

Queensland



# QUEENSLAND COMPETITION AUTHORITY ACT 1997

**Reprinted as in force on 9 February 1998  
(includes amendments up to Act No. 77 of 1997)**

**Reprint No. 1A**

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# Information about this reprint

This Act is reprinted as at 9 February 1998. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprint.**

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**QUEENSLAND COMPETITION  
AUTHORITY ACT 1997**

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# QUEENSLAND COMPETITION AUTHORITY ACT 1997

[as amended by all amendments that commenced on or before 9 February 1998]

**An Act to establish the Queensland Competition Authority, give it powers and functions about pricing practices relating to government monopoly business activities, competitive neutrality and access to services, and for other purposes**

## PART 1—PRELIMINARY

### *Division 1—Introduction*

#### **Short title**

1. This Act may be cited as the *Queensland Competition Authority Act 1997*.

#### **Commencement**

2. Parts 3 and 4 commence on 1 July 1997.

#### **Act binds State**

3.(1) This Act binds the State.

(2) Nothing in this Act makes the State liable to be prosecuted for an offence.

**Extraterritorial operation**

4. It is the intention of Parliament that this Act should apply, as far as possible, to—

- (a) land and things outside Queensland (whether in or outside Australia); and
- (b) acts, transactions and things done, entered into or happening outside Queensland (whether in or outside Australia); and
- (c) land, things, acts and transactions (wherever situated, done, entered into or happening) that would, apart from this Act, be governed or otherwise affected by the law of another jurisdiction (including a foreign country).

***Division 2—Interpretation*****Definitions—the dictionary**

5. The dictionary in the schedule defines particular words in this Act.<sup>1</sup>

**Things done in relation to Ministers**

6.(1) For this Act—

- (a) if a thing is required to be, or may be, done by the Ministers, the thing is to be done by the Ministers jointly; and
- (b) if a thing is required to be, or may be, given to the Ministers, the thing is to be given to each of the Ministers.

(2) However, if the Ministers' offices are held, or the functions of the offices are being performed, by 1 person, the thing may be done by, or given to, that person alone.

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<sup>1</sup> In some Acts, definitions are contained in a dictionary that appears as the last schedule and forms part of the Act—*Acts Interpretation Act 1954*, section 14(4). Words defined elsewhere in the Act are generally signposted by entries in the dictionary. However, if a section has a definition that only applies to the section, or a part of the section, it is generally not signposted by an entry in the dictionary. If this type of definition is set out in a separate subsection, the subsection is generally the last subsection of the section.

## **PART 2—QUEENSLAND COMPETITION AUTHORITY**

### *Division 1—Establishment of authority*

#### **Establishment of authority**

7. The Queensland Competition Authority is established.

#### **Legal status of authority**

8. The authority—

- (a) is a body corporate; and
- (b) has a common seal; and
- (c) may sue and be sued in its corporate name.

#### **Authority's relationship with State**

9.(1) The authority represents the State.

(2) Without limiting subsection (1), the authority—

- (a) has all the rights, privileges and immunities of the State; and
- (b) is an exempt public authority under the Corporations Law.

### *Division 2—Functions and powers of authority*

#### **Authority's functions**

10. The authority's functions are—

- (a) to develop criteria, and, at the request of the Ministers or on its own initiative, to revise the criteria or give information or advice to the Ministers about the criteria, to be used by the Ministers for deciding whether to declare a government business activity to be a government monopoly business activity; and

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- (b) to conduct investigations and report to the Ministers about pricing practices relating to government monopoly business activities; and
- (c) to receive, investigate, and report to the Ministers on, complaints against government agencies carrying on significant business activities otherwise than in accordance with the principle of competitive neutrality; and
- (d) to grant accreditation to government agencies carrying on significant business activities in accordance with the principle of competitive neutrality; and
- (e) if directed by the Ministers—to examine, and report to the Ministers on, any matter relevant to the implementation of competition policy; and
- (f) to make recommendations to the Ministers for the making or revocation of Ministerial declarations; and
- (g) to conduct arbitration hearings for resolving access disputes or, if asked by the parties to access agreements, to arbitrate to resolve disputes under the agreements; and
- (h) to approve undertakings for services; and
- (i) at the request of the Ministers, or on its own initiative—to give information or advice to the Ministers about access codes or proposed access codes, or the contents of access codes or proposed access codes; and
- (j) to regulate market conduct of electricity entities and holders of special approvals under the *Electricity Act 1994*; and
- (k) to develop the conduct rules with which electricity entities and holders of special approvals under the *Electricity Act 1994* must comply; and
- (l) to monitor the standards of service quality in the electricity industry; and
- (m) to perform other functions given to the authority under this or another Act; and
- (n) to perform a function incidental to a function mentioned in paragraphs (a) to (m).

**Authority's powers**

**11.(1)** The authority has all the powers of an individual and may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, deal with and dispose of property; and
- (c) appoint agents and attorneys; and
- (d) engage consultants; and
- (e) do anything else necessary or convenient to be done for, or in connection with, the performance of its functions.

