

# Independent Pricing and Regulatory Tribunal Act 1992 No 39

[1992-39]



New South Wales

## Status Information

### Currency of version

Historical version for 15 January 2016 to 29 February 2016 (accessed 24 April 2024 at 22:58)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**  
Government Pricing Tribunal Act 1992
- **Does not include amendments by**  
[Passenger Transport Act 2014 No 46](#) (not commenced — to commence on 1.3.2016)

### Authorisation

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File last modified 26 February 2016

# Independent Pricing and Regulatory Tribunal Act 1992 No 39



New South Wales

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# Independent Pricing and Regulatory Tribunal Act 1992 No 39



New South Wales

An Act to establish the Independent Pricing and Regulatory Tribunal of New South Wales; to confer functions on the Tribunal in relation to pricing, industry and competition; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Independent Pricing and Regulatory Tribunal Act 1992*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

(1) In this Act:

**access regime** means a scheme (whether of a legislative, administrative or other kind) set up for the purpose of implementing the Competition Principles Agreement in respect of third-party access to services provided by means of infrastructure facilities owned, controlled or operated by a public or private sector body, where **service**:

- (a) includes the use of an infrastructure facility (such as a road or railway), the handling or transporting of things (such as goods or people) or a communications service or similar service, but
- (b) does not include the supply of goods, the use of intellectual property or the use of a production process, except to the extent that that supply or use is an integral but subsidiary part of the service.

**Chairperson** means the Chairperson of the Tribunal.

**Competition Principles Agreement** means the Competition Principles Agreement made on 11 April 1995 by the Commonwealth, the Territories and the States, as in force for the time being.

**government agency** means any public or local authority which supplies services to the public or any part of the public, and includes a government department, state owned corporation, water supply authority or public utility undertaking which supplies such services.

**government monopoly service** is defined in section 4.

**portfolio Minister:**

(a) in relation to a statutory State owned corporation—has the same meaning as in the *State Owned Corporations Act 1989*, or

(b) in relation to any other government agency or public authority—means the Minister who is responsible for the agency or authority,

or such other Minister as is nominated by the Premier by order published in the Gazette.

**price** includes any rate, fee, levy and charge and any other valuable consideration (however described), but does not include a State tax.

**pricing policies** includes policies relating to the level or structure of prices for services.

**public infrastructure access regime** means an access regime that relates to services provided by means of infrastructure facilities owned, controlled or operated by a government agency.

**service** includes:

(a) the supply of water, electricity, gas or other thing (whether or not of the same kind), and

(b) the provision of public transport, and

(c) the making available for use of facilities of any kind, and

(d) the conferring of rights, benefits or privileges for which the price is payable in the form of royalty, tribute, levy or similar exaction, and

(e) the exercise of the general functions of a public or local authority for which a rate or levy is payable by a section of the public,

but does not include anything for which a State tax is payable.

**State tax** means a tax such as land tax or stamp duty which is imposed for the public revenue purposes of the State.

**Tribunal** means the Independent Pricing and Regulatory Tribunal of New South Wales



established by this Act.

**water supply authority** has the same meaning as it has in the [Water Management Act 2000](#).

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) Notes included in this Act do not form part of this Act.

#### 4 Government monopoly services

(1) For the purposes of this Act, a **government monopoly service** is a service supplied by a government agency and declared by the regulations or the Minister to be a government monopoly service.

**Editorial note—**

For declarations under this subsection, see the Historical notes at the end of this Act.

(2) A service may be declared to be a government monopoly service if the Minister certifies that it is a service:

- (a) for which there are no other suppliers to provide competition in the part of the market concerned, and
- (b) for which there is no contestable market by potential suppliers in the short term in that part of the market.

(3) A service may be declared to be a government monopoly service by reference to:

- (a) a service specified or described in the declaration, or
- (b) the service for which a price specified or described in the declaration is payable.

(4) A declaration of a service by the Minister is to be made by order published on the NSW legislation website.

(5) To avoid doubt the service for which a navigation service charge under Part 5 of the [Ports and Maritime Administration Act 1995](#) is payable is capable of being declared to be a government monopoly service. The relevant port authority (within the meaning of that Part) is taken to be the supplier of that service.

(6) To avoid doubt, the services for which fees and charges are payable under Chapter 3 of the [Water Management Act 2000](#) are capable of being declared to be government monopoly services. The Water Administration Ministerial Corporation is taken to be the supplier of any such service.

- (7) To avoid doubt, the services for which fees and charges are payable under the [Water NSW Act 2014](#) are capable of being declared to be government monopoly services. Water NSW is taken to be the supplier of any such service.

## **Part 2 Tribunal**

### **5 Establishment of Tribunal**

- (1) There is established by this Act an Independent Pricing and Regulatory Tribunal of New South Wales. The Tribunal is a body corporate.
- (2) The Tribunal has such functions as are conferred or imposed on it by or under this or any other Act or law.
- (3) (Repealed)

### **6 Members and procedure of the Tribunal**

- (1) The Tribunal consists of 3 members appointed by the Minister as the permanent members of the Tribunal, and any number of additional members appointed by the Minister as temporary members.
- (2) Of the permanent members of the Tribunal, one is to be appointed as Chairperson.
- (3) A member of the Tribunal may be appointed as a full-time or part-time member.
- (4) The Minister is to ensure that the persons appointed as permanent members of the Tribunal have together a knowledge and understanding of economics, the interests of consumers and the interests of suppliers of services (including the interests of the Government as a supplier of services), whether the services supplied are monopoly services or not.
- (5) Schedule 2 has effect with respect to the members of the Tribunal.
- (6) Schedule 3 has effect with respect to the procedure of the Tribunal.

### **7 Tribunal not subject to Ministerial control in making determinations or recommendations**

- (1) The Tribunal is not subject to the control or direction of the Minister in respect of the contents of any determination or recommendation of the Tribunal, but in other respects is subject to the control and direction of the Minister.
- (2) The Tribunal is not subject to the control or direction of any other Minister in respect of any function conferred or imposed on the Tribunal by or under this or any other Act, except as provided in any Act.

## 8 Staff

Persons may be employed in the Public Service under the *Government Sector Employment Act 2013* to enable the Tribunal to exercise its functions.

### Note—

Section 59 of the *Government Sector Employment Act 2013* provides that the persons so employed (or whose services the Tribunal makes use of) may be referred to as officers or employees, or members of staff, of the Tribunal. Section 47A of the *Constitution Act 1902* precludes the Tribunal from employing staff.

## 9 Arrangements with other entities

- (1) The Tribunal may enter into arrangements with any government agency, or other body or person (whether in the public or private sector):
  - (a) for the provision of assistance to the Tribunal in connection with investigations under this Act or the exercise of other functions of the Tribunal (whether under this or any other Act), or
  - (b) for the provision of assistance by the Tribunal to the agency or other body or person by means of the provision of services that are within the Tribunal's field of expertise and relevant to its functions.
- (2) The Tribunal is not to enter into an arrangement for the provision of services by the Tribunal unless the Minister has approved of the arrangement.
- (3) In entering into an arrangement for the provision of services by the Tribunal, the Tribunal has a duty to ensure that giving effect to the arrangement will not interfere with the ability of the Tribunal to exercise its functions.
- (4) The Tribunal may engage consultants to assist it in the exercise of its functions.
- (5) The Tribunal is entitled to charge for the services that it provides under this section, whether or not regulations have been made under section 29 for or with respect to fees for those services.

## 10 Delegation of Tribunal's functions

- (1) The Tribunal may delegate its functions, other than this power of delegation, to any member of the Tribunal or to any committee of persons (whether of members only or members and other persons).
- (2) The Tribunal may not delegate its function of making determinations or recommendations under this or any other Act to a committee that includes persons who are not members of the Tribunal.
- (3) The Tribunal may delegate any of its functions to an officer of the Tribunal, other than this power of delegation and the Tribunal's functions of making or giving determinations, recommendations, advice or reports under this or any other Act.

- (4) This section does not limit any power of delegation conferred on the Tribunal by or under any other Act.

### **Part 3 Price determinations and other functions**

#### **Division 1 Pricing and electricity costs determinations: investigations and reports**

##### **11 Investigations and reports by Tribunal—standing reference**

- (1) The Tribunal is to conduct investigations and make reports to the Minister on the following matters:
- (a) the determination of the pricing for a government monopoly service supplied by a government agency specified in Schedule 1,
  - (b) a periodic review of pricing policies in respect of government monopoly services supplied by such an agency.
- (1A) Subsection (1) does not extend to such services of a government agency specified in Schedule 1 as may be excluded in that Schedule for the agency.
- (2) The regulations may amend Schedule 1. An agency may not be added to Schedule 1 by the regulations unless it is a government agency.
- (3) The Tribunal is to conduct investigations and make reports to the Minister on:
- (a) the determination of the proportion of the costs of a distribution network service provider, as referred to in section 25 (1) of the *Electricity Supply Act 1995*, that the distribution network service provider may require new customers to contribute, and
  - (b) the determination of the proportion of the costs of a distribution network service provider, as referred to in section 25 (2) of that Act, that the distribution network service provider may require further new customers to contribute, and
  - (c) the determination of the repayment, from any such contributions, to existing customers who have previously contributed to such costs, as referred to in section 25 (3) of that Act.

##### **12 Investigations and reports by Tribunal—reference by Minister**

- (1) The Tribunal is also to conduct investigations and make reports to the Minister on any of the following matters referred to the Tribunal by the Minister:
- (a) the determination of the pricing for a specified government monopoly service,
  - (b) a periodic review of pricing policies in respect of a specified government monopoly service.

