

# Independent Pricing and Regulatory Tribunal and Other Legislation Amendment Act 2000 No 60

[2000-60]



New South Wales

## Status Information

### Currency of version

Repealed version for 8 December 2000 to 3 July 2002 (accessed 22 December 2024 at 21:22)

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—

- **Repeal**

The Act was repealed by the [Statute Law \(Miscellaneous Provisions\) Act 2002 No 53](#), Sch 3 with effect from 4.7.2002.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 4 July 2002

# Independent Pricing and Regulatory Tribunal and Other Legislation Amendment Act 2000 No 60



New South Wales

## Contents

<b>Long title</b> .....	3
1 Name of Act .....	3
2 Commencement .....	3
3 Amendments .....	3
<b>Schedule 1 Amendments relating to regulation of utilities</b> .....	3
<b>Schedule 2 Amendments relating to competitive neutrality</b> .....	31
<b>Schedule 3 Miscellaneous amendments</b> .....	47

# Independent Pricing and Regulatory Tribunal and Other Legislation Amendment Act 2000 No 60



New South Wales

An Act to confer on the Independent Pricing and Regulatory Tribunal certain regulatory functions in connection with electricity, gas and urban water utilities and certain other functions in connection with pricing determinations and other matters; to establish a complaints mechanism in connection with non-compliance with competitive neutrality principles by public trading agencies; for these and other purposes to amend the [Independent Pricing and Regulatory Tribunal Act 1992](#) and certain other Acts; and for other purposes.

## 1 Name of Act

This Act is the [Independent Pricing and Regulatory Tribunal and Other Legislation Amendment Act 2000](#).

## 2 Commencement

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

## 3 Amendments

Each Act specified in a Schedule to this Act is amended as set out in that Schedule.

## Schedule 1 Amendments relating to regulation of utilities

(Section 3)

### 1.1 Independent Pricing and Regulatory Tribunal Act 1992 No 39

#### [1] Part 4B

Insert after Part 4A:

## **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
- (e) section 30A of the *Sydney Water Catchment Management Act 1998*.

#### **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 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
  - (d) its functions in connection with operational audits under the *Sydney Water Catchment Management Act 1998*.
- (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.

## [2] Schedule 3A

Insert after Schedule 3:

# 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 8 of the *Public Sector Management Act 1988*, 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) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of 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.

## **1.2 Electricity Supply Act 1995 No 94**

### **[1] Part 7 Administration**

Insert after the heading to Part 7:

## **Division 1 Regulatory functions of Tribunal**

### **77 Regulatory functions of Tribunal**

- (1) The regulatory functions of the Tribunal under this Act are:
- (a) the function of making recommendations under subsection (2), and
  - (b) the function of monitoring and reporting under section 87, and
  - (c) the function of imposing monetary penalties, or requiring other action to be taken, under clause 8A of Schedule 2, and
  - (d) such other functions of the Tribunal under this Act as are specified by the regulations for the purposes of this section.
- (2) The Tribunal has the function of making recommendations to the Minister for or with respect to:
- (a) the granting, variation, transfer or cancellation of a licence, and
  - (b) the imposition, variation or cancellation of conditions in relation to a licence, and
  - (c) action to be taken, and sanctions to be applied, in respect of a contravention of the conditions of a licence, and
  - (d) any remedial action that may be warranted as a result of a contravention of the conditions of a licence.
- (3) Part 4B of the *Independent Pricing and Regulatory Tribunal Act 1992* applies in relation to the Tribunal's regulatory functions under this Act.

**[2] Part 7, Division 3, heading**

Omit “**Licence Compliance Advisory Board**”.

Insert instead “**Licence auditing**”.

**[3] Section 86 Establishment of Board**

Omit the section.

**[4] Section 87 Licence auditing functions of Tribunal**

Omit “Licence Compliance Advisory Board” from section 87 (1).

Insert instead “Tribunal under this Division”.

**[5] Section 87 (2)**

Omit “Board” wherever occurring. Insert instead “Tribunal”.

**[6] Section 87A**

Insert after section 87:

**87A Cost of audit**

- (1) Each holder of a licence is required to pay to the Treasurer the cost (as certified by the Tribunal) involved in and in connection with carrying out the Tribunal’s functions under section 87 in relation to the holder of the licence.
- (2) Without limitation, a licence may include terms and conditions relating to the determination of the cost of carrying out those functions.

**[7] Section 88 Annual reports**

Omit “Licence Compliance Advisory Board” from section 88 (1).

Insert instead “Tribunal”.

**[8] Section 95A**

Insert after section 95:

**95A Review of certain decisions concerning licences**

- (1) The holder of a licence who is aggrieved by a decision of the Tribunal to take action under clause 8A of Schedule 2 in relation to the holder of the licence may apply to the Administrative Decisions Tribunal for a review of the decision.

- (2) Section 53 (Internal reviews) of the *Administrative Decisions Tribunal Act 1997* does not apply to such a decision of the Tribunal.

**[9] Section 106 Regulations**

Insert after section 106 (3):

- (4) Regulations may not be made with respect to any of the matters referred to in subsection (1) (b), (c) or (c1) unless the Minister certifies to the Governor that the Minister has consulted with the Minister for Fair Trading and the Tribunal in connection with those regulations.

