the accreditation of the arrangements referred to in section 24AJ (a) as accredited arrangements, the Tribunal must publish notice of that revocation within 7 days after that revocation.	37 38 39
	(4) A notice under subsection (3) must:	40
	(a) be published in the Gazette and on the Tribunal's website, and	41
	(b) include a copy of the ACCC's decision to revoke the accreditation and the date on which the revocation takes effect.	42 43

- (5) If accreditation of the arrangements referred to in section 24AJ (a) as accredited arrangements ceases to have effect, the Tribunal must publish notice of that fact within 7 days after the date on which that accreditation ceases to have effect. 1
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- (6) A notice under subsection (5) must: 5
- (a) be published in the Gazette and on the Tribunal’s website, and 6
- (b) include the date on which the accreditation ceases to have effect. 7
- Note.** Part 9 of the Commonwealth Water Charge Rules provides for the approval of an application for accreditation of arrangements and the revocation of the accreditation. In accordance with that Part, the ACCC is required to publish notice of the approval or revocation on its website. 8
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[2] Schedule 1 Government agencies for which Tribunal has standing reference 12

Insert “(but excluding any services provided by Water NSW in respect of which fees and charges may be approved or determined in accordance with Part 6 or 7 of the *Water Charge (Infrastructure) Rules 2010* of the Commonwealth or the applied provisions, within the meaning of Part 3B)” after “Water NSW”. 13
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