- (2) This section applies to a government monopoly service whether or not it is supplied by a government agency specified in Schedule 1.
- (3) A reference with respect to the determination of the pricing of a government monopoly service may extend to an annual or other periodic determination of that pricing.
- (4) The Tribunal may request the Minister to refer a matter to the Tribunal under this section.
- (5) If the Minister has referred a matter to the Tribunal for investigation and report, the Minister may withdraw or amend the reference at any time before the Minister has received the report from the Tribunal.

## **Division 2 Industry and other matters: investigations and reports**

### **12A Investigations and reports on industry and other matters**

- (1) The Tribunal is to conduct investigations and make reports on any matter with respect to pricing, industry or competition that is referred to the Tribunal by the Minister.
- (2) If the Minister so directs, a report by the Tribunal on an investigation under this section that relates to one or more access regimes is to include general guidelines for those access regimes.
- (2A) Without limiting subsection (1), a matter relating to any adverse or unforeseen consequences of applying competitive neutrality principles (within the meaning of Part 4C) to a public authority (within the meaning of that Part) or class of public authorities may be referred by the Minister to the Tribunal for investigation and report under this section.
- (3) The Tribunal may request the Minister to refer a matter to the Tribunal under this section and is to cause a copy of any such request to be published in the Gazette within 28 days after the request is made.
- (4) If the Minister has referred a matter to the Tribunal for investigation and report, the Minister may withdraw or amend the reference at any time before the Minister has received the report from the Tribunal. The Minister must give written reasons for the withdrawal or amendment to the Tribunal, and the Tribunal is to cause a copy of those reasons to be published in the Gazette within 28 days after they are given to the Tribunal.
- (5) In this section:

***industry*** means industry of any kind (including any business or activity relating to goods or services), and a reference to industry is a reference to industry in general, a particular industry, a part of an industry, or a group or groups of particular industries.

## **Division 2A WHS matters: investigations and reports**

### **12AA Investigation and report by IPART in relation to SafeWork NSW**

- (1) The Tribunal is to conduct an investigation and make a report on such matters relating to the operational costs and expenses of SafeWork NSW as are referred to the Tribunal by the WHS Minister.
- (2) Any such report is to be provided to the WHS Minister within the period specified by the Minister in the terms of reference to the Tribunal.
- (3) In this section:

**SafeWork NSW** means SafeWork NSW as referred to in clause 1 of Schedule 2 to the [Work Health and Safety Act 2011](#).

**WHS Minister** means the Minister administering the [Work Health and Safety Act 2011](#).

## **Division 3 Access regimes**

### **12B Notice of proposed access agreements**

- (1) A government agency that, under a public infrastructure access regime, proposes to enter into an agreement for the granting of access to services provided by means of infrastructure facilities owned, controlled or operated by it must notify the Tribunal of the proposal at least 30 days before entering into the agreement.
- (2) The agency must also provide the Tribunal with a copy of the proposed agreement if the Tribunal requests it, and with such details of the proposal as the Tribunal may request.
- (3) The Tribunal may give advice on the proposal to the agency and to the Minister.
- (4) A failure to comply with this section in relation to a proposed agreement, or a failure by the Tribunal to give advice on the proposal, does not affect the validity of the agreement.

### **12C Registration of access agreements**

- (1) A government agency that, under a public infrastructure access regime, enters into an agreement for the granting of access to services provided by means of infrastructure facilities owned, controlled or operated by it must notify the Tribunal of that fact.
- (2) The agency must also provide the Tribunal with a copy of the agreement if the Tribunal requests it, and with such details of the agreement as the Tribunal may request.
- (3) The Tribunal must register the agreement and record the registration in the register

maintained under section 12E, including in that record the names of the parties to the agreement, the service to which it relates, the date when it was made and such other details as the regulations prescribe.

- (4) To remove any doubt, it is declared that an agreement registered under this section is a document within the meaning of section 22A and therefore may be made available to the public, subject to that section.
- (5) A failure to comply with this section in relation to an agreement, or a failure by the Tribunal to register it, does not affect the validity of the agreement.
- (6) Nothing in this section or section 12B prevents the Minister, at the request of a party to a proposed agreement under an access regime, from submitting to the Tribunal a draft of the agreement before the party enters into it, or prevents the Tribunal from giving advice to the Minister in relation to it.

#### **12D Failure to notify proposal or provide copy of agreement**

- (1) If an agency fails to notify the Tribunal under section 12B of a proposal for an agreement or fails to notify the Tribunal under section 12C of entering into the agreement, the Tribunal may request the agency to provide the Tribunal with written reasons for that failure.
- (2) The Tribunal must report to the Minister on the failure, and include in the report any reasons provided by the agency.

#### **12E Register of agreements**

The Tribunal must maintain a register of agreements and must make the register available for inspection by any person during the office hours of the Tribunal or such other hours as the regulations may prescribe.

### **Division 4 Investigations and reports: general**

#### **13 Investigations and reports by Tribunal—general**

- (1) The Minister may, in respect of an investigation and report under this Part by the Tribunal, do any or all of the following:
  - (a) specify a period within which the report is required to be submitted to the Minister,
  - (b) require the Tribunal to make a draft report available to the public, or to any specified persons or bodies, during the investigation,
  - (c) require the Tribunal to consider specified matters when making its investigations, and the Tribunal must act accordingly.

- (2) The Tribunal is required to give notice of any investigation under this Part in a newspaper circulating in the State and to the government agency concerned (if any) and, at the discretion of the Tribunal, to any person or body that may supply or use the relevant service. The notice (and any report of the investigation) is to include the terms of any reference by the Minister and of any requirement made by the Minister under subsection (1).
- (3) The Tribunal is required, after considering any public comments on any such terms of reference, to settle the final terms of reference in the matter in consultation with the Minister.
- (4) The Tribunal may also report to the Minister on any matter it considers relevant that arises from an investigation into a matter under this Part. Any such report may be part of the principal report to the Minister or may be a separate report.
- (5) The fact that a determination of the pricing of a government monopoly service is in force does not preclude a further investigation and report on the matter.
- (6) An investigation and report with respect to a government monopoly service or other service may be limited to a particular part or category of that service or to a particular period during which that service is supplied or in any other manner.
- (7) An investigation and report may relate to a number of goods or services supplied by the same or different suppliers.
- (8) A report is to include any minority report by a member of the Tribunal who wishes to make such a report.

## **Division 5 Price determinations and electricity costs determinations**

### **13A Determinations of pricing**

- (1) In making a determination of the pricing for a government monopoly service, the Tribunal is limited to either of the following approaches:
  - (a) the first approach, which involves either:
    - (i) fixing the maximum price for the government monopoly service, or
    - (ii) setting the methodology for fixing the maximum price for the government monopoly service, or
  - (b) the second approach, which involves both:
    - (i) fixing the maximum price for a part or parts of the government monopoly service, and
    - (ii) setting the methodology for fixing the maximum price for any other part or parts of the government monopoly service.



- (2) The Tribunal may not choose to make a determination that involves setting the methodology for fixing a maximum price, unless the Tribunal is of the opinion that it is impractical to make a determination directly fixing the maximum price.
- (3) The Tribunal is to include in its determination a statement of the reasons why it has chosen to make a determination that involves setting the methodology for fixing a maximum price.
- (4) In relation to determinations that involve the second approach (“mixed determinations”), a reference (however expressed) in this or any other Act to:
  - (a) a determination of, or fixing, the maximum price for a government monopoly service includes a reference to so much of a mixed determination as involves fixing the maximum price for any part or parts of a government monopoly service, and
  - (b) a determination of, or setting, the methodology for fixing the maximum price for a government monopoly service includes a reference to so much of a mixed determination as involves setting the methodology for fixing the maximum price for any part or parts of a government monopoly service.

#### **14 Method of fixing maximum prices**

- (1) A determination of the Tribunal of the maximum price for a government monopoly service may fix that price in any manner the Tribunal considers appropriate, including the following:
  - (a) by fixing an average price for a number of categories of the service,
  - (b) by fixing a percentage increase or decrease in existing prices,
  - (c) by fixing an average percentage increase or decrease in existing prices for a number of categories of the service,
  - (d) by fixing a specified price for each category of the service (if any other manner is not considered appropriate).
- (2) The Tribunal may fix such a price by reference to:
  - (a) a general price index (such as the Consumer Price Index), or
  - (b) the government agency’s economic cost of production, or
  - (c) a rate of return on the assets of the government agency.

#### **14A Setting of methodology for fixing prices**

- (1) A determination of the Tribunal of the methodology for fixing the price for a government monopoly service may be made in any manner the Tribunal considers

appropriate, including, for example, by reference to maximum revenue, or a maximum rate of increase or minimum rate of decrease in maximum revenue, for a number of categories of the service concerned.

- (2) In making such a determination, the Tribunal may have regard to such matters as it considers appropriate, including, for example, the following:
  - (a) the government agency's economic cost of production,
  - (b) past, current or future expenditures in relation to the government monopoly service,
  - (c) charges for other monopoly services provided by the government agency,
  - (d) economic parameters, such as:
    - (i) discount rates, or
    - (ii) movements in a general price index (such as the Consumer Price Index), whether past or forecast,
  - (e) a rate of return on the assets of the government agency,
  - (f) a valuation of the assets of the government agency,
  - (g) the need to maintain ecologically sustainable development (within the meaning of section 6 of the *Protection of the Environment Administration Act 1991*) by appropriate pricing policies that take account of all the feasible options available to protect the environment,
  - (h) the need to promote competition in the supply of the service concerned,
  - (i) considerations of demand management (including levels of demand) and least cost planning.
- (3) In any report of such a determination, the Tribunal must indicate what regard it has had to the matters set out in subsection (2) in reaching that determination.