**[10] Schedule 2 Licences**

Omit clause 2 (c). Insert instead:

- (c) must be lodged at the office of the Tribunal.

**[11] Schedule 2, clause 3 (5) (c)**

Omit "head office of the Department of Energy".

Insert instead "office of the Tribunal".

**[12] Schedule 2, clause 6 (7) (b)**

Omit "Licence Compliance Advisory Board". Insert instead "Tribunal".

**[13] Schedule 2, clause 8, heading**

Insert "**by the Minister**" after "**licences**".

**[14] Schedule 2, clause 8A**

Insert after clause 8:

**8A Enforcement of licences by Tribunal**

- (1) The Tribunal may impose a monetary penalty on the holder of a licence.
- (2) The Tribunal may, instead of imposing a monetary penalty, require the holder of the licence to take such action as the Tribunal considers appropriate in the circumstances, including (for example) requiring the sending of information to customers or the publication of notices in newspapers.
- (3) The Tribunal may not require action to be taken under subclause (2) by the holder of a licence if the cost of that action would exceed the monetary penalty

that the Tribunal could impose under this clause on the holder.

- (4) If the Tribunal requires information to be sent to a customer under subclause (2), the holder of the licence may satisfy that requirement by sending the information to the customer with the next account or bill to be sent to the customer by the holder or, if the holder is sending other information to that customer before the next account or bill, with that other information.
- (5) Action may be taken under this clause only if the holder of the licence has knowingly contravened the conditions of the licence.
- (6) The monetary penalty that the Tribunal may impose under this clause must not exceed \$10,000 for the first day on which the contravention concerned occurs and a further \$1,000 for each subsequent day (not exceeding 30 days) on which the contravention continues.
- (7) The Tribunal must not take action under this clause unless:
  - (a) the Tribunal has considered whether the contravention has been or is likely to be the subject of any other penalty or action or any claim for compensation, and is satisfied that it is nevertheless appropriate to take action under this clause, and
  - (b) the Tribunal has considered the action that the holder of the licence has taken or is likely to take in respect of the contravention and the cost to the holder in taking that action, and is satisfied that it is nevertheless appropriate to take action under this clause.
- (8) The Tribunal is required to consider the seriousness of the contravention concerned in determining to impose a monetary penalty under this clause.
- (9) The Tribunal must not take action under this clause in respect of a contravention if the Minister has already taken action under clause 8 in respect of the contravention.
- (10) Nothing in this clause affects the Minister's powers under clause 8 in respect of a contravention, whether or not the Tribunal has already taken action under this clause in respect of the contravention.

**[15] Schedule 2, clause 9 (1)**

Insert “, or the Tribunal must not take action under clause 8A,” after “8”.

**[16] Schedule 2, clause 9 (1) (c)**

Insert “or Tribunal” after “Minister”.

**[17] Schedule 2, clause 10 (1)**

Omit the subclause. Insert instead:

- (1) A register of licences is to be kept at the office of the Tribunal.

**[18] Dictionary**

Insert in alphabetical order:

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

### **1.3 Gas Supply Act 1996 No 38**

**[1] Section 7 Applications**

Omit section 7 (1) (c). Insert instead:

- (c) must be lodged at the office of the Tribunal.

**[2] Section 13, heading**

Insert “**by the Minister**” after “**authorisations**”.

**[3] Section 13A**

Insert after section 13:

**13A Enforcement of authorisations by Tribunal**

- (1) The Tribunal may impose a monetary penalty on the holder of an authorisation.
- (2) The Tribunal may, instead of imposing a monetary penalty, require the holder of the authorisation to take such action as the Tribunal considers appropriate in the circumstances, including (for example) requiring the sending of information to customers or the publication of notices in newspapers.
- (3) The Tribunal may not require action to be taken under subsection (2) by the holder of an authorisation if the cost of that action would exceed the monetary penalty that the Tribunal could impose under this section on the holder.
- (4) If the Tribunal requires information to be sent to a customer under subsection (2), the holder of the authorisation may satisfy that requirement by sending the information to the customer with the next account or bill to be sent to the customer by the holder or, if the holder is sending other information to that



customer before the next account or bill, with that other information.

- (5) Action may be taken under this section only if the holder of the authorisation has knowingly contravened the conditions of the authorisation.
- (6) The monetary penalty that the Tribunal may impose under this section must not exceed \$10,000 for the first day on which the contravention concerned occurs and a further \$1,000 for each subsequent day (not exceeding 30 days) on which the contravention continues.
- (7) The Tribunal must not take action under this section unless:
  - (a) the Tribunal has considered whether the contravention has been or is likely to be the subject of any other penalty or action or any claim for compensation, and is satisfied that it is nevertheless appropriate to take action under this section, and
  - (b) the Tribunal has considered the action that the holder of the authorisation has taken or is likely to take in respect of the contravention and the cost to the holder in taking that action, and is satisfied that it is nevertheless appropriate to take action under this section.
- (8) The Tribunal is required to consider the seriousness of the contravention concerned in determining to impose a monetary penalty under this section.
- (9) The Tribunal must not take action under this section in respect of a contravention if the Minister has already taken action under section 13 in respect of the contravention.
- (10) Nothing in this section affects the Minister's powers under section 13 in respect of a contravention, whether or not the Tribunal has already taken action under this section in respect of the contravention.