**(2)** Without limiting subsection (1), the authority has the powers given to it under this or another Act.

**(3)** The authority may exercise its powers inside and outside Queensland, including outside Australia.

**Directions by Ministers about authority's functions**

**12.(1)** The authority is subject to the written directions of the Ministers in performing its functions.

**(2)** Despite subsection (1), the authority is not subject to direction by the Ministers—

- (a) in relation to the conduct of any investigation by the authority (except as provided in subsection (3) and section 24<sup>2</sup>); or
- (b) in relation to the content of any report of the authority; or
- (c) in performing its functions under part 5.<sup>3</sup>

**(3)** For the conduct of an investigation by the authority, the Ministers may direct the authority to consult with a stated entity.

**(4)** The Ministers must cause a copy of any direction to be gazetted within 14 days after it is given.

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<sup>2</sup> Section 24 (Directions of Ministers for Ministerial reference)

<sup>3</sup> Part 5 (Access to services)

**Public availability of directions**

**13.(1)** If the authority receives a direction from the Ministers, the authority must ensure—

- (a) a copy of the direction is available for public inspection within 14 days after receiving the direction; and
- (b) a copy of the direction continues to be available for public inspection—
  - (i) for 2 years after it first became available for public inspection; or
  - (ii) if, in the period, a report of the authority containing details of the direction becomes available for public inspection—until the report becomes available for public inspection.

**(2)** Arrangements made for subsection (1) must include ensuring a copy of the direction is available for public inspection during office hours on business days at the authority's office.

## **PART 3—PRICING PRACTICES RELATING TO GOVERNMENT MONOPOLY BUSINESS ACTIVITIES**

### *Division 1—Criteria for declarations of government monopoly business activities*

**Development of criteria**

**14.** Within 6 months after the commencement, the authority must—

- (a) develop criteria for use by the Ministers for deciding whether to declare a government business activity to be a government monopoly business activity; and
- (b) give written notice of the criteria to the Ministers.

**Revision of, and advice about, criteria**

**15.(1)** The authority must, if requested by the Ministers, and may, on its own initiative—

- (a) revise the criteria given to the Ministers under section 14, including the criteria as previously revised under this section; and
- (b) give information or advice to the Ministers about the current criteria.

**(2)** The authority must give written notice of any revised criteria to the Ministers.

**Consultation about criteria**

**16.** In developing or revising criteria for this division, the authority may consult with anyone it considers appropriate.

**Publication of criteria**

**17.** The authority must publish the criteria and any revised criteria developed under this division in the gazette and in any other way it considers appropriate.

*Division 2—Declarations of government monopoly business activities***Request for declaration**

**18.** The authority may ask the Ministers—

- (a) to declare a government business activity to be a government monopoly business activity; and
- (b) if the declaration is made—to refer the government monopoly business activity to it under section 23.<sup>4</sup>

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<sup>4</sup> Section 23 (Investigations by authority—Ministerial reference)

**Declaration by Ministers**

**19.(1)** The Ministers may declare a government business activity to be a government monopoly business activity.

**(2)** The declaration must be made by gazette notice.

**(3)** In deciding whether to make a declaration, the Ministers must have regard to—

- (a)** the current criteria given to them by the authority for the purpose; and
- (b)** any information or advice about the current criteria given to them by the authority.

**(4)** A declaration must identify the business activity by reference to the government agency carrying on the activity.

**(5)** The Ministers may make a declaration whether or not a request for the declaration is made by the authority.

**Declaration by regulation**

**20.(1)** A regulation may declare a government business activity to be a government monopoly business activity.

**(2)** A declaration must identify the business activity by reference to the government agency carrying on the activity.

**Public availability of requests**

**21.** The authority must—

- (a)** keep a list of requests made by it under section 18 during the preceding 2 years; and
- (b)** ensure a copy of the list is available for public inspection during office hours on business days at the authority's office.

***Division 3—Investigations about government monopoly business activities***

**Investigations by authority—standing reference**

**22.(1)** This section applies to a government monopoly business activity for which the relevant declaration is made under a regulation.

**(2)** The authority must conduct the following investigations about the government monopoly business activity—

- (a) an initial investigation about the pricing practices relating to the activity;
- (b) further investigations for monitoring the pricing practices relating to the activity.

**Investigations by authority—Ministerial reference**

**23.(1)** This section applies to a government monopoly business activity for which the relevant declaration is made by the Ministers.

**(2)** The Ministers may refer the government monopoly business activity to the authority for either or both of the following investigations—

- (a) an investigation about the pricing practices relating to the activity;
- (b) investigations for monitoring the pricing practices relating to the activity.

**(3)** The authority must conduct the investigations.

**(4)** The Ministers may, by written notice given to the authority, withdraw or amend the reference at any time before receiving the authority's report of the results of the investigation.

**(5)** A notice under subsection (4) must state the reasons for the withdrawal or amendment of the reference.

**Directions of Ministers for Ministerial reference**

**24.(1)** In referring a government monopoly business activity to the authority for an investigation, the Ministers may direct the authority to do any or all of the following—

- (a) to make a draft report available to the public, or a stated entity, during the investigation;
  - (b) to consider stated matters when conducting the investigation;
  - (c) to give a report of the results of the investigation to the Ministers within a stated period.
- (2) The authority must comply with a direction.

### **Notice of investigation**

**25.(1)** Before starting an investigation under this division, the authority must give reasonable notice of the investigation.

(2) The notice must be published in a newspaper circulating throughout the State.