#### **14B Determinations of electricity costs contributions and related matters**

- (1) In making a determination of the proportion of costs that a distribution network service provider may require new customers or further new customers to contribute, the Tribunal may fix the maximum proportion of the costs or set the methodology for fixing the maximum proportion of the costs.
- (2) A determination of the Tribunal of the maximum proportion of costs may fix that proportion in any manner the Tribunal considers appropriate.
- (3) In making a determination as to the repayments from such contributions to existing

customers, the Tribunal may set the methodology for determining the repayments.

- (4) A determination of the Tribunal of the methodology for fixing the maximum proportion of costs or for determining repayments may be made in any manner the Tribunal considers appropriate.

#### **15 Matters to be considered by Tribunal under this Act**

- (1) In making determinations and recommendations under this Act, the Tribunal is to have regard to the following matters (in addition to any other matters the Tribunal considers relevant):
- (a) the cost of providing the services concerned,
  - (b) the protection of consumers from abuses of monopoly power in terms of prices, pricing policies and standard of services,
  - (c) the appropriate rate of return on public sector assets, including appropriate payment of dividends to the Government for the benefit of the people of New South Wales,
  - (d) the effect on general price inflation over the medium term,
  - (e) the need for greater efficiency in the supply of services so as to reduce costs for the benefit of consumers and taxpayers,
  - (f) the need to maintain ecologically sustainable development (within the meaning of section 6 of the *Protection of the Environment Administration Act 1991*) by appropriate pricing policies that take account of all the feasible options available to protect the environment,
  - (g) the impact on pricing policies of borrowing, capital and dividend requirements of the government agency concerned and, in particular, the impact of any need to renew or increase relevant assets,
  - (h) the impact on pricing policies of any arrangements that the government agency concerned has entered into for the exercise of its functions by some other person or body,
  - (i) the need to promote competition in the supply of the services concerned,
  - (j) considerations of demand management (including levels of demand) and least cost planning,
  - (k) the social impact of the determinations and recommendations,
  - (l) standards of quality, reliability and safety of the services concerned (whether those standards are specified by legislation, agreement or otherwise).

- (2) In any report of a determination or recommendation made by the Tribunal under this Act, the Tribunal must indicate what regard it has had to the matters set out in subsection (1) in reaching that determination or recommendation.
- (3) To remove any doubt, it is declared that this section does not apply to the Tribunal in the exercise of any of its functions under section 12A or under the applied provisions within the meaning of Part 3B.
- (4) This section does not apply to the Tribunal in the exercise of any of its functions under section 11 (3).

## **16 Report on financial impact if maximum price not charged**

If the Tribunal determines to increase the maximum price for a government monopoly service or determines a methodology that would or might increase the maximum price for a government monopoly service, the Tribunal is required to assess and report on the likely annual cost to the Consolidated Fund if the price were not increased to the maximum permitted and the government agency concerned were to be compensated for the revenue foregone by an appropriation from the Consolidated Fund.

### **16A Passing through efficient costs in price determinations**

- (1) The portfolio Minister for a government agency may direct the Tribunal, when it makes a determination of the maximum price for a government monopoly service provided by the agency, to include in the maximum price an amount representing the efficient cost of complying with a specified requirement imposed on the agency.
- (2) The portfolio Minister for a government agency may direct the Tribunal, when it makes a determination of the methodology for fixing the maximum price for a government monopoly service provided by the agency, to include in the methodology a factor representing the efficient cost of complying with a specified requirement imposed on the agency.
- (3) Such a requirement may only be a requirement imposed by or under a licence or authorisation, a requirement imposed by a ministerial direction under an Act, or some other requirement imposed by or under an Act or statutory instrument.
- (3A) A portfolio Minister may give a direction to the Tribunal under this section only if:
  - (a) the portfolio Minister has consulted with the Tribunal on the proposed direction before giving the direction, and
  - (b) the Minister administering this Act has approved the direction.
- (4) The Tribunal is required to comply with a direction under this section.
- (5) In its report, the Tribunal is required to set out the terms of the direction and to include an explanation of the manner in which it has complied with the direction.

## **17 Gazettal of determinations**

- (1) A determination in a report of the Tribunal of the pricing for a government monopoly service or for the purposes of section 11 (3):
  - (a) is to be published in the Gazette by the Minister as soon as practicable after the report is received by the Minister, and
  - (b) takes effect on the day it is so published or on a later day specified in the determination for that purpose.
- (2) A determination may specify different days for the commencement of different parts of the determination.

## **18 Implementation of price determinations and other reports**

- (1) A determination of the Tribunal of the maximum price for a government monopoly service is to be implemented as follows:
  - (a) if the price for the service is fixed by a Minister, a public official (other than the Governor) or the relevant government agency—the Minister, official or agency is to ensure that the price does not exceed the maximum price determined by the Tribunal,
  - (b) in any other case—the Minister responsible for the supply of the service (or for the government agency that supplies the service) is required to take the appropriate action available to the Minister to ensure that the price does not exceed the maximum price determined by the Tribunal.
- (1A) A determination made by the Tribunal of the methodology for fixing the maximum price for a government monopoly service is to be implemented as follows:
  - (a) if the price for the service is fixed by a Minister, a public official (other than the Governor) or the relevant government agency—the Minister, official or agency is to ensure that the price does not exceed the maximum price fixed in accordance with a proper application of the methodology,
  - (b) in any other case—the Minister responsible for the supply of the service (or for the government agency that supplies the service) is required to take the appropriate action available to the Minister to ensure that the price does not exceed the maximum price fixed in accordance with a proper application of the methodology.
- (2) The approval of the Treasurer must be obtained if another Minister, an official or an agency fixes (or takes action to fix) the price below the maximum price determined by the Tribunal or calculated in accordance with the determination of the Tribunal.
- (3) If a report of the Tribunal makes recommendations with respect to the pricing policies for a government monopoly service, the recommendations are to be taken into

account in the fixing of prices for those services.

- (4) A government agency which is the subject of a determination or recommendation of the Tribunal is required to include in its annual report:
  - (a) particulars of how any such determination has been implemented, and
  - (b) a statement of whether any such recommendation has been implemented and, if not, the reasons why it has not been implemented.
- (5) A government agency that is the subject of a determination or recommendation of the Tribunal is also required to include the particulars and statement required under subsection (4) in the submissions made by the agency to the Tribunal during any subsequent investigation of the same matter as that to which the determination or recommendation related.

## **Division 6 Publication of reports**

### **19 Reports to be made public**

- (1) As soon as practicable after the Minister receives a report from the Tribunal under this Part, the Minister is to arrange for copies of the report to be made available for public inspection.
- (2) However, if the Tribunal in the special circumstances of the case recommends in its report that the public release of the report, or part of the report, be delayed for a specified period, subsection (1) applies to the report, or that part of the report, as if the report were received by the Minister at the end of that period.
- (3) The arrangements under subsection (1) for making of copies of a report available for public inspection are to include:
  - (a) the tabling of a copy of the report in each House of Parliament within 5 sitting days of the House, and
  - (b) the forwarding of a copy of the report, within 5 days of its receipt by the Minister, to the Parliamentary Librarian to form part of the Parliamentary Library's collection, and
  - (c) the making of a copy of the report available for public inspection at the office of the Tribunal during its ordinary hours of business.
- (4) Copies of the report are also to be made available for sale at the principal office of the Government Information Service during its ordinary hours of business.

## **Division 7 Investigations**

## **19A Definition**

In this Division:

**investigation** means an investigation by the Tribunal for the purposes of this Part.

## **20 General conduct of investigations**

(1) In an investigation, the Tribunal:

- (a) is to act with as little formality as possible, and
- (b) may inform itself on any matter in any way it thinks fit and is not bound by the rules of evidence, and
- (c) may receive information or submissions in the form of oral or written statements, and
- (d) may consult with such persons as it thinks fit.

(2) The Tribunal is not required to hear evidence from a government agency or any other person affected by any investigation of the Tribunal.

## **21 Hearings in investigations**

(1) The Tribunal is required to hold at least one hearing for the purposes of each investigation and may hold further hearings if it considers that it is necessary to do so.

(2) The Tribunal may also hold public seminars, conduct workshops and establish working groups and task forces for the purposes of an investigation.

(3) Before the Tribunal begins to hold hearings for the purposes of an investigation, it must give reasonable notice, by advertisement published in a newspaper circulating in the State, of its intention to hold the hearings, the subject of the hearings and the time and place at which the first of the hearings is to begin.

(3A) The Tribunal may call for written submissions to be made before the hearings commence, and may specify a time and date by which those submissions must be made. The Tribunal may extend the time for the making of submissions.

(4) A hearing is to be held in public.

(5) However, if the Tribunal is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason, it may:

- (a) direct that a hearing or a part of a hearing is to take place in private and give directions as to the persons who may be present, or
- (b) give directions prohibiting or restricting the publication of evidence given before the hearing or of matters contained in documents given to the Tribunal.

(6) A person must not contravene a direction given under subsection (5) (b).

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

(7) Schedule 3 applies to a hearing, so far as that Schedule is capable of so applying, as if the hearing were a meeting of the Tribunal.

## **22 Tendering information, documents and evidence**

(1) For the purposes of an investigation, the Chairperson may, by notice in writing served on an officer of a government agency or on any other person, require the officer or other person to do any one or more of the following:

(a) to send to the Tribunal, on or before a day specified in the notice, a statement setting out such information as is so specified,

(b) to send to the Tribunal, on or before a day specified in the notice, such documents as are so specified,

(c) to attend at a hearing before the Tribunal to give evidence.