**[4] Section 14 Holder of authorisation to be notified of proposed action**

Insert “, or the Tribunal must not take action under section 13A,” after “13” in section 14 (1).

**[5] Section 14 (1) (c)**

Insert “or Tribunal” after “Minister”.

**[6] Section 14 (2)**

Insert “, or the Tribunal must not take action under section 13A,” after “13”.

**[7] Section 17A**

Insert after section 17:

### **17A Review of certain decisions concerning authorisations**

- (1) The holder of an authorisation who is aggrieved by a decision of the Tribunal to take action under section 13A in relation to the holder of the authorisation may apply to the Administrative Decisions Tribunal for a review of the decision.
- (2) Section 53 (Internal reviews) of the *Administrative Decisions Tribunal Act 1997* does not apply to such a decision of the Tribunal.

### **[8] Section 18 Register of authorisations**

Omit section 18 (1). Insert instead:

- (1) A register of authorisations is to be kept at the office of the Tribunal.

### **[9] Section 36 Applications**

Omit section 36 (c). Insert instead:

- (c) must be lodged at the office of the Tribunal.

### **[10] Section 42, heading**

Insert “**by the Minister**” after “**licences**”.

### **[11] Section 42A**

Insert after section 42:

#### **42A Enforcement of licences by Tribunal**

- (1) The Tribunal may impose a monetary penalty on the holder of a licence.
- (2) The Tribunal may, instead of imposing a monetary penalty, require the holder of the licence to take such action as the Tribunal considers appropriate in the circumstances, including (for example) requiring the sending of information to customers or the publication of notices in newspapers.
- (3) The Tribunal may not require action to be taken under subsection (2) by the holder of a licence if the cost of that action would exceed the monetary penalty that the Tribunal could impose under this section on the holder.
- (4) If the Tribunal requires information to be sent to a customer under subsection (2), the holder of the licence may satisfy that requirement by sending the information to the customer with the next account or bill to be sent to the

customer by the holder or, if the holder is sending other information to that customer before the next account or bill, with that other information.

- (5) Action may be taken under this section only if the holder of the licence has knowingly contravened the conditions of the licence.
- (6) The monetary penalty that the Tribunal may impose under this section must not exceed \$10,000 for the first day on which the contravention concerned occurs and a further \$1,000 for each subsequent day (not exceeding 30 days) on which the contravention continues.
- (7) The Tribunal must not take action under this section unless:
  - (a) the Tribunal has considered whether the contravention has been or is likely to be the subject of any other penalty or action or any claim for compensation, and is satisfied that it is nevertheless appropriate to take action under this section, and
  - (b) the Tribunal has considered the action that the holder of the licence has taken or is likely to take in respect of the contravention and the cost to the holder in taking that action, and is satisfied that it is nevertheless appropriate to take action under this section.
- (8) The Tribunal is required to consider the seriousness of the contravention concerned in determining to impose a monetary penalty under this section.
- (9) The Tribunal must not take action under this section in respect of a contravention if the Minister has already taken action under section 42 in respect of the contravention.
- (10) Nothing in this section affects the Minister's powers under section 42 in respect of a contravention, whether or not the Tribunal has already taken action under this section in respect of the contravention.

**[12] Section 43 Holder of licence to be notified of proposed action**

Insert “, or the Tribunal must not take action under section 42A,” after “42” in section 43 (1).

**[13] Section 43 (1) (c)**

Insert “or Tribunal” after “Minister”.

**[14] Section 43 (2)**

Insert “, or the Tribunal must not take action under section 42A,” after “42”.

**[15] Section 45A**

Insert after section 45:

**45A Review of certain decisions concerning licences**

- (1) The holder of a licence who is aggrieved by a decision of the Tribunal to take action under section 42A in relation to the holder of the licence may apply to the Administrative Decisions Tribunal for a review of the decision.
- (2) Section 53 (Internal reviews) of the *Administrative Decisions Tribunal Act 1997* does not apply to such a decision of the Tribunal.

**[16] Section 46 Register of licences**

Omit section 46 (1). Insert instead:

- (1) A register of licences is to be kept at the office of the Tribunal.

**[17] Part 5A**

Insert after Part 5:

**Part 5A Regulatory functions of Tribunal**

**75A Regulatory functions of Tribunal**

- (1) The regulatory functions of the Tribunal under this Act are:
  - (a) the function of making recommendations under subsection (2), and
  - (b) the function of monitoring and reporting under subsection (3), and
  - (c) the function of imposing monetary penalties, or requiring other action to be taken, under section 13A or 42A, and
  - (d) such other functions of the Tribunal under this Act as are specified by the regulations for the purposes of this section.
- (2) The Tribunal has the function of making recommendations to the Minister for or with respect to:
  - (a) the grant, transfer or cancellation of an authorisation or licence, and
  - (b) the imposition, variation or cancellation of conditions in relation to an authorisation or licence, and

- (c) action to be taken, and sanctions to be applied, in respect of a contravention of the conditions of an authorisation or licence, and
  - (d) any remedial action that may be warranted as a result of a contravention of the conditions of an authorisation or licence.
- (3) The Tribunal has the function of monitoring and reporting to the Minister on compliance by the holder of an authorisation or licence with the conditions of the authorisation or licence.
- (4) Part 4B of the *Independent Pricing and Regulatory Tribunal Act 1992* applies in relation to the Tribunal's regulatory functions under this Act.