(3) Also, the notice must be given to the government agency carrying on the government monopoly business activity.

(4) The notice must—

- (a) state the authority's intention to conduct the investigation; and
- (b) state the subject matter of the investigation; and
- (c) invite interested persons to make written submissions to the authority on the subject matter within a reasonable time stated in the notice; and
- (d) state the authority's address.

### **Matters to be considered by authority for investigation**

**26.(1)** In conducting an investigation under this division, the authority must have regard to the following matters—

- (a) the need for efficient resource allocation;
- (b) the need to promote competition;
- (c) the protection of consumers from abuses of monopoly power;
- (d) in relation to the goods or services to which the government monopoly business activity relates—

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- (i) the cost of providing the goods or services in an efficient way, having regard to relevant interstate and international benchmarks; and
- (ii) the actual cost of providing the goods or services; and
- (iii) the standard of the goods or services, including quality, reliability and safety;
- (e) the appropriate rate of return on government agency assets;
- (f) the effect of inflation;
- (g) the impact on the environment of prices charged by the government agency by which the government monopoly business activity is carried on;
- (h) considerations of demand management;
- (i) social welfare and equity considerations including community service obligations, the availability of goods and services to consumers and the social impact of pricing practices;
- (j) the need for pricing practices not to discourage socially desirable investment or innovation by government agencies;
- (k) legislation and government policies relating to ecologically sustainable development;
- (l) legislation and government policies relating to occupational health and safety and industrial relations;
- (m) economic and regional development issues, including employment and investment growth;
- (n) any directions given by the government to the government agency by which the government monopoly business activity is carried on.

**(2)** Subsection (1) does not limit the matters the authority may have regard to in conducting an investigation.

**Procedures for investigations**

27. Part 6<sup>5</sup> applies to an investigation under this division.

**Ending of authority's jurisdiction for investigation**

28.(1) The authority's jurisdiction to continue an investigation about a government monopoly business activity ends if—

- (a) the activity stops being a government monopoly business activity; or
- (b) the reference of the activity to the authority by the Ministers is withdrawn.

(2) If the authority's jurisdiction to continue an investigation ends, the authority may report the results of the investigation to the Ministers up to the time its jurisdiction ended.

***Division 4—Reports of authority about investigations*****Application of division**

29. This division applies to—

- (a) the authority for reporting the results of an investigation conducted by it under division 3; and
- (b) the report of the authority of the results of the investigation.

**Authority to report to Ministers**

30. The authority must report the results of an investigation to the Ministers.

**Authority to give copy of report to government agency**

31. When reporting the results of an investigation to the Ministers, the

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<sup>5</sup> Part 6 (Investigations by authority)

authority must give a copy of the report to the government agency carrying on the government monopoly business activity.

### **Multiple reports**

**32.** For reporting the results of an investigation, the authority may make more than 1 report.

### **Contents of report**

**33.(1)** The authority must include in a report—

- (a) its recommendations about the pricing practices relating to the government monopoly business activity; and
- (b) its reasons for the recommendations; and
- (c) if the Ministers gave a direction to the authority for the investigation—details of the direction.

**(2)** The authority may include in a report anything else about the investigation it considers appropriate.

### **Public availability of reports**

**34.(1)** Within 2 days after the Ministers receive a report, the Ministers must ensure a copy of the report is available for public inspection.

**(2)** Arrangements made for subsection (1) must include ensuring a copy of the report is available for public inspection during office hours on business days at the authority's office.

**(3)** The authority may publish a report that is available for public inspection.

**(4)** Subsection (1) applies subject to section 35.

### **Delaying public availability of reports**

**35.(1)** The authority may recommend in a report that, in the special circumstances of the case, the report, or a part of the report, not be made available for public inspection for a stated period.

(2) The authority must give reasons for the recommendation.

(3) Section 34(1) applies to a report, or part of a report, to which a recommendation relates as if the Ministers received the report at the end of the period mentioned in subsection (1).

### **Decision of Ministers about report**

**36.(1)** Within 1 month after the Ministers receive a report, the Ministers must—

- (a) accept (with or without qualification), or reject, the recommendations about pricing practices contained in it; or
- (b) accept (with or without qualification) some of the recommendations about pricing practices contained in it and reject the other recommendations.

(2) As soon as practicable after making a decision under subsection (1), the Ministers must notify the decision and the reasons for the decision by gazette notice.

### **Referral of accepted recommendations to responsible Minister**

**37.** If the Ministers accept recommendations, they must refer the recommendations, and any qualifications on which the recommendations are accepted, to the responsible Minister for the government agency carrying on the government monopoly business activity.

## **PART 4—COMPETITIVE NEUTRALITY AND SIGNIFICANT BUSINESS ACTIVITIES**

### *Division 1—Preliminary*

#### **Principle of competitive neutrality**

**38.** The principle of competitive neutrality is that a government agency

carrying on a significant business activity should not enjoy a competitive advantage, solely because of the government ownership or control of the agency, over competitors or potential competitors in a particular market.

### **Significant business activity**

**39.(1)** A “**significant business activity**” is a business activity carried on by a government agency and declared to be a significant business activity by the Ministers by gazette notice.

**(2)** In making a declaration, the Ministers may have regard to government policies about the application of the principle of competitive neutrality.