(2) If documents are given to the Tribunal under this section, the Tribunal:

(a) may take possession of, and make copies of or take extracts from, the documents, and

(b) may keep possession of the documents for such period as is necessary for the purposes of the investigation to which they relate, and

(c) during that period must permit them to be inspected at all reasonable times by persons who would be entitled to inspect them if they were not in the possession of the Tribunal.

(3) A person (not being an officer of a government agency) who attends at a hearing because of a notice under this section is entitled to be paid by the State such allowances and expenses as are prescribed by the regulations or (subject to the regulations) as are approved by the Treasurer.

(4) (Repealed)

## **22A Making submissions and documents available to public**

(1) The Tribunal must make a document obtained by the Tribunal in connection with an investigation (including any submission given to the Tribunal under section 21 and any statement or document given to the Tribunal under section 22) available for inspection on request by any person, unless the document contains information that the Tribunal would not be required to disclose under the [Government Information \(Public Access\) Act 2009](#).



- (2) The Tribunal may make such a document available for inspection on request by any person who the Tribunal considers has an interest in the investigation to which the document relates, despite the fact that the document contains information that the Tribunal would not be required to disclose under the *Government Information (Public Access) Act 2009*. However, the Tribunal may only do that if the Tribunal:
- (a) has given the person that gave the document to the Tribunal (and, in the case of a document that is an agreement registered under section 12C, the parties to the agreement) an opportunity to make a submission to the Tribunal on whether the document should be made available, and
  - (b) has considered the submission (if any), and
  - (c) is satisfied that making the document available could not reasonably be expected to damage the commercial or other interests of the State or of the person that gave it to the Tribunal (or, in the case of a document that is an agreement registered under section 12C, of the parties to the agreement) or of any other person.
- (3) The Tribunal may, in making a document available (or instead of refusing to make a document available) under this section, do all or any of the following:
- (a) make parts of the document available to the public, being parts that would, if they stood alone, constitute documents that the Tribunal must or may, in accordance with this section, make available to the public,
  - (b) make the document available after deleting parts of the document that would otherwise prevent its availability under this section,
  - (c) impose conditions on the availability of part or all of a document (for example, conditions limiting the availability to certain classes of persons or requiring persons not to reveal the contents of the part or document).
- (4) In its deliberations under subsection (2), the Tribunal may take into account the likely effect of conditions that the Tribunal might impose under subsection (3).
- (5) A person to whom a document is made available under subsection (2) must not infringe any condition to which that availability is subject under this section.

Maximum penalty: 100 penalty units.

- (6) Nothing in this section limits the operation of section 21 (5) (b).

### **23 Offences**

- (1) A person must not, without reasonable excuse:
- (a) refuse or fail to comply with a notice served under this Division, or

- (b) refuse or fail to answer a question that the person is required to answer by the Chairperson at any hearing held under this Division.
- (2) It is a reasonable excuse for the purposes of subsection (1) that to comply with the notice or to answer the question might tend to incriminate the person or make the person liable to any forfeiture or penalty.
- (3) A person must not:
  - (a) give to the Tribunal, whether orally or in writing, information that the person knows to be false or misleading in a material particular (unless the person informs the Tribunal of that fact), or
  - (b) at a hearing before the Tribunal, give evidence that the person knows to be false or misleading in a material particular.
- (4) A person must not hinder, obstruct or interfere with the Chairperson or any other member of the Tribunal in the exercise of functions as Chairperson or other member.
- (5) A person must not take any action that detrimentally affects the employment of another person, or threaten to do so, because that other person has assisted the Tribunal in any investigation.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

**24** (Renumbered as sec 25A)

## **Part 3A Price determinations: monitoring**

### **24AA Monitoring role**

The Tribunal may monitor the performance of a government agency specified in Schedule 1 for the purposes of:

- (a) establishing, and reporting to the Minister on, the level of compliance by the government agency with a determination of the Tribunal of the pricing for a government monopoly service supplied by the government agency, and
- (b) preparing for a periodic review of pricing policies in respect of government monopoly services supplied by the government agency.

### **24AB Government agencies to provide information, documents and evidence**

- (1) For the purposes referred to in section 24AA, the Chairperson may, by notice in writing served on an officer of the government agency to which a determination relates, require the officer to do any one or more of the following:
  - (a) to send to the Tribunal, on or before a day specified in the notice, a statement setting out such information as is so specified,

- (b) to send to the Tribunal, on or before a day specified in the notice, such documents as are so specified,
  - (c) to attend a meeting of the Tribunal to give evidence.
- (2) If documents are given to the Tribunal under this section, the Tribunal:
- (a) may take possession of, and make copies of or take extracts from, the documents, and
  - (b) may keep possession of the documents for such period as is necessary for those purposes, and
  - (c) during that period must permit them to be inspected at all reasonable times by persons who would be entitled to inspect them if they were not in the possession of the Tribunal.

#### **24AC Offences**

- (1) A person must not, without reasonable excuse:
- (a) refuse or fail to comply with a notice served under this Part, or
  - (b) refuse or fail to answer a question that the person is required to answer by the Chairperson at any meeting of the Tribunal under this Part.
- (2) It is a reasonable excuse for the purposes of subsection (1) that to comply with the notice or to answer the question might tend to incriminate the person or make the person liable to any forfeiture or penalty.
- (3) A person must not:
- (a) give to the Tribunal, whether orally or in writing, information that the person knows to be false or misleading in a material particular (unless the person informs the Tribunal of that fact), or
  - (b) at a meeting of the Tribunal, give evidence that the person knows to be false or misleading in a material particular.
- (4) A person must not hinder, obstruct or interfere with the Chairperson or any other member of the Tribunal in the exercise of functions for the purposes of this Part as Chairperson or other member.
- (5) A person must not take any action that detrimentally affects the employment of another person, or threaten to do so, because that other person has assisted the Tribunal in any investigation.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

## 24AD Confidential information

- (1) If a person provides information to the Tribunal in connection with functions under this Part on the understanding that the information is confidential and will not be divulged, the Tribunal is required to ensure that the information is not divulged by it to any person, except:
  - (a) with the consent of the person who provided the information, or
  - (b) to the extent that the Tribunal is satisfied that the information is not confidential in nature, or
  - (c) to a member or officer of the Tribunal.
- (2) If the Tribunal is satisfied that it is desirable to do so because of the confidential nature of any information provided to the Tribunal in connection with functions under this Part, it may give directions prohibiting or restricting the divulging of the information.
- (3) A person must not contravene a direction given under subsection (2).

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.
- (4) A reference in this section to information includes information contained in any evidence given at a meeting of the Tribunal and information contained in any documents given to the Tribunal.

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

### 24AE Definitions

In this Part:

**ACCC** means the Australian Competition and Consumer Commission established by section 6A of the [Competition and Consumer Act 2010](#) of the Commonwealth.

**accredited arrangements** has the same meaning as in the Commonwealth Water Charge Rules.

**applied provisions** means the Commonwealth provisions as applied by section 24AG.

**Basin water resources** has the same meaning as **State water resources** has in the Commonwealth Water Charge Rules in relation to New South Wales.

**Commonwealth provisions** has the same meaning as **applied provisions** has in rule 59 (2) of the Commonwealth Water Charge Rules.

**Commonwealth Water Charge Rules** means the [Water Charge \(Infrastructure\) Rules](#)

2010 of the Commonwealth.

**Part 6 operator** has the same meaning as in the Commonwealth Water Charge Rules.

**Part 7 operator** has the same meaning as in the Commonwealth Water Charge Rules.

**regulated charge** has the same meaning as in the Commonwealth Water Charge Rules.

**Regulator** has the same meaning as in the Commonwealth Water Charge Rules.

#### **24AF Interpretation of applied provisions**

- (1) Subject to subsection (2), the [Acts Interpretation Act 1901](#) 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.
- (2) The [Acts Interpretation Act 1901](#) of the Commonwealth applies to the applied provisions only to the extent to which that Act applies to the Commonwealth Water Charge Rules.
- (3) The following provisions apply to the applied provisions:
  - (a) expressions used in the applied provisions have the same meaning as in the [Water Act 2007](#) of the Commonwealth,
  - (b) the applied provisions are to be read and construed subject to the [Water Act 2007](#) 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,
  - (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.
- (4) The [Interpretation Act 1987](#) of New South Wales does not apply in relation to the applied provisions.

#### **24AG Application of Commonwealth provisions**

In respect of Basin water resources, the Commonwealth provisions, as in force from time to time, apply as a law of this State.

#### **24AH Functions of Tribunal**

The Tribunal has all the functions conferred on a Regulator under the applied provisions.

#### **24AI Operation of applied provisions**

Without limiting section 24AG, the applied provisions have effect only while the

arrangements referred to in section 24AJ (a) are accredited arrangements.

#### **24AJ Application for accreditation**

The Tribunal may:

- (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
- (b) do anything else necessary to enable those arrangements to be so accredited.

#### **24AK Tribunal not subject to Ministerial control in exercise of functions**

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.

#### **24AL Notification of approval, revocation or cessation of accreditation**

- (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.
- (2) A notice under subsection (1) must:
  - (a) be published in the Gazette and on the Tribunal's website, and
  - (b) include a copy of the ACCC's decision to approve the application and the date on which the accreditation takes effect.
- (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.
- (4) A notice under subsection (3) must:
  - (a) be published in the Gazette and on the Tribunal's website, and
  - (b) include a copy of the ACCC's decision to revoke the accreditation and the date on which the revocation takes effect.
- (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.
- (6) A notice under subsection (5) must:
  - (a) be published in the Gazette and on the Tribunal's website, and

- (b) include the date on which the accreditation ceases to have effect.