#### **[18] Section 83 Regulations**

Insert after section 83 (5):

- (5A) Regulations may not be made with respect to any of the matters referred to in subsection (3) (a) unless the Minister certifies to the Governor that the Minister has consulted with the Tribunal in connection with those regulations.

### **1.4 Hunter Water Act 1991 No 53**

#### **[1] Section 3 Definitions**

Insert in alphabetical order in section 3 (2):

**operational audit** means an operational audit of the Corporation that is required to be prepared under the operating licence.

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

#### **[2] Sections 17A and 17B**

Insert after section 17:

##### **17A Contravention of operating licence: action by Tribunal**

- (1) The Tribunal may impose a monetary penalty on the Corporation.
- (2) The Tribunal may, instead of imposing a monetary penalty, require the Corporation to take such action as the Tribunal considers appropriate in the circumstances, including (for example) requiring the sending of information to customers or the publication of notices in newspapers.

- (3) The Tribunal may not require action to be taken under subsection (2) by the Corporation if the cost of that action would exceed the monetary penalty that the Tribunal could impose under this section on the Corporation.
- (4) If the Tribunal requires information to be sent to a customer under subsection (2), the Corporation may satisfy that requirement by sending the information to the customer with the next account or bill to be sent to the customer by the Corporation or, if the Corporation is sending other information to that customer before the next account or bill, with that other information.
- (5) Action may be taken under this section only if the Corporation has knowingly contravened the operating licence.
- (6) The monetary penalty that the Tribunal may impose under this section must not exceed \$10,000 for the first day on which the contravention concerned occurs and a further \$1,000 for each subsequent day (not exceeding 30 days) on which the contravention continues.
- (7) The Tribunal must not take action under this section unless:
  - (a) the Tribunal has considered whether the contravention has been or is likely to be the subject of any other penalty or action or any claim for compensation, and is satisfied that it is nevertheless appropriate to take action under this section, and
  - (b) the Tribunal has considered the action that the Corporation has taken or is likely to take in respect of the contravention and the cost to the Corporation in taking that action, and is satisfied that it is nevertheless appropriate to take action under this section.
- (8) The Tribunal is required to consider the seriousness of the contravention concerned in determining to impose a monetary penalty under this section.
- (9) The Tribunal must not take action under this section unless:
  - (a) notice of the proposed action has been given to the Corporation, and
  - (b) the Corporation has been given a reasonable opportunity to make submissions with respect to the proposed action, and
  - (c) the Tribunal has given due consideration to any such submissions.
- (10) The Tribunal must not take action under this section in respect of a contravention if any action has already been taken under section 17 in respect of the contravention.
- (11) Nothing in this section affects any powers under section 17 in respect of a contravention, whether or not the Tribunal has already taken action under this

section in respect of the contravention.

- (12) A penalty imposed under this section may be recovered in any court of competent jurisdiction as if it were a debt due to the Crown.

### **17B Review of certain decisions of Tribunal concerning operating licence**

- (1) The Corporation, if aggrieved by a decision of the Tribunal to take action under section 17A in relation to the Corporation, may apply to the Administrative Decisions Tribunal for a review of the decision.
- (2) Section 53 (Internal reviews) of the *Administrative Decisions Tribunal Act 1997* does not apply to such a decision of the Tribunal.

### **[3] Part 5, Divisions 1A and 1B**

Insert after section 18:

## **Division 1A Regulatory functions of Tribunal**

### **18A Regulatory functions of Tribunal**

- (1) The regulatory functions of the Tribunal under this Act are:
- (a) the function of making recommendations under subsection (2), and
  - (b) the function of monitoring and reporting under subsection (3), and
  - (c) the function of imposing monetary penalties, or requiring other action to be taken, under section 17A, and
  - (d) the licence auditing functions of the Tribunal under section 18B, and
  - (e) such other functions of the Tribunal under this Act as are specified by the regulations for the purposes of this section.
- (2) The Tribunal has the function of making recommendations to the Minister for or with respect to:
- (a) the granting, amendment or cancellation of the operating licence, and
  - (b) the imposition, amendment or cancellation of conditions in relation to the operating licence, and
  - (c) action to be taken, and sanctions to be applied, in respect of a contravention of the operating licence, and
  - (d) remedial action that may be warranted as a result of a contravention of the operating licence.

(3) The Tribunal has the function of monitoring and reporting to the Minister on compliance by the Corporation with the operating licence.

(4) Part 4B of the *Independent Pricing and Regulatory Tribunal Act 1992* applies in relation to the Tribunal's regulatory functions under this Act.

## **Division 1B Licence auditing functions of Tribunal**

### **18B Licence auditing functions of Tribunal**

The Tribunal has such functions as may be conferred or imposed on it by the operating licence in connection with operational audits of the Corporation.

### **18C Operational audits**

The Tribunal is required to ensure that the operational audit of the Corporation is prepared in accordance with the operating licence.

### **18D Cost of audit**

(1) The Corporation is required to pay to the Treasurer the cost (as certified by the Tribunal) involved in and in connection with carrying out the operational audit of the Corporation.

(2) Without limitation, the operating licence may include terms and conditions relating to the determination of the cost of carrying out the operational audit.