*Example of policy for subsection (2)—*

Government policy statement ‘Competitive Neutrality and Queensland Government Business Activities’ (published by the Queensland Government, July 1996).<sup>6</sup>

**(3)** A declaration must identify the activity by reference to the government agency carrying on the activity.

### **Time for doing things**

**40.** If, under this part, anything is required to be done by the authority but no period within which, or time by which, the thing is to be done is stated, the thing must be done within a reasonable time.

### **Reference to noncompliance by government agency**

**41.** In this part, a reference to a government agency not complying with the principle of competitive neutrality in carrying on a significant business activity is a reference to the agency carrying on the activity otherwise than under the principle.

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<sup>6</sup> A copy of the policy may be inspected at the office of the Treasury Department at 100 George Street, Brisbane.

***Division 2—Complaints about competitive neutrality*****Grounds for complaint**

**42.** A person may make a complaint under this division to the authority against a government agency carrying on a significant business activity on the ground the agency, in carrying on the activity, does not comply with the principle of competitive neutrality.

**Persons who may make complaint**

**43.(1)** A complaint may be made to the authority only by a person who—

- (a) is, or may be, adversely affected by the competitive advantage alleged by the person to be enjoyed by the government agency; and
- (b) satisfies a competition requirement.

**(2)** A person satisfies a competition requirement if the person—

- (a) competes in a particular market with the government agency in relation to the significant business activity carried on by the agency; or
- (b) seeks to compete in a particular market with the government agency in relation to the significant business activity carried on by the agency but is being hindered from doing so by the competitive advantage alleged by the person to be enjoyed by the agency.

**Making a complaint**

**44.** A complaint must—

- (a) be in writing; and
- (b) contain details of the alleged noncompliance by the government agency with the principle of competitive neutrality; and
- (c) include sufficient details to show—
  - (i) how the complainant is, or may be, adversely affected by the

- alleged noncompliance; and
- (ii) the complainant and government agency are, or could be, in competition in the particular market; and
  - (iii) the complainant has made a genuine, but unsuccessful, attempt to resolve the subject matter of its complaint with the government agency.

### **Further information to support complaint**

**45.(1)** The authority may, by written notice given to a complainant, require the complainant to give the authority further information about the complaint within the reasonable time stated in the notice.

**(2)** A notice under subsection (1) must relate to information that is necessary and reasonable to help the authority decide whether or not to investigate the complaint.

### *Division 3—Investigation of complaints*

#### **Requirement of authority to investigate**

- 46.(1)** The authority must investigate a complaint received by it unless—
- (a) the authority reasonably believes the complainant is not, or could not be, in competition in a particular market with the government agency carrying on the significant business activity; or
  - (b) the authority reasonably believes the complainant is not, or the complainant is unlikely to be, adversely affected by the noncompliance by the government agency with the principle of competitive neutrality alleged in the complaint; or
  - (c) the authority reasonably believes the complainant has not shown it has made a genuine attempt to resolve the subject matter of its complaint with the government agency carrying on the significant business activity; or
  - (d) if the authority has sought further information about the complaint under section 45—the complainant has failed, without reasonable excuse, to give the information to the authority within

the time stated in the relevant notice; or

- (e) the government agency carrying on the significant business activity has a current accreditation for the activity granted by the authority under this part; or
- (f) the authority reasonably believes the complaint is frivolous or vexatious.

(2) In forming a belief for subsection (1)(a), the authority must have regard to the following—

- (a) laws and government policy governing competition in the particular market;
- (b) whether the complainant is supplying, or could supply, the goods or service the subject of the significant business activity carried on by the government agency, or similar goods or a similar service, in the particular market;
- (c) the structure of the particular market;
- (d) any other matter it considers appropriate.

(3) If the authority decides not to investigate a complaint, the authority must, within 14 days after making the decision, give to the complainant a written notice stating its decision and the reasons for the decision.

(4) Subsection (1) has effect subject to section 47(2).

### **Effect of complaint on competitive tender process**

**47.(1)** This section applies if the complainant and the government agency are engaged in a competitive tender process that relates to the significant business activity the subject of the complaint.

(2) The authority may decide to—

- (a) investigate, or continue to investigate, the complaint before the tender process has been completed; or
- (b) defer or suspend investigating the complaint until after the tender process has been completed.

(3) The tender process may be continued and completed despite—

- (a) the making of the complaint; or

- (b) the authority making a decision under subsection (2)(a).
- (4) The outcome of the tender process is not affected by—
  - (a) the results of the investigation; or
  - (b) any decision of the Ministers about the results of the investigation.

### **Notice of investigation**

**48.(1)** Before starting an investigation under this division, the authority must give reasonable notice of the investigation.

- (2) The notice must be given to—
  - (a) the government agency carrying on the significant business activity; and
  - (b) the responsible Minister for the government agency; and
  - (c) the complainant; and
  - (d) any other person the authority considers appropriate.
- (3) The notice must—
  - (a) state the authority's intention to conduct the investigation; and
  - (b) state the subject matter of the complaint or be accompanied by a copy of the complaint; and
  - (c) invite the person to whom the notice is given to make written, or, if the authority approves, oral, submissions to the authority on the subject matter within a reasonable time stated in the notice; and
  - (d) state the authority's address.