**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.

## **Part 4A Access regimes: arbitration of disputes**

### **24A Arbitration of access disputes**

- (1) If a dispute exists with respect to a public infrastructure access regime that provides for the application of this Part, any party to the dispute may refer the dispute to arbitration.
- (2) The *Commercial Arbitration Act 2010* applies to such an arbitration, but subject to this Part and the regulations.
- (3) A dispute is taken to exist with respect to such an access regime if a person (the third party) who wants access to a service, or wants a change to some aspect of the person's existing access to a service, under the access regime is unable to agree with the provider of the service on one or more aspects of access to the service.
- (4) The parties to the dispute are the third party and the provider of the service. The provider of the service is the government agency that owns, controls or operates the infrastructure by means of which the service is provided.

### **24B Appointment and functions of arbitrator**

- (1) The Tribunal may act as arbitrator to hear and determine disputes referred to arbitration under this Part. Alternatively, the Tribunal may appoint one or more persons from a panel approved by the Minister (whether or not the persons are members of the Tribunal) who may act as arbitrators to hear and determine a dispute referred to arbitration under this Part.
- (2) In the case of a dispute between a third party wanting, but not having, access to a service and the provider of the service, the arbitrator must give public notice of the dispute. The notice must invite submissions to the arbitrator from the public regarding the dispute and specify when and how those submissions may be made.
- (3) In the arbitration of a dispute referred under this Part, the arbitrator must take into account the following:
  - (a) the matters set out in clause 6 (4) (i), (j) and (l) of the Competition Principles Agreement,
  - (b) any guidelines referred to in section 12A (2) for the access regime to which the dispute relates,

(c) any submissions made on the dispute by the public, in a case to which subsection (2) applies,

(d) any other matters that the arbitrator considers relevant.

(4) An arbitrator in an arbitration under this Part has the powers of the Tribunal under section 22 (Tendering information, documents and evidence). In the application of that section under this Part, a reference to the Tribunal is taken to be a reference to the arbitrator.

#### **24C Determination of dispute by arbitrator**

(1) The arbitrator is to determine the dispute by making a written determination on access to the service by the third party.

(2) The determination may deal with any matter relating to access by the third party to the service, including matters that were not the basis for notification of the dispute. For example, the determination may do one or more of the following:

(a) require the provider to provide access to the service by the third party,

(b) require the third party to accept, and pay for, access to the service,

(c) specify the terms and conditions of the third party's access to the service,

(d) require the provider to extend the infrastructure facility,

(e) specify the extent to which the determination overrides an earlier determination relating to access to the service by the third party.

(3) The determination does not have to require the provider to provide access to the service by the third party.

#### **24D Parties required to give effect to determination**

The parties to an arbitration are required to give effect to the arbitration determination and, if the determination is in favour of the third party's access to the service, must not engage in conduct for the purpose of preventing or hindering the third party's access to the service under the determination.

#### **24E Termination of arbitration**

(1) An arbitrator may, without making a determination, terminate the arbitration at any time if the arbitrator thinks that any of the following grounds exist:

(a) the notification of the dispute was vexatious,

(b) the subject-matter of the dispute is trivial, misconceived or lacking in substance,

(c) the party who notified the dispute has not engaged in negotiations in good faith,



(d) access to the service should continue to be governed by an existing contract between the provider and the third party.

(2) In addition, if the dispute is about varying an existing determination, the arbitrator may terminate the arbitration if the arbitrator thinks there is no sufficient reason why the previous determination should not continue to have effect in its present form.

## **Part 4B Regulation of utilities**

### **Division 1 Regulatory functions**

#### **24F Regulatory functions of Tribunal**

The regulatory functions of the Tribunal include its functions referred to in:

- (a) section 77 of the *Electricity Supply Act 1995*, and
- (b) section 75A of the *Gas Supply Act 1996*, and
- (c) section 18A of the *Hunter Water Act 1991*, and
- (d) section 28 of the *Sydney Water Act 1994*, and
- (d1) section 51 of the *Central Coast Water Corporation Act 2006*, and
- (e) section 56 of the *Water NSW Act 2014*, and
- (f) (Repealed)
- (g) section 90 of the *Water Industry Competition Act 2006*.

#### **24FA Recommendations and advice**

- (1) Any recommendations or advice authorised or required to be made or given by the Tribunal under its regulatory functions may be of a general or specific nature.
- (2) A Minister may, by order in writing, following consultation with, and with the agreement of, the Tribunal, establish protocols as to the procedures to be adopted for or with respect to the seeking, making or giving of any such recommendations or advice to that Minister, including protocols as to:
  - (a) the provision of advice and information to the Tribunal to enable the Tribunal to exercise its functions with respect to such recommendations or advice effectively and efficiently, and
  - (b) the circumstances in which the Tribunal's recommendations or advice need not be sought, made or given (except where a recommendation or advice is required by an Act to be made or given).
- (3) If the Tribunal makes or gives any recommendation or advice referred to in this

section to a Minister, that Minister is to consider but is not bound by the recommendation or advice.

- (4) A copy of each order made under this section is to be published in the Gazette as soon as practicable after it has been made.
- (5) The provisions of an Act conferring on the Tribunal the regulatory function of making or giving recommendations or advice to a Minister for or with respect to a contravention of an operating licence or of the conditions of a licence or authorisation, or of an endorsement attached to a licence, do not apply to or affect any power that the Tribunal has to impose a monetary penalty in respect of such a contravention.

#### **24FB Directions as to government policy**

- (1) In exercising its regulatory functions (other than its licence auditing functions), the Tribunal must give effect to any current government policy that has been communicated to the Tribunal, and certified to be government policy, by the relevant Minister or by the Premier.
- (2) For the purposes of this section, the relevant Minister is the Minister who administers the provisions of the legislation relating to the grant of the relevant operating licence, licence or authorisation.
- (3) The Tribunal is to make each such policy communicated to it and certificate received by it publicly available.

### **Division 2 Licence auditing functions**

#### **24FC Licence auditing functions of Tribunal**

- (1) The licence auditing functions of the Tribunal are:
  - (a) its functions under section 87 of the *Electricity Supply Act 1995*, and
  - (b) its functions in connection with operational audits under the *Hunter Water Act 1991*, and
  - (c) its functions in connection with operational audits under the *Sydney Water Act 1994*, and
  - (c1) its functions in connection with operational audits under section 52 of the *Central Coast Water Corporation Act 2006*, and
  - (d) its functions in connection with operational audits under the *Water NSW Act 2014*, and
  - (e) (Repealed)
  - (f) its functions under section 85 of the *Water Industry Competition Act 2006*.

- (2) The Tribunal is not subject to the control or direction of any Minister in respect of the contents of any report or advice given to a Minister in relation to those functions.

**24FD Establishment and function of Utilities Licence Auditing Advisory Committee**

- (1) There is established by this Act a Utilities Licence Auditing Advisory Committee.
- (2) The function of the Advisory Committee is to furnish advice to the Tribunal on the scope and methodology of audits being or to be conducted under the licence auditing functions of the Tribunal.
- (3) The advice is to be furnished at the request of, and in the manner and form determined by, the Tribunal.
- (4) The Tribunal is to consider but is not bound by any of the advice of the Advisory Committee furnished to the Tribunal.
- (5) The Advisory Committee is not subject to the control or direction of the Tribunal in respect of the contents of any advice of the Advisory Committee furnished to the Tribunal.

**24FE Membership and procedure of Advisory Committee**

- (1) The Utilities Licence Auditing Advisory Committee is to consist of six part-time members appointed by the Minister.
- (2) Of the members of the Advisory Committee:
  - (a) one is to have expertise in, and extensive knowledge of, water conservation and associated environmental matters and is to be appointed by the Minister from a panel of three persons nominated jointly by the Nature Conservation Council of New South Wales, the Public Interest Advocacy Centre, the Council of Social Services of New South Wales and the Australian Consumers Association, and
  - (b) one is to have expertise in, and extensive knowledge of, electricity distribution and retail supply and associated environmental matters and is to be appointed by the Minister from a panel of three persons nominated jointly by the Nature Conservation Council of New South Wales, the Public Interest Advocacy Centre, the Council of Social Services of New South Wales and the Australian Consumers Association, and
  - (c) one is to have expertise in, and knowledge of, consumer issues and is to be appointed by the Minister from a panel of three persons nominated jointly by the Nature Conservation Council of New South Wales, the Public Interest Advocacy Centre, the Council of Social Services of New South Wales and the Australian Consumers Association, and
  - (d) two are to be nominated by the Minister for Energy, and

(e) one is to be nominated by the Minister for the Environment.

(3) Schedule 3A has effect with respect to the membership and procedure of the Advisory Committee.

#### **24FF Confidential information**

(1) If a person provides information to the Tribunal in connection with its licence auditing functions on the understanding that the information is confidential and will not be divulged, the Tribunal is required to ensure that the information is not divulged by it to any person, except:

(a) with the consent of the person who provided the information, or

(b) to the extent that the Tribunal is satisfied that the information is not confidential in nature, or

(c) to a member or officer of the Tribunal.

(2) If the Tribunal is satisfied that it is desirable to do so because of the confidential nature of any information provided to the Tribunal in connection with its licence auditing functions, it may give directions prohibiting or restricting the divulging of the information.

(3) A person must not contravene a direction given under subsection (2).

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

(4) A reference in this section to information includes information given at a meeting of the Tribunal and information contained in any documents given to the Tribunal.

### **Part 4C Competitive neutrality**

#### **Division 1 Preliminary**

##### **24G Purpose and application of Part**

(1) The purpose of this Part is to provide the Tribunal with a role under the State's complaints mechanism, in connection with competitive neutrality principles, as contemplated by the Competition Principles Agreement, so far as they are applicable to public authorities. Other bodies (including the NSW Procurement Board and the Office of Local Government) may also have roles under the complaints mechanism.