## **1.5 Sydney Water Act 1994 No 88**

### **[1] Section 3 Definitions**

Insert in alphabetical order in section 3 (2):

***operational audit*** means an operational audit of the Corporation that is required to be prepared under the operating licence.

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

### **[2] Sections 19A and 19B**

Insert after section 19:

#### **19A Enforcement of operating licences: action by Tribunal**

(1) The Tribunal may impose a monetary penalty on the Corporation.



- (2) The Tribunal may, instead of imposing a monetary penalty, require the Corporation to take such action as the Tribunal considers appropriate in the circumstances, including (for example) requiring the sending of information to customers or the publication of notices in newspapers.
- (3) The Tribunal may not require action to be taken under subsection (2) by the Corporation if the cost of that action would exceed the monetary penalty that the Tribunal could impose under this section on the Corporation.
- (4) If the Tribunal requires information to be sent to a customer under subsection (2), the Corporation may satisfy that requirement by sending the information to the customer with the next account or bill to be sent to the customer by the Corporation or, if the Corporation is sending other information to that customer before the next account or bill, with that other information.
- (5) Action may be taken under this section only if the Corporation has knowingly contravened an operating licence.
- (6) The monetary penalty that the Tribunal may impose under this section must not exceed \$10,000 for the first day on which the contravention occurs and a further \$1,000 for each subsequent day (not exceeding 30 days) on which the contravention continues.
- (7) The Tribunal must not take action under this section unless:
  - (a) the Tribunal has considered whether the contravention has been or is likely to be the subject of any other penalty or action or any claim for compensation, and is satisfied that it is nevertheless appropriate to take action under this section, and
  - (b) the Tribunal has considered the action that the Corporation has taken or is likely to take in respect of the contravention and the cost to the Corporation in taking that action, and is satisfied that it is nevertheless appropriate to take action under this section.
- (8) The Tribunal is required to consider the seriousness of the contravention concerned in determining to impose a monetary penalty under this section.
- (9) The Tribunal must not take action under this section unless:
  - (a) notice of the proposed action has been given to the Corporation, and
  - (b) the Corporation has been given a reasonable opportunity to make submissions with respect to the proposed action, and
  - (c) the Tribunal has given due consideration to any such submissions.
- (10) The Tribunal must not take action under this section in respect of a

contravention if any action has already been taken under section 19 in respect of the contravention.

- (11) Nothing in this section affects any powers under section 19 in respect of a contravention, whether or not the Tribunal has already taken action under this section in respect of the contravention.
- (12) A penalty imposed under this section may be recovered in any court of competent jurisdiction as if it were a debt due to the Crown.

### **19B Review of certain decisions of Tribunal concerning operating licences**

- (1) The Corporation, if aggrieved by a decision of the Tribunal to take action under section 19A in relation to the Corporation, may apply to the Administrative Decisions Tribunal for a review of the decision.
- (2) Section 53 (Internal reviews) of the *Administrative Decisions Tribunal Act 1997* does not apply to such a decision of the Tribunal.

### **[3] Part 6, Division 1A**

Insert after section 27:

## **Division 1A Regulatory functions of Tribunal**

### **28 Regulatory functions of Tribunal**

- (1) The regulatory functions of the Tribunal under this Act are:
- (a) the function of making recommendations under subsection (2), and
  - (b) the function of informing, monitoring and reporting under section 31 (2) (a) and (b), and
  - (c) the function of advising about penalties or remedial action under section 31 (2) (c), and
  - (d) the function of imposing monetary penalties, or requiring other action to be taken, under section 19A, and
  - (e) such other functions of the Tribunal under this Act as are specified by the regulations for the purposes of this section.
- (2) The Tribunal has the function of making recommendations to the Minister for or with respect to:
- (a) the granting, amendment or cancellation of the operating licence, and

(b) the imposition, amendment or cancellation of conditions in relation to the operating licence.

(3) Part 4B of the *Independent Pricing and Regulatory Tribunal Act 1992* applies in relation to the Tribunal's regulatory functions under this Act.

**[4] Part 6, Division 2, heading**

Omit "Licence Regulator".

Insert instead "Licence auditing functions of Tribunal".

**[5] Section 29 Definitions**

Omit the section.

**[6] Section 30 Sydney Water Corporation Licence Regulator**

Omit the section.

**[7] Section 31 Functions of Tribunal**

Omit "Licence Regulator" from section 31 (1).

Insert instead "Tribunal under this Division".

**[8] Section 31 (2)-(4)**

Omit "Licence Regulator" wherever occurring.

Insert instead "Tribunal".

**[9] Section 31 (3)**

Insert "under this Division" after "functions".

**[10] Section 31 (5)**

Omit the subsection.

**[11] Section 32 Operational report**

Omit "Licence Regulator". Insert instead "Tribunal".

**[12] Section 33A**

Insert after section 33:

**33A Cost of audit**

(1) The Corporation is required to pay to the Treasurer the cost (as certified by the

Tribunal) involved in and in connection with carrying out the operational audit of the Corporation.

- (2) Without limitation, an operating licence may include terms and conditions relating to the determination of the cost of carrying out the operational audit.

**[13] Schedule 1 Provisions relating to members and procedure of Sydney Water Corporation Licence Regulator**

Omit the Schedule.

**1.6 Sydney Water Catchment Management Act 1998 No 171**

**[1] Section 3 Definitions**

Omit the definition of **Licence Regulator**.