### **Matters to be considered by authority for investigation**

**49.(1)** In conducting an investigation under this division, the authority must have regard to the following matters—

- (a) the need to ensure compliance with the principle of competitive neutrality;
- (b) the need for efficient resource allocation;

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- (c) the need to promote competition;
- (d) any government policies or guidelines about the application of the principle of competitive neutrality;
- (e) any directions about the application of the principle of competitive neutrality given to the government agency by the government;
- (f) any arrangements between the government and the government agency about a competitive disadvantage suffered by the agency because of the government ownership or control of the agency;
- (g) any laws about the application of the principle of competitive neutrality;
- (h) any legislation or government policies relating to ecologically sustainable development;
- (i) social welfare and equity considerations including community service obligations and the availability of goods and services to consumers;
- (j) any legislation or government policies relating to occupational health and safety or industrial relations;
- (k) economic and regional development issues, including employment and investment growth;
- (l) the interests of consumers or any class of consumers.

*Examples of policies for subsection (1)(d)—*

1. Policy framework for commercialisation of government activities as outlined in 'Commercialisation of government service functions in Queensland' (published by the Treasury Department, October 1994).

2. Government policy statement 'Competitive Neutrality and Queensland Government Business Activities' (published by the Queensland Government, July 1996).<sup>7</sup>

*Example of a law for subsection (1)(g)—*

*Government Owned Corporations Act 1993* governing the corporatisation of government entities.

**(2)** However, in deciding whether the complaint the subject of an

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<sup>7</sup> A copy of each policy may be inspected at the office of the Treasury Department at 100 George Street, Brisbane.

investigation has been substantiated, the authority must not accept that any competitive advantage enjoyed by the government agency solely because of the government ownership or control of the agency is justified because of the existence of a competitive disadvantage suffered by the agency because of the government ownership or control of the agency.

(3) Subsection (1) does not limit the matters the authority may have regard to in conducting an investigation.

### **Procedures for investigations**

50. Part 6<sup>8</sup> applies to an investigation under this division.

#### *Division 4—Reports of authority about investigations*

### **Application of division**

51. This division applies to—

- (a) the authority for reporting the results of an investigation conducted by it under division 3; and
- (b) the report of the authority of the results of the investigation.

### **Authority to report to Ministers**

52. The authority must report the results of an investigation to the Ministers.

### **Multiple reports**

53. For reporting the results of an investigation, the authority may make more than 1 report.

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<sup>8</sup> Part 6 (Investigations by authority)

**Contents of reports**

**54.** The authority must, in a report—

- (a) state whether the complaint the subject of the investigation has been substantiated; and
- (b) state its reasons for the decision; and
- (c) if the authority decides the complaint has been substantiated—include its recommendations on how the government agency's failure to comply with the principle of competitive neutrality could be overcome; and
- (d) if the authority considers the government agency suffers a competitive disadvantage because of the government ownership or control of the agency—
  - (i) include its comments about the competitive disadvantage (including comments about the effect of the disadvantage on the government agency); and
  - (ii) include its recommendations on how the disadvantage suffered by the government agency could be overcome.

**Public availability of reports**

**55.(1)** Within 2 days after the Ministers receive a report, the Ministers must ensure a copy of the report is available for public inspection.

**(2)** Arrangements made for subsection (1) must include ensuring a copy of the report is available for public inspection during office hours on business days at the authority's office.

**(3)** The authority may publish a report that is available for public inspection.

**(4)** Subsection (1) applies subject to section 56.

**Delaying public availability of reports**

**56.(1)** The authority may recommend in a report that, in the special circumstances of the case, the report, or a part of the report, not be made available for public inspection for a stated period.

(2) The authority must give reasons for the recommendation.

(3) Section 55(1) applies to a report, or part of a report, to which a recommendation relates as if the Ministers received the report at the end of the period mentioned in subsection (1).

### **Decision of Ministers about report**

**57.(1)** Within 1 month after the Ministers receive a report, the Ministers must—

- (a) accept or reject the authority’s decision on whether the complaint the subject of the investigation has been substantiated; and
- (b) if the authority decides a complaint has been substantiated—accept (with or without qualification), or reject, any recommendation of the authority contained in the report on how the government agency’s failure to comply with the principle of competitive neutrality could be overcome.

(2) However, the Ministers may act under subsection (1) only in consultation with the responsible Minister.

(3) The Ministers must give a written notice (a “**Ministers’ decision notice**”) to the authority setting out their decision under subsection (1) and the reasons for the decision.

### **Copy of Ministers’ decision notice to be given to certain entities**

**58.** The authority must give a copy of a Ministers’ decision notice received by it to the complainant and government agency.

### **Public availability of Ministers’ decision notice**

**59.(1)** Within 2 days after the authority receives a Ministers’ decision notice, the authority must ensure a copy of the notice is available for public inspection.

(2) Arrangements made for subsection (1) must include ensuring a copy of the notice is gazetted, and is otherwise available for public inspection during office hours on business days at the authority’s office.

### ***Division 5—Accreditation***

#### **Purpose of accreditation**

**60.** The purpose of accreditation under this Act is to remove doubt for a government agency carrying on a significant business activity about whether it carries on the activity in accordance with the principle of competitive neutrality.<sup>9</sup>

#### **Application for accreditation**

**61.(1)** A government agency carrying on a significant business activity may apply to the authority for an accreditation for the agency for the activity.