(2) Subject to subsection (3), this Part does not apply to a complaint that a public authority has failed to comply with competitive neutrality principles in relation to a tender bid made by the authority in response to an invitation for tenders.

(3) If the Minister is satisfied that:

- (a) a complaint relates to an alleged failure by a public authority to comply with competitive neutrality principles in relation to a tender bid made by the authority in response to an invitation for tenders as well as in other respects, and
- (b) it is appropriate that the complaint should be dealt with in its entirety under this Part,

the Minister may direct that this Part applies to the complaint in relation to the tender bid as well as in the other respects.

- (4) Subject to subsection (5), this Part does not apply to a complaint that a local authority has failed to comply with competitive neutrality principles.
- (5) If the Minister (after consultation with the Minister for Local Government) is satisfied that:
  - (a) a complaint relates to an alleged failure by one or more local authorities to comply with competitive neutrality principles and also to an alleged failure by one or more other public authorities (not being local authorities), and
  - (b) it is appropriate that the complaint should be dealt with in its entirety under this Part,the Minister may direct that this Part applies to the complaint in relation to the one or more local authorities as well as in relation to the one or more other public authorities.
- (6) A complaint that is the subject of a direction under this section is to be dealt with under this Part in accordance with the direction.

#### **24GA Definitions**

In this Part:

**competitive neutrality principles** means:

- (a) the competitive neutrality principles referred to in the Competition Principles Agreement, and
- (b) any policies adopted by the State for the purpose of complying with or giving effect to those principles.

**complaint** includes any part or aspect of a complaint.

**local authority** means a council or county council within the meaning of the [Local Government Act 1993](#) or any person exercising all or any of the functions of such a council or county council.

**public authority** means a public or local authority of the State, and includes any government agency.

**public trading activities** of a public authority means significant business activities relating to goods or services in which the authority is engaged.

**public trading agency** means a public authority that is engaged in public trading activities (whether or not it is also engaged in other activities), and includes a public authority prescribed by the regulations as a public trading agency, but does not include a public authority prescribed by the regulations as not being a public trading agency.

**State** includes the Government or a Minister.

## Division 2 Complaints

### 24GB Complaints about competitive neutrality

- (1) The Minister may refer to the Tribunal, for investigation and report, a complaint about a public trading agency with respect to:
  - (a) a failure of the agency to comply with competitive neutrality principles in relation to any or all of its public trading activities, or
  - (b) the inappropriate manner in which competitive neutrality principles are applied by or to the agency in relation to any or all of its public trading activities.
- (2) The Minister is not to refer a complaint to the Tribunal unless satisfied:
  - (a) that the complaint relates to any or all of the public trading activities of the agency, and
  - (b) that the complainant is able to demonstrate that a person (the **competitor**) competes, or seeks to compete, in a particular market with the public authority and is hindered or is likely to be hindered from or in doing so by the matters complained of, and
  - (c) that the competitor is materially affected by the matters complained of or is likely to be so affected, and
  - (d) that the complaint has been made by the competitor or by a person or body authorised by the competitor to make the complaint on behalf of the competitor, and
  - (e) that the subject-matter of the complaint has been raised with the agency and the complainant has reasonable grounds for not being satisfied with the response to the complaint.
- (3) The Tribunal is required to notify the complainant, the agency, the agency's portfolio Minister and the Treasurer of the reference and that an investigation will be conducted into the complaint.

- (4) If the Minister has referred a complaint to the Tribunal for investigation and report, the Minister may withdraw or amend the reference at any time before the Minister has received the report from the Tribunal.
- (5) The regulations may make provision for or with respect to the manner of making complaints for the purposes of this Part.

#### **24GC Investigation and report**

- (1) The Tribunal is to conduct an investigation into and make a report on any complaint referred to it and not withdrawn by the Minister.
- (2) The Tribunal is, as far as possible, to use its best endeavours to complete the investigation and report within 10 weeks after receiving the complaint or such other period as the Minister may approve from time to time.

#### **24GD Reports**

- (1) The report of the Tribunal with respect to a complaint is to contain a statement of its findings and recommendations about the complaint.
- (2) If the Tribunal finds that the complaint has been wholly or partly substantiated, the report is to contain a statement about:
  - (a) any need for changes to the conduct of the public trading agency to ensure future compliance with competitive neutrality principles, and
  - (b) any policy changes that should be considered by the State.
- (3) Copies of the report are to be furnished to the complainant, the agency, the agency's portfolio Minister, the Treasurer, and the Minister.
- (4) The Tribunal is to make the report publicly available.

#### **24GE Portfolio Minister's response to report**

- (1) Within 8 weeks after a report about a public trading agency has been furnished to the agency's portfolio Minister, the portfolio Minister is to prepare a written response to the report. This requirement does not apply where the report states that the investigation concerned was terminated because the complainant did not comply or did not fully comply with a request under section 24GI.
- (2) The response must include a statement as to whether or not the recommendations have been adopted or are proposed to be adopted and must include a statement of the reasons why any recommendation will not be adopted (whether wholly or partly).
- (3) Copies of the response are to be furnished to the complainant, the agency, the Treasurer, the Minister, and the Tribunal.

- (4) The Tribunal is to make the response publicly available.

### **Division 3 Investigations**

#### **24GF Definition**

In this Division:

***investigation*** means an investigation by the Tribunal for the purposes of this Part.

#### **24GG Conduct of investigations**

- (1) Subject to this Part, in an investigation, the Tribunal:
- (a) is to act with as little formality as possible, and
  - (b) may inform itself on any matter in any way it thinks fit and is not bound by the rules of evidence, and
  - (c) may receive information or submissions in the form of oral or written statements, and
  - (d) may consult with such persons as it thinks fit.
- (2) The investigation is to be conducted in private as far as possible, and accordingly the Tribunal is not to conduct public hearings, public seminars and public workshops except with the approval of the Minister.
- (3) Nothing in this section prevents the Tribunal from holding one or more meetings for the purposes of the investigation, but all such meetings are to be held privately.
- (4) The Tribunal is required to seek and consider submissions from the public trading agency that is the subject of the complaint to which the investigation relates and the Treasurer, but is not required to seek or consider submissions from any other person.
- (5) The regulations may make provision for or with respect to the conduct of investigations.

#### **24GH Public trading agency to provide information, documents and evidence**

- (1) For the purposes of an investigation, the Chairperson may, by notice in writing served on an officer of the public trading agency that is the subject of the complaint to which the investigation relates, require the officer to do any one or more of the following:
- (a) to send to the Tribunal, on or before a day specified in the notice, a statement setting out such information as is so specified,
  - (b) to send to the Tribunal, on or before a day specified in the notice, such documents as are so specified,



(c) to attend a meeting of the Tribunal to give evidence.

(2) If documents are given to the Tribunal under this section, the Tribunal:

- (a) may take possession of, and make copies of or take extracts from, the documents, and
- (b) may keep possession of the documents for such period as is necessary for the purposes of the investigation to which they relate, and
- (c) during that period must permit them to be inspected at all reasonable times by persons who would be entitled to inspect them if they were not in the possession of the Tribunal.

**24GI Complainant may be requested to provide information, documents and evidence**

(1) For the purposes of an investigation, the Chairperson may, by notice in writing served on the complainant, request the complainant to do any one or more of the following:

- (a) to send to the Tribunal, on or before a day specified in the notice, a statement setting out such information as is so specified,
- (b) to send to the Tribunal, on or before a day specified in the notice, such documents as are so specified,
- (c) to attend a meeting of the Tribunal to give evidence.

(2) If documents are given to the Tribunal under this section, the Tribunal:

- (a) may take possession of, and make copies of or take extracts from, the documents, and
- (b) may keep possession of the documents for such period as is necessary for the purposes of the investigation to which they relate, and
- (c) during that period must permit them to be inspected at all reasonable times by persons who would be entitled to inspect them if they were not in the possession of the Tribunal.

(3) If the complainant does not comply or fully comply with a request under this section, the Tribunal may terminate the investigation, and the Tribunal's report may be limited to a statement that the investigation was terminated for that reason.

**24GJ Confidential information**

(1) If a person provides information (***protected information***) to the Tribunal for the purposes of an investigation on the understanding that the information is confidential and will not be divulged, the Tribunal is required to ensure that the information is not divulged by it to any person, except:

- (a) with the consent of the person who provided the information, or
- (b) to the extent that the Tribunal is satisfied that the information is not confidential in nature, or
- (c) to a member or officer of the Tribunal.

(2) If:

- (a) the Tribunal is satisfied that protected information provided to the Tribunal by a complainant needs to be divulged to a person in order that the complaint can be properly dealt with, and
- (b) the exceptions in subsection (1) (a)–(c) are not applicable,

the Tribunal may notify the complainant that the Tribunal proposes to divulge the information to a specified person, or in its report, after a specified period.

- (3) After the specified period, and despite subsection (1), the Tribunal may divulge the information to the specified person or in its report, unless the complainant withdraws the complaint.
- (4) If the Tribunal is satisfied that it is desirable to do so because of the confidential nature of any information provided to the Tribunal for the purposes of an investigation, it may give directions prohibiting or restricting the divulging of the information.
- (5) A person must not contravene a direction given under subsection (4).

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

- (6) A reference in this section to information includes information contained in any evidence given at a meeting of or hearing before the Tribunal and information contained in any documents given to the Tribunal.