**[2] Section 3**

Insert in alphabetical order:

**Tribunal** means the Independent Pricing and Regulatory Tribunal established under the [Independent Pricing and Regulatory Tribunal Act 1992](#).

**[3] Section 24 Role of Tribunal with respect to arrangements**

Omit section 24 (1).

**[4] Section 24 (5)**

Omit "Licence Regulator". Insert instead "Tribunal".

**[5] Sections 29A and 29B**

Insert after section 29:

**29A Contravention of operating licence: action by Tribunal**

- (1) The Tribunal may impose a monetary penalty on the Authority.
- (2) The Tribunal may, instead of imposing a monetary penalty, require the Authority to take such action as the Tribunal considers appropriate in the circumstances, including (for example) requiring the sending of information to customers or the publication of notices in newspapers.
- (3) The Tribunal may not require action to be taken under subsection (2) by the Authority if the cost of that action would exceed the monetary penalty that the Tribunal could impose under this section on the Authority.

- (4) If the Tribunal requires information to be sent to a customer under subsection (2), the Authority may satisfy that requirement by sending the information to the customer with the next account or bill to be sent to the customer by the Authority or, if the Authority is sending other information to that customer before the next account or bill, with that other information.
- (5) Action may be taken under this section only if the Authority has knowingly contravened the operating licence.
- (6) The monetary penalty that the Tribunal may impose under this section must not exceed \$10,000 for the first day on which the contravention concerned occurs and a further \$1,000 for each subsequent day (not exceeding 30 days) on which the contravention continues.
- (7) The Tribunal must not take action under this section unless:
  - (a) the Tribunal has considered whether the contravention has been or is likely to be the subject of any other penalty or action or any claim for compensation, and is satisfied that it is nevertheless appropriate to take action under this section, and
  - (b) the Tribunal has considered the action that the Authority has taken or is likely to take in respect of the contravention and the cost to the Authority in taking that action, and is satisfied that it is nevertheless appropriate to take action under this section.
- (8) The Tribunal is required to consider the seriousness of the contravention concerned in determining to impose a monetary penalty under this section.
- (9) The Tribunal must not take action under this section unless:
  - (a) notice of the proposed action has been given to the Authority, and
  - (b) the Authority has been given a reasonable opportunity to make submissions with respect to the proposed action, and
  - (c) the Tribunal has given due consideration to any such submissions.
- (10) The Tribunal must not take action under this section in respect of a contravention if any action has already been taken under section 29 in respect of the contravention.
- (11) Nothing in this section affects any powers under section 29 in respect of a contravention, whether or not the Tribunal has already taken action under this section in respect of the contravention.
- (12) A penalty imposed under this section may be recovered in any court of competent jurisdiction as if it were a debt due to the Crown.

## **29B Review of certain decisions of Tribunal concerning operating licence**

- (1) The Authority, if aggrieved by a decision of the Tribunal to take action under section 29A in relation to the Authority, may apply to the Administrative Decisions Tribunal for a review of the decision.
- (2) Section 53 (Internal reviews) of the *Administrative Decisions Tribunal Act 1997* does not apply to such a decision of the Tribunal.

### **[6] Part 4, Division 1A**

Insert after section 30:

## **Division 1A Regulatory functions of Tribunal**

### **30A Regulatory functions of Tribunal**

- (1) The regulatory functions of the Tribunal under this Act are:
  - (a) the function of making recommendations under subsection (2), and
  - (b) the function of monitoring, reporting and informing under section 31 (1) (b) and (3) (a), and
  - (c) the function of advising about penalties or remedial action under section 31 (3) (b), and
  - (d) the function of imposing monetary penalties, or requiring other action to be taken, under section 29A, and
  - (e) such other functions of the Tribunal under this Act as are specified by the regulations for the purposes of this section.
- (2) The Tribunal has the function of making recommendations to the Minister for or with respect to:
  - (a) the granting, amendment or cancellation of the operating licence, and
  - (b) the imposition, amendment or cancellation of conditions in relation to the operating licence.
- (3) Part 4B of the *Independent Pricing and Regulatory Tribunal Act 1992* applies in relation to the Tribunal's regulatory functions under this Act.

### **[7] Part 4, Division 2, heading**

Omit "**Licence Regulator**".

Insert instead "**Licence and other auditing functions of Tribunal**".

**[8] Section 31 Functions of Tribunal**

Omit “Licence Regulator under this Act” from section 31 (1).

Insert instead “Tribunal under this Division”.

**[9] Section 31 (2)-(5)**

Omit “Licence Regulator” wherever occurring. Insert instead “Tribunal”.

**[10] Section 31 (2) and (4)**

Insert “under this Division” after “functions” wherever occurring.

**[11] Section 31 (6)**

Omit the subsection.

**[12] Section 32 Report on operational audit**

Omit “Licence Regulator”. Insert instead “Tribunal”.

**[13] Section 33A**

Insert after section 33:

**33A Cost of audit**

- (1) The Authority is required to pay to the Treasurer the cost (as certified by the Tribunal) involved in and in connection with carrying out the operational audit of the Authority.
- (2) Without limitation, an operating licence may include terms and conditions relating to the determination of the cost of carrying out the operational audit.