**(2)** An application must be made in the form approved by the authority.

#### **Decision on application**

**63.(1)** The authority must consider an application for accreditation received by it and either grant, or refuse to grant, the accreditation.

**(2)** In considering an application, the authority must have regard to the principle of competitive neutrality and—

- (a)** if the authority is satisfied the applicant carries on the significant business activity in accordance with the principle—the authority must grant the accreditation; or
- (b)** if the authority is not satisfied the applicant carries on the significant business activity in accordance with the principle—the authority must refuse to grant the accreditation.

**(3)** Also, the authority may refuse to grant the accreditation if—

- (a)** the authority has sought further information about the application under section 62; and
- (b)** the applicant has failed, without reasonable excuse, to give the

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<sup>9</sup> Under section 46(1)(e) the authority must investigate a complaint unless the agency carrying on the significant business activity has been granted a current accreditation.

information to the authority within the time stated in the relevant notice.

### **Conditions on grant of accreditation**

**64.(1)** If the authority decides to grant an accreditation, the grant is subject to the following conditions—

- (a) a condition that the government agency must continue to comply with the principle of competitive neutrality;
- (b) a condition that the government agency must inform the authority of any change in the agency's structure or operations that may affect the agency's continued compliance with the principle of competitive neutrality.

**(2)** The authority may impose any other conditions it considers are necessary and reasonable for ensuring compliance with the accreditation.

**(3)** Without limiting subsection (2), a condition may relate to requirements of the government agency to give relevant information to the authority that is necessary and reasonable to enable the authority to decide whether it is appropriate to maintain the accreditation.

**(4)** For a condition mentioned in subsection (3), the information may be required to be given to the authority either—

- (a) from time to time, at reasonable intervals; or
- (b) at stated reasonable times.

### **Notice of decision**

**65.(1)** If the authority decides to grant an accreditation, the authority must give the applicant a written notice stating—

- (a) the decision; and
- (b) the period of accreditation (not longer than 2 years); and
- (c) the conditions of the accreditation; and
- (d) for a condition imposed by the authority—the reasons for the condition.

(2) If the authority decides not to grant the accreditation, the authority must give the applicant a written notice stating the decision and the reasons for the decision.

### **Publication of decision**

66. If the authority decides to grant an accreditation, the authority must publish in the gazette—

- (a) a notice of the grant; and
- (b) a notice containing a list of all current accreditations.

### **Period of effect of accreditation**

67.(1) An accreditation remains in force until the end of the period stated in the authority's accreditation notice, unless it is sooner surrendered or cancelled.

(2) In this section—

“**authority's accreditation notice**” means a notice given to an applicant for an accreditation by the authority advising the applicant of the grant of the accreditation.

### **Surrender of accreditation**

68.(1) A government agency that has been granted an accreditation may surrender the accreditation by written notice given to the authority.

(2) The surrender takes effect—

- (a) the day the notice is given to the authority; or
- (b) if a later day of effect is stated in the notice—the later day.

### **Cancellation of accreditation**

69.(1) An accreditation may be cancelled on the ground the government agency concerned has contravened a condition of the accreditation.

(2) If the authority believes the ground exists to cancel an accreditation, the authority must give the government agency a written notice that—

- (a) states the authority proposes to cancel the accreditation; and
- (b) states the grounds for the proposed action; and
- (c) outlines the facts and circumstances forming the basis for the grounds; and
- (d) invites the agency to show within the show cause period why the proposed action should not be taken.

(3) If, after considering all written representations made within the show cause period, the authority still believes the ground exists to cancel the accreditation, the authority may cancel the accreditation.

(4) The authority must give the government agency a written notice stating its decision and the reasons for the decision.

(5) The decision takes effect—

- (a) the day the notice is given to the government agency; or
- (b) if a later day of effect is stated in the notice—the later day.

(6) In this section—

“**show cause period**”, for a notice given to a government agency under subsection (2), means the period ending not less than 14 days, and not more than 21 days, after the notice is given to the agency.

### *Division 6—Investigations about accreditation*

#### **Power of authority to conduct investigation**

**69A.(1)** For deciding whether to grant, or refuse to grant, accreditation for a government agency by which an application has been made, the authority may conduct an investigation about the agency.

(2) The authority may conduct the investigation whether the application was made before or after this section commences.

#### **Notice of investigation**

**69B.(1)** Before starting an investigation under this division, the authority must give reasonable notice of the investigation to—

- (a) the government agency; and
  - (b) the responsible Minister for the government agency; and
  - (c) any other person the authority considers appropriate.
- (2) The notice must—
- (a) state the authority's intention to conduct the investigation; and
  - (b) state the subject matter of the investigation; and
  - (c) invite the person to whom the notice is given to make written, or, if the authority approves, oral, submissions to the authority within a reasonable time stated in the notice; and
  - (d) state the authority's address.