#### **24GK Offences**

- (1) A person must not, without reasonable excuse:
  - (a) refuse or fail to comply with a notice served under this Division, or
  - (b) refuse or fail to answer a question that the person is required to answer by the Chairperson at any meeting of or hearing before the Tribunal under this Division.
- (2) It is a reasonable excuse for the purposes of subsection (1) that to comply with the notice or to answer the question might tend to incriminate the person or make the person liable to any forfeiture or penalty.
- (3) A person must not:
  - (a) give to the Tribunal, whether orally or in writing, information that the person

knows to be false or misleading in a material particular (unless the person informs the Tribunal of that fact), or

- (b) at a meeting of or hearing before the Tribunal, give evidence that the person knows to be false or misleading in a material particular.
- (4) A person must not hinder, obstruct or interfere with the Chairperson or any other member of the Tribunal in the exercise of functions for the purposes of this Division as Chairperson or other member.
- (5) A person must not take any action that detrimentally affects the employment of another person, or threaten to do so, because that other person has assisted the Tribunal in any investigation.
- (6) Subsection (1) does not apply to a complainant in relation to a notice served on the complainant under section 24GI.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

#### **24GL Report of complaints**

The Tribunal is required to include in its annual report a statistical summary of complaints received by it, investigations conducted by it, and complaints disposed of by it, during the period covered by the annual report.

### **Part 5 Miscellaneous**

#### **25 Act binds Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

#### **25A Cabinet information and proceedings**

- (1) This Act does not enable the Tribunal:
  - (a) to require any person to give any statement of information or answer any question which relates to confidential proceedings of Cabinet, or
  - (b) to require any person to disclose Cabinet information, or
  - (c) to inspect Cabinet information.
- (2) For the purposes of this section, a certificate of the Secretary or General Counsel of the Department of Premier and Cabinet that:
  - (a) any information or question relates to confidential proceedings of Cabinet, or
  - (b) information is Cabinet information,

is conclusive of that fact.

(3) In this section:

**Cabinet** includes a committee of Cabinet or a subcommittee of such a committee.

**Cabinet information** means information that is Cabinet information under the [Government Information \(Public Access\) Act 2009](#).

## 26 Personal liability

A matter or thing done or omitted to be done by the Tribunal, a member of the Tribunal or any person acting under the direction of the Tribunal does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

## 27 Service of documents on Tribunal

- (1) A document may be served on the Tribunal by leaving it at, or by sending it by post to:
  - (a) the office of the Tribunal, or
  - (b) if it has more than one office—any one of its offices.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Tribunal in any other manner.

## 28 Proceedings for offences

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Local Court.

## 29 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may make provision for or with respect to the following matters:
  - (a) fees,
  - (b) the procedure of the Tribunal,
  - (c) the arbitration of disputes under Part 4A.
- (3) The regulations may require the payment of fees:
  - (a) by recipients of services provided by the Tribunal, or

- (b) to meet the costs of the arbitration of access disputes under Part 4A, or
  - (c) by a government agency, or members of an industry, to which an investigation, report or determination by the Tribunal relates, to meet the reasonable costs of the Tribunal with respect to the investigation, report or determination.
- (4) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

### **30 Savings and transitional provisions**

Schedule 4 has effect.

#### **30A Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. In particular, the review is to address the question of overlap between the Act and any corresponding Commonwealth legislation dealing with access regimes.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the [Government Pricing Tribunal Amendment Act 1995](#).
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

### **31 Disputes regarding application of determination of methodology**

- (1) A customer who is dissatisfied with the way in which a government agency applies the methodology in a determination referred to in section 14A may complain to the agency.
- (2) The chief executive of the agency is to review the complaint or cause it to be reviewed.
- (3) The customer, if still dissatisfied, may request the agency that the matter be reviewed by way of arbitration by an arbitrator, who is to be appointed by agreement between the customer and the agency. The agency is, subject to this section, to comply with any such request.
- (4) Costs of the arbitration are to be borne equally by the agency and the customer.
- (5) The regulations may exclude classes of determinations from the operation of this section and may make provision for or with respect to reviews and arbitration under this section, including:
  - (a) the times within which complaints and requests are to be made,
  - (b) the circumstances in which complaints and requests may be dismissed without

consideration,

(c) the determination of costs of arbitration.

(6) Subject to this section and the regulations, the [Commercial Arbitration Act 2010](#) applies to any such arbitration.

## **Schedule 1 Government agencies for which Tribunal has standing reference**

(Section 11)

Sydney Water Corporation

Hunter Water Corporation (but excluding any water or sewerage services provided by the Corporation in respect of the Dungog local government area prior to the commencement of the Tribunal's first determination made under section 11 for the Corporation after the commencement of the [Independent Pricing and Regulatory Tribunal Amendment \(Hunter Water\) Regulation 2008](#))

Water supply authorities

County councils established for the supply of water

Rail Corporation New South Wales

State Transit Authority (but excluding any bus services provided by the Authority under a service contract to which section 28J of the [Passenger Transport Act 1990](#) applies)

Roads and Maritime Services

Department of Family and Community Services

Port Corporations or other relevant port authorities within the meaning of Part 5 of the [Ports and Maritime Administration Act 1995](#)

Water Administration Ministerial Corporation

Sydney Ferries (but excluding any services provided by Sydney Ferries under a ferry service contract to which section 16AE of the [Passenger Transport Act 1990](#) applies)

Essential Energy

Water NSW (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)

## Schedule 2 Provisions relating to members of Tribunal

(Section 6 (4))

### 1 Definitions

In this Schedule:

**full-time Chairperson** means the Chairperson if appointed as a full-time member.

**member** means any member of the Tribunal, including the Chairperson.

**part-time member** means a part-time member of the Tribunal, including the Chairperson if appointed as a part-time member.

### 2 Deputies

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment. The persons appointed as deputies must have the same qualifications as those required of persons appointed as members.
- (2) In the absence of a member, the member's deputy:
  - (a) may, if available, act in the place of the member, and
  - (b) while so acting, has all the functions of the member and is taken to be a member.
- (2A) The Minister may appoint a permanent member of the Tribunal to act in the place of the Chairperson during the illness, absence or unavailability of the Chairperson, and the acting Chairperson, while so acting, has and may exercise all the functions of the Chairperson and is taken to be the Chairperson.
- (3) A person while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.
- (5) The deputy of a member who is the Chairperson does not have the member's functions as Chairperson.

### 3 Terms of office of members

- (1) Subject to this Schedule, a member holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) Subject to this Schedule, the minimum term of office that may be specified in the

instrument of appointment of a permanent member is 3 years.

#### **4 Remuneration**

- (1) A full-time permanent member is entitled to be paid:
  - (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
  - (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the permanent member.
- (2) A part-time permanent member or temporary member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

#### **5 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause or the Governor under Part 6 of the *Government Sector Employment Act 2013*, or
  - (e) in the case of a full-time Chairperson—is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any period of 12 months, or
  - (f) in the case of a part-time member—is absent from 4 consecutive meetings of the Tribunal of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings, or
  - (g) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (h) becomes a mentally incapacitated person, or
  - (i) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.



- (2) The Minister may remove the Chairperson or any other permanent member from office for misbehaviour, incompetence or incapacity.
- (3) The Minister may remove a temporary member from office at any time.

## **6 Disclosure of pecuniary interests**

(1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Tribunal, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Tribunal.

(2) A disclosure by a member at a meeting of the Tribunal that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the Tribunal in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee (if any) determined by the Tribunal.

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Tribunal otherwise determines:

- (a) be present during any deliberation of the Tribunal with respect to the matter, or
- (b) take part in any decision of the Tribunal with respect to the matter.

(5) For the purposes of the making of a determination by the Tribunal under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Tribunal for the purpose of making the determination, or
- (b) take part in the making by the Tribunal of the determination.

(6) A contravention of this clause does not invalidate any decision of the Tribunal.

### **7 Filling of vacancy in office of member**

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

### **8 Effect of certain other Acts**

(1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to a member.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable to the person under this Act as a part-time member.

## **Schedule 3 Provisions relating to procedure of Tribunal at meetings**

(Section 6 (5))

### **1 Definition**

In this Schedule:

**member** means a member of the Tribunal, including the Chairperson.

### **2 General procedure**

The procedure for the calling of meetings of the Tribunal and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Tribunal.

### **3 Quorum**

The quorum for a meeting of the Tribunal is 2 members (one of whom is to be the Chairperson).

### **4 Presiding member**

(1) The Chairperson is to preside at a meeting of the Tribunal.

(2) The Chairperson has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## 5 Voting

A decision supported by a majority of the votes cast at a meeting of the Tribunal at which a quorum is present is the decision of the Tribunal.

## 6 Transaction of business outside meetings or by telephone etc

- (1) The Tribunal may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Tribunal for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Tribunal.
- (2) The Tribunal may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights they have at an ordinary meeting of the Tribunal.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Tribunal.
- (5) Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## 7 First meeting

The Minister may call the first meeting of the Tribunal in such manner as the Minister thinks fit.

# Schedule 3A Utilities Licence Auditing Advisory Committee

(Section 24FE)

## Part 1 Preliminary

### 1 Definitions

In this Schedule:

**Advisory Committee** means the Utilities Licence Auditing Advisory Committee established by section 24FD.

**Chairperson** means the Chairperson of the Advisory Committee.

**member** means a member of the Advisory Committee.

## Part 2 Members

### 2 Chairperson

The Chairperson is to be selected by the Minister from among the members.

### 3 Deputies

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.
- (2) In the absence of a member, the member's deputy:
  - (a) may, if available, act in the place of the member, and
  - (b) while so acting, has the functions of the member and is taken to be the member.
- (3) A person while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

### 4 Terms of office of members

Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for reappointment.