**Schedule 2 Amendments relating to competitive neutrality**

(Section 3)

**2.1 Independent Pricing and Regulatory Tribunal Act 1992 No 39**

**[1] Section 12A Investigations and reports on industry and other matters**

Insert after section 12A (2):

- (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.

**[2] Part 4C**

Insert as Part 4C:

## **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 State Contracts Control Board and the Department 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.

## **2.2 Public Sector Management Act 1988 No 33**

### **Part 10**

Insert after Part 9:

## **Part 10 Competitive neutrality in tendering**

### **Division 1 Preliminary**

#### **107 Purpose and application of Part**

- (1) The purpose of this Part is to provide the State Contracts Control Board 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 Independent Pricing and Regulatory Tribunal and the Department of Local Government) may also have roles under the complaints mechanism.
- (2) This Part applies only 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) However, this Part does not apply to a complaint so far as it is the subject of a direction under section 24G (3) of the *Independent Pricing and Regulatory Tribunal Act 1992*.

## 108 Definitions

In this Part:

**Board** means the State Contracts Control Board established by the regulations.

**Chairperson** means the Chairperson of the Board.

**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.

**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.

**portfolio Minister** has the same meaning as in the *Independent Pricing and Regulatory Tribunal Act 1992*.

**public authority** means a public authority of the State.

**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, and includes a public authority prescribed by the regulations as a public trading agency, but does not include a local council or any other local authority or a public authority prescribed by the regulations as not being a public trading agency.

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

## Division 2 Complaints

### 109 Complaints about competitive neutrality

- (1) The Minister may refer to the Board, 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,

so far as the complaint relates to a tender bid made by the agency in response to an invitation for tenders.

- (2) The Minister is not to refer a complaint to the Board 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 agency 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 Board 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 Board for investigation and report, the Minister may withdraw or amend the reference at any time before the Minister has received the report from the Board.
- (5) The regulations may make provision for or with respect to the manner of making complaints for the purposes of this Part.

## **110 Investigation and report**

- (1) The Board is to conduct an investigation into and make a report on any complaint referred to it and not withdrawn by the Minister.
- (2) The Board 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.

## **111 Reports**

- (1) The report of the Board with respect to a complaint is to contain a statement of its findings and recommendations about the complaint.
- (2) If the Board 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 with regard to tendering bids made by it in response to invitations for tenders, 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 Board is to arrange for the report to be publicly available.

## **112 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 116.
- (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 Board.
- (4) The Board is to arrange for the response to be publicly available.

## **Division 3 Investigations**

### **113 Definition**

In this Division:

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

### **114 Conduct of investigations**

- (1) Subject to this Part, in an investigation, the Board:

- (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 Board 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 Board from holding one or more meetings for the purposes of the investigation, but all such meetings are to be held privately.
- (4) The Board 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.

### **115 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 Board, on or before a day specified in the notice, a statement setting out such information as is so specified,
  - (b) to send to the Board, on or before a day specified in the notice, such documents as are so specified,
  - (c) to attend a meeting of the Board to give evidence.
- (2) If documents are given to the Board under this section, the Board:
- (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 Board.

### **116 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 Board, on or before a day specified in the notice, a statement setting out such information as is so specified,
  - (b) to send to the Board, on or before a day specified in the notice, such documents as are so specified,
  - (c) to attend a meeting of the Board to give evidence.
- (2) If documents are given to the Board under this section, the Board:
  - (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 Board.
- (3) If the complainant does not comply or fully comply with a request under this section, the Board may terminate the investigation, and the Board's report may be limited to a statement that the investigation was terminated for that reason.

### **117 Confidential information**

- (1) If a person provides information (***protected information***) to the Board on the understanding that the information is confidential and will not be divulged, the Board 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 Board is satisfied that the information is not confidential in nature, or
  - (c) to a member of the Board or an officer working for the Board.

- (2) If:
- (a) the Board is satisfied that protected information provided to the Board 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 Board may notify the complainant that the Board 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 Board may divulge the information to the specified person or in its report, unless the complainant withdraws the complaint.
- (4) If the Board is satisfied that it is desirable to do so because of the confidential nature of any information provided to the Board 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 Board and information contained in any documents given to the Board.

## **118 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 Board 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 Board, whether orally or in writing, information that the person knows to be false or misleading in a material particular (unless the person informs the Board of that fact), or
  - (b) at a meeting of or hearing before the Board, 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 Board 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 Board in any investigation.
- (6) Subsection (1) does not apply to a complainant in relation to a notice served on the complainant under section 116.

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

### **119 Proceedings for offences**

Proceedings for an offence under this Division may be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

### **120 Cabinet documents and proceedings**

- (1) This Part does not enable the Board:
  - (a) to require any person to give any statement of information or answer any question that relates to confidential proceedings of Cabinet, or
  - (b) to require any person to produce a Cabinet document, or
  - (c) to inspect a Cabinet document.
- (2) For the purposes of this section, a certificate of the head of The Cabinet Office that any information or question relates to the confidential proceedings of Cabinet or that a document is a Cabinet document is conclusive of the matter certified.
- (3) In this section:

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

**Cabinet document** means a document that is a restricted document by virtue of clause 1 of Part 1 of Schedule 1 to the [Freedom of Information Act 1989](#).