### **Matters to be considered by authority for investigation**

**69C.(1)** In conducting an investigation under this division, the authority must consider the following matters—

- (a) the need to ensure compliance with the principle of competitive neutrality;
- (b) the need for efficient resource allocation;
- (c) the need to promote competition;
- (d) any government policies or guidelines about the application of the principle of competitive neutrality;
- (e) any directions about the application of the principle of competitive neutrality given to the government agency by the government;
- (f) any arrangements between the government and the government agency about a competitive disadvantage suffered by the agency because of the government ownership or control of the agency;
- (g) any laws about the application of the principle of competitive neutrality;
- (h) any legislation or government policies concerning ecologically sustainable development;
- (i) social welfare and equity considerations including community service obligations and the availability of goods and services to

consumers;

- (j) any legislation or government policies concerning occupational health and safety or industrial relations;
- (k) economic and regional development issues, including employment and investment growth;
- (l) the interests of consumers or any class of consumers.

(2) However, in deciding whether to grant an accreditation for the government agency, the authority must not accept that any competitive advantage enjoyed by the agency solely because of the government ownership or control of the agency is justified because of the existence of a competitive disadvantage suffered by the agency because of the government ownership or control of the agency.

(3) Subsection (1) does not limit the matters the authority may consider in conducting an investigation.

### **Procedures for investigations**

**69D.** Part 6<sup>10</sup> applies to an investigation under this division.

## **PART 5—ACCESS TO SERVICES**

### *Division 1—Interpretation*

#### **Meaning of “facility”**

**70.(1)** “Facility” includes—

- (a) rail transport infrastructure; and
- (b) port infrastructure; and
- (c) electricity transmission and distribution infrastructure; and

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<sup>10</sup> Part 6 (Investigations by authority)

(d) water and sewerage infrastructure, including treatment and distribution infrastructure.

(2) However, “**facility**” does not include—

(a) a pipeline in relation to which a pipeline licence under the *Petroleum Act 1923* is in force; or

(b) another facility (whether or not of a type mentioned in subsection (1)) prescribed under a regulation as a facility to which this part does not apply.

### **Meaning of “market”**

**71.(1)** A “**market**” is a market in Australia or a foreign country.

(2) If “**market**” is used in relation to goods or services, it includes a market for—

(a) the goods or services; and

(b) other goods or services that are able to be substituted for, or are otherwise competitive with, the goods or services mentioned in paragraph (a).

### **Meaning of “service”**

**72.(1)** “**Service**” is a service provided, or to be provided, by means of a facility and includes, for example—

(a) the use of a facility (including, for example, a road or railway line); and

(b) the transporting of people; and

(c) the handling or transporting of goods or other things; and

(d) a communications service or similar service.

(2) However, “**service**” does not include—

(a) the supply of goods (except to the extent the supply is an integral, but subsidiary, part of the service); or

(b) the use of intellectual property or a production process (except to the extent the use is an integral, but subsidiary, part of the

service); or

- (c) a service declared under a regulation to be a service to which this part does not apply.

(3) Subsections (1) and (2) apply only for this part.

### **References to facilities**

**73.** In this part, a reference to a facility in association with a reference to a service or part of a service is a reference to the facility used, or to be used, to provide the service or part of the service.

### **Application of part to partnerships and joint ventures**

**74.(1)** This section applies if an access provider of a service is a partnership or joint venture consisting of 2 or more entities (the “participants”).

(2) If this part requires or permits something to be done by an access provider, the thing may be done by 1 or more of the participants for the access provider.

(3) If a provision of this part refers to an access provider bearing any costs, the provision applies as if the provision referred to any of the participants bearing any costs.

(4) If a provision of this part refers to an access provider doing something, the provision applies as if the provision referred to 1 or more of the participants doing the thing for the access provider.

(5) Subsection (6) applies if—

- (a) a provision of this part requires an access provider to do something, or prohibits an access provider from doing something; and
- (b) a contravention of the provision is an offence.

(6) The provision mentioned in subsection (5) applies as if a reference to the access provider were a reference to any person responsible for the day-to-day management and control of the access provider.

(7) Subsection (8) applies if—

- (a) a provision of this part requires an access provider to do something, or prohibits an access provider from doing something; and
- (b) a contravention of the provision is not an offence.

(8) The provision mentioned in subsection (7) applies as if a reference to the access provider were a reference to each participant and to any other person responsible for the day-to-day management and control of the access provider.

### **Application of Act to authority for purposes of giving notices**

**75.(1)** If this part requires or permits a notice to be given to the owner of a facility or service by the authority and there is more than 1 owner of the facility or service, the notice may be given to—

- (a) if there is a nominated owner for the facility or service—the nominated owner; or
- (b) if the authority has requested notification of a nominated owner for the facility or service but there is no nominated owner—any 1 of the owners.

(2) An owner is the nominated owner, for a facility or service for which there is more than 1 owner, only if a written notice has been given to the authority in relation to the owner (the “**nominee**”) and the notice contains—

- (a) the nominee’s name and address for receiving notices; and
- (b) a signed statement by the other owners that the nominee is authorised by them to receive notices under this part for all the owners; and
- (c) a signed statement by the nominee agreeing to be the owner authorised to receive notices under this Act for all the owners.

(3) For subsection (1)(b), the authority may request notification of a nominated owner, for a facility or service for which there is more than 1 owner, by giving a notice to each owner whose name and address is known to the authority asking that a written notice be given to the authority containing—

- (a) the name, and address for receiving notices, of 1 owner (also the

- “nominee”); and
- (b) a signed statement by the other owners that the nominee is authorised by them to receive notices under this Act for all the owners; and
  - (c) a signed statement by the nominee agreeing to be the owner authorised to receive notices under this Act for all the owners.