### 5 Remuneration

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

### 6 Vacancy in office of member

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not reappointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this Schedule or by the Governor under Part 6 of the *Government Sector Employment Act 2013*, or
  - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment

of his or her remuneration for their benefit, or

- (f) becomes a mentally incapacitated person, or
- (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (h) is absent from 3 consecutive meetings of the Advisory Committee of which reasonable notice has been given to the member, except on leave granted by the Advisory Committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Advisory Committee for having been absent from the meetings.

(2) The Minister may remove a member from office at any time.

## **7 Disclosure of pecuniary interests**

(1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Advisory Committee, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Advisory Committee.

(2) A disclosure by a member at a meeting of the Advisory Committee that the member:

- (a) is a member or officer, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause are to be recorded in a book kept by the Advisory Committee for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Advisory Committee.

- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or Advisory Committee otherwise determines:
  - (a) be present during any deliberation of the Advisory Committee with respect to the matter, or
  - (b) take part in any decision of the Advisory Committee with respect to the matter.
- (5) For the purpose of the making of a determination by the Advisory Committee under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the Advisory Committee for the purpose of making the determination, or
  - (b) take part in the making by the Advisory Committee of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Advisory Committee.

## **8 Filling of vacancy in office of member**

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **9 Effect of certain other Acts**

- (1) The provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as such a member.
- (3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

## **Part 3 Procedure**

### **10 General procedure**

The procedure for calling meetings of the Advisory Committee and for the conduct of

business at those meetings is, subject to this Act, to be as determined by the Advisory Committee.

#### **11 Quorum**

The quorum for a meeting of the Advisory Committee is a majority of members for the time being.

#### **12 Presiding member**

- (1) The Chairperson is to preside at a meeting of the Advisory Committee.
- (2) The Chairperson has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

#### **13 Voting**

A decision supported by a majority of the votes cast at a meeting of the Advisory Committee at which a quorum is present is a decision of the Advisory Committee.

#### **14 Transaction of business outside meeting or by telephone or other means**

- (1) The Advisory Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Advisory Committee.
- (2) The Advisory Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Advisory Committee.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meeting of the Advisory Committee.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other means for transmission of the information in the papers concerned.

#### **15 Minutes**

- (1) The Advisory Committee is to ensure that full and accurate minutes of all its

proceedings are kept.

- (2) The Advisory Committee is to submit a copy of the minutes of a meeting of the Advisory Committee to the Minister and the Chairperson of the Tribunal within 14 days after the meeting is held.

## **16 First meeting**

The Minister may call the first meeting of the Advisory Committee in such manner as the Minister thinks fit.

## **Schedule 4 Savings and transitional provisions**

(Section 30)

### **Part 1 Preliminary**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Government Pricing Tribunal Amendment Act 1995*

*National Electricity (New South Wales) Act 1997*

*Independent Pricing and Regulatory Tribunal and Other Legislation Amendment Act 2000*

*Electricity Supply Amendment (Greenhouse Gas Emission Reduction) Act 2002*

*Passenger Transport Amendment (Bus Reform) Act 2004* (but only in relation to the amendments made to this Act)

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done, or omitted to be done, before the date of its publication.



## **Part 2 Government Pricing Tribunal Amendment Act 1995**

### **2 Definitions**

In this Part:

**GPT** means the Government Pricing Tribunal of New South Wales as constituted immediately before the commencement of this clause.

**IPRT** means the Independent Pricing and Regulatory Tribunal of New South Wales.

### **3 Members of Tribunal**

- (1) Appointments made under this Act by the Governor and in force immediately before the commencement of this clause are taken to have been made by the Minister.
- (2) A person who, immediately before the commencement of this clause, held office as a member of the GPT holds office as a member of the IPRT on that commencement for the remainder of the person's term.

### **4 Continuity of Tribunal**

- (1) The IPRT is a continuation of and the same legal entity as the GPT.
- (2) Anything done or commenced by the GPT and having effect immediately before the commencement of this clause has effect after the commencement of this clause as if done by the IPRT.
- (3) In particular, any determination by the GPT in force immediately before the commencement of this clause (or, though due to come into effect after that commencement, has not been revoked as at that commencement) is taken to be a determination of the IPRT.
- (4) After the commencement of this clause, a reference in any other Act, in any instrument made under any Act or in any other instrument of any kind to the GPT is to be read as a reference to the IPRT.

### **5 Effect of amendments on pending investigations**

In making a determination or recommendation pursuant to an investigation begun before the commencement of an amendment made to section 14A or 15 by the *Government Pricing Tribunal Amendment Act 1995*, the Tribunal is to use its best endeavours to have regard to the matters provided for in those amendments and, to the extent that it does not have regard to those matters, is to include in its report under section 14A (3) or 15 (2) a statement of the reasons why it did not have regard to the matters concerned.

## Part 3 National Electricity (New South Wales) Act 1997

### 6 Definition

In this Part:

***electricity supply authority*** means any of the following:

- (a) TransGrid,
- (b) Advance Energy,
- (c) Australian Inland Energy,
- (d) EnergyAustralia,
- (e) Great Southern Energy,
- (f) Integral Energy Australia,
- (g) NorthPower.

### 7 Standing references with respect to transmission network service pricing

- (1) The Tribunal may continue to exercise its functions under this Act with respect to any transmission network service provided by an electricity supply authority whose name has been omitted from Schedule 1 by the *National Electricity (New South Wales) Act 1997* as if the authority were still specified in that Schedule.
- (2) This Act continues to have effect with respect to anything done by the Tribunal in the exercise of any such function.
- (3) Without limiting subclause (2), section 18 continues to have effect with respect to any maximum price determined by the Tribunal, or calculated in accordance with the determination of the Tribunal, in relation to any transmission network service referred to in subclause (1).
- (4) This clause ceases to have effect on 1 July 1999 or on such later date as may be prescribed by the regulations.

### 8 Standing references with respect to distribution network service pricing

- (1) The Tribunal may continue to exercise its functions under this Act with respect to any distribution network service provided by an electricity supply authority whose name has been omitted from Schedule 1 by the *National Electricity (New South Wales) Act 1997* as if the authority were still specified in that Schedule.
- (2) This Act continues to have effect with respect to anything done by the Tribunal in the exercise of any such function.

- (3) Without limiting subclause (2), section 18 continues to have effect with respect to any maximum price determined by the Tribunal, or calculated in accordance with the determination of the Tribunal, in relation to any distribution network service referred to in subclause (1).
- (4) This clause ceases to have effect on 1 January 2001 or on such later date as may be prescribed by the regulations.

#### **9 Standing references with respect to other government monopoly service pricing**

- (1) The Tribunal may continue to exercise its functions under this Act with respect to any government monopoly service (other than a distribution network service) provided by an electricity supply authority whose name has been omitted from Schedule 1 by the *National Electricity (New South Wales) Act 1997* as if the authority were still specified in that Schedule.
- (2) This Act continues to have effect with respect to anything done by the Tribunal in the exercise of any such function.
- (3) Without limiting subclause (2), section 18 continues to have effect with respect to any maximum price determined by the Tribunal, or calculated in accordance with the determination of the Tribunal, in relation to any government monopoly service referred to in subclause (1).
- (4) This clause ceases to have effect on 1 January 2001 or on such other date, whether occurring before or after 1 January 2001, as may be prescribed by the regulations.

#### **10 Exercise of Tribunal's functions for the purposes of the *National Electricity (NSW) Law***

- (1) For the purpose of enabling it to give full effect to the *National Electricity (NSW) Law*, the Tribunal may exercise its functions with respect to the whole of any transmission network or distribution network, even if part of the network is situated outside New South Wales.
- (2) For the purposes of this Act, the functions of the Tribunal under the *National Electricity (NSW) Law* include the functions of the Tribunal under the *National Electricity Code* referred to in that Law.

### **Part 4 Independent Pricing and Regulatory Tribunal and Other Legislation Amendment Act 2000**

#### **11 Definition**

In this Part:

**amending Act** means the *Independent Pricing and Regulatory Tribunal and Other Legislation Amendment Act 2000*.

## **12 References to renumbered Part 4 of this Act**

A reference in any other Act, in any instrument made under any Act or in any other instrument of any kind to Part 4 of this Act (as amended by Schedule 3 to the amending Act) is taken to be a reference to Division 7 of Part 3 of this Act.

## **13 Provisions in licences and operating licences**

If a licence or operating licence granted under an Act referred to in section 24FC (as inserted by the amending Act) contains, immediately before the commencement of that section, a term or condition that would after that commencement have the effect of preventing the Tribunal from exercising any of its licence auditing functions (including any term or condition that prevents the Tribunal from being appointed as Licence Regulator), the term or condition is taken to cease to be in force to the extent that it would, but for this clause, have that effect.

## **14 References to Licence Regulator**

- (1) A reference to the Regulator in an operating licence in force at the commencement of section 18B of the *Hunter Water Act 1991* (as inserted by the amending Act) is taken to be a reference to the Tribunal.
- (2) A reference to the Licence Regulator (being the Sydney Water Corporation Licence Regulator) in an operating licence in force at the commencement of the amendments to section 31 of the *Sydney Water Act 1994* made by Schedule 1 to the amending Act is taken to be a reference to the Tribunal.
- (3) A reference to the Licence Regulator (being the Sydney Water Corporation Licence Regulator) in an operating licence in force at the commencement of the amendments to section 31 of the *Sydney Water Catchment Management Act 1998* made by Schedule 1 to the amending Act is taken to be a reference to the Tribunal.

## **15 Competitive neutrality**

Part 4C (as inserted by the amending Act) extends to:

- (a) the conduct of public trading agencies occurring on or after 1 June 1996, and
- (b) complaints to the Minister about such conduct made before or after the commencement of this clause.