### **121 Report of complaints**

The Board, or the Department whose annual report covers the Board, is required to include in its annual report a statistical summary of complaints received by the Board, investigations conducted by the Board, and complaints disposed of by the

Board, during the period covered by the annual report.

## 2.3 Freedom of Information Act 1989 No 5

### Schedule 2 Exempt bodies and offices

Insert at the end of the Schedule:

The Independent Pricing and Regulatory Tribunal—complaint handling, investigative and reporting functions of the Tribunal in relation to competitive neutrality complaints.

The State Contracts Control Board—complaint handling, investigative and reporting functions of the Board in relation to competitive neutrality complaints.

## Schedule 3 Miscellaneous amendments

(Section 3)

### 3.1 Independent Pricing and Regulatory Tribunal Act 1992 No 39

#### [1] Section 3 Definitions

Omit the definition of *investigation* from section 3 (1).

#### [2] Section 3 (1)

Insert in alphabetical order:

***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.

#### [3] Section 7 Tribunal not subject to Ministerial control in making determinations or recommendations

Insert at the end of the section:

(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.

**[4] Section 9 Arrangements with other entities**

Insert “under this Act” after “investigations” in section 9 (1) (a).

**[5] Section 10 Delegation of Tribunal’s functions**

Omit “this Act” from section 10 (2).

Insert instead “this or any other Act”.

**[6] Section 10 (3)**

Insert after section 10 (2):

- (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.

**[7] Part 3, heading**

Omit the heading.

Insert instead “**Part 3 Price determinations and other functions**”.

**[8] Part 3, new Division heading**

Insert “**Division 1 Pricing: investigations and reports**” before section 11.

**[9] Part 3, new Division heading**

Insert “**Division 2 Industry and other matters: investigations and reports**” before section 12A.

**[10] Part 3, new Division heading**

Insert “**Division 3 Access regimes**” before section 12B.

**[11] Part 3, new Division heading**

Insert “**Division 4 Investigations and reports: general**” before section 13.

**[12] Part 3, new Division heading**

Insert “**Division 5 Price determinations**” before section 13A.

**[13] Section 13A**

Omit the section. Insert instead:



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

Insert “, 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” after “appropriate” in section 14A (1).

**[15] Section 16A**

Insert after section 16:

**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.
- (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.

**[16] Part 3, new Division heading**

Insert “**Division 6 Publication of reports**” before section 19.

**[17] Section 19 Reports to be made public**

Omit “this Act” from section 19 (1). Insert instead “this Part”.

**[18] Part 4, to become Division 7 of Part 3**

Omit the heading to Part 4. Insert instead “**Division 7 Investigations**”.

**[19] Section 19A**

Insert before section 20:

**19A Definition**

In this Division:

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

**[20] Section 22A Making submissions and documents available to public**

Insert “obtained by the Tribunal in connection with an investigation” after “document” where firstly occurring in section 22A (1).

**[21] Section 22A (2)**

Insert “such” before “a document” where firstly occurring.

**[22] Section 23 Offences**

Omit “this Part” wherever occurring in section 23 (1).

Insert instead “this Division”.

**[23] Section 24, to be renumbered as section 25A**

Renumber section 24 as section 25A, and insert it after section 25.

**[24] Part 3A**

Insert as Part 3A:

## **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.

**[25] Part 4A, heading**

Omit "**Arbitration**". Insert instead "**Access regimes: arbitration**".

**[26] Section 26**

Omit the section. Insert instead:

**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] Schedule 4 Savings and transitional provisions**

Insert "*Independent Pricing and Regulatory Tribunal and Other Legislation Amendment Act 2000*" at the end of clause 1 (1).

**[28] Schedule 4**

Insert at the end of the Schedule:

## **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.

### **3.2 Gas Supply Act 1996 No 38**

#### **[1] Section 30 Determinations by review panel**

Omit "Part 4" from section 30 (3). Insert instead "Division 7 of Part 3".

#### **[2] Section 30 (3)**

Omit "that Part". Insert instead "that Division".

#### **[3] Section 32 Investigations by Tribunal**

Omit "Part 4" from section 32 (2). Insert instead "Division 7 of Part 3".

#### **[4] Section 83 Regulations**

Omit section 83 (2) (d) and (e).

#### **[5] Section 83 (4)**

Omit the subsection. Insert instead:

- (4) Regulations may not be made with respect to any of the matters referred to in subsection (3) unless the Minister certifies to the Governor that the Minister has consulted with the Minister for Fair Trading in connection with those regulations.

#### **[6] Section 83A**

Insert after section 83:

#### **83A Regulations as to gas appliances and gas meters**

Without limitation, the regulations may make provision for or with respect to the following matters:

- (a) the design, construction and labelling of gas appliances,
- (b) the prohibition of the sale or supply of unsafe gas appliances,
- (c) the imposition of conditions on the sale or supply of gas appliances to ensure their safe use,
- (d) the connection, alteration, maintenance, repair, replacement and operation of gas appliances,
- (e) the installation, alteration, maintenance, repair, replacement and operation of

gas installations and flues,

(f) the examination and testing of gas meters.

### **3.3 Gas Supply Amendment (Safety) Act 1999 No 25**

#### **Schedule 1 [3]**

Omit the item.

### **3.4 Hunter Water Act 1991 No 53**

#### **Section 15 Term of operating licence**

Omit "3 years". Insert instead "5 years".