### *Division 2—Ministerial declarations*

#### *Subdivision 1—Criteria for declaration recommendations and Ministerial declarations*

#### **Access criteria**

**76.(1)** This section sets out the matters (the “**access criteria**”) about which—

- (a) the authority is required to be satisfied for recommending that a candidate service be declared by the Ministers; and
- (b) the Ministers are required to be satisfied for declaring a candidate service.

**(2)** The access criteria are as follows—

- (a) that access (or increased access) to the service would promote competition in at least 1 market (whether or not in Australia), other than the market for the service;
- (b) that it would be uneconomical to duplicate the facility for the service;
- (c) that access (or increased access) to the service can be provided safely;
- (d) that access (or increased access) to the service would not be contrary to the public interest.

**(3)** In considering the access criterion mentioned in subsection (2)(d), the authority and the Ministers must have regard to the following matters—

- (a) legislation and government policies relating to ecologically

- sustainable development;
- (b) social welfare and equity considerations including community service obligations and the availability of goods and services to consumers;
  - (c) legislation and government policies relating to occupational health and safety and industrial relations;
  - (d) economic and regional development issues, including employment and investment growth;
  - (e) the interests of consumers or any class of consumers;
  - (f) the need to promote competition;
  - (g) the efficient allocation of resources.

### ***Subdivision 2—Recommendation by authority for declaration***

#### **Requests about declarations**

**77.(1)** A person may ask the authority to recommend that a particular candidate service be declared by the Ministers.

**(2)** The Ministers may ask the authority to consider whether a particular candidate service should be declared by the Ministers.

**(3)** A request must be in the form approved by the authority.

**(4)** At any time before the authority makes a recommendation about a request, the applicant may—

- (a) withdraw the request; or
- (b) with the written agreement of the authority—amend the request.

#### **Notice of request**

**78.(1)** This section applies if the applicant for a request is not the owner of the service.

**(2)** The authority must—

- (a) promptly tell the owner of the service that the authority has

received the request; and

- (b) if the request is later withdrawn or amended by the applicant—promptly tell the owner of the withdrawal, or promptly give details of the amendment to the owner.

### **Making recommendation**

**79.(1)** After receiving a request, the authority must recommend to the Ministers that—

- (a) the service be declared; or
- (b) part of the service, that is itself a service, be declared; or
- (c) the service not be declared.

**(2)** Before making the recommendation, the authority may consult with any person it considers appropriate.

**(3)** The authority must—

- (a) make the recommendation within a reasonable time after receiving the request; and
- (b) publish the recommendation and the reasons for the recommendation in the way the authority considers appropriate.

**(4)** If the authority makes a recommendation that a candidate service, or part of a candidate service, be declared, the authority also must recommend the period for which the declaration should operate.

**(5)** Unless the request is made by the Ministers, the authority must give a copy of the request to the Ministers with the recommendation.

**(6)** If the applicant for the request is not the owner of the service, the authority must give the owner's name and address to the Ministers with the recommendation.

### **Factors affecting making of recommendation**

**80.(1)** The authority must recommend that a candidate service be declared by the Ministers if the authority is satisfied about all of the access criteria for the service.

(2) The authority must recommend that a candidate service not be declared by the Ministers if the authority is not satisfied about all of the access criteria for the service.

(3) Despite subsection (1), the authority may recommend that a candidate service not be declared by the Ministers if the authority—

- (a) is not satisfied that access (or increased access) to the service would be likely to have a substantial effect on a market; or
- (b) considers the request was not made in good faith or is frivolous.

(4) Subsection (3)(b) does not apply to a request made by the Ministers.

(5) Despite subsections (1) and (2), the authority may recommend that part of a candidate service be declared by the Ministers if the authority is satisfied about all of the access criteria for the part of the service.

### *Subdivision 3—Investigations about candidate services*

#### **Power of authority to conduct investigation**

**81.** For making a recommendation under subdivision 2, the authority may conduct an investigation about the candidate service.

#### **Notice of investigation**

**82.(1)** Before starting an investigation under this subdivision, the authority must give reasonable notice of the investigation to—

- (a) the owner of the service; and
- (b) any other person the authority considers appropriate.

(2) The notice must—

- (a) state the authority's intention to conduct the investigation; and
- (b) state the name of the owner of the service; and
- (c) state the subject matter of the investigation; and
- (d) invite the person to whom the notice is given to make written submissions to the authority on the subject matter within a

- reasonable time stated in the notice; and
- (e) state the authority's address.

### **Procedures for investigation**

**83.** Part 6<sup>11</sup> applies to an investigation under this subdivision.

#### *Subdivision 4—Declaration by Ministers*

### **Making declaration**

**84.(1)** On receiving a declaration recommendation, the Ministers must do 1 of the following—

- (a) declare the service;
- (b) declare part of the service, that is itself a service;
- (c) decide not to declare the service.

**(2)** If the Ministers declare the service, or part of the service, the declaration must state the expiry date of the declaration.

### **Notice of decision**

**85.(1)** The Ministers must publish in the gazette—

- (a) notice of the decision to declare the service in whole or part or not to declare the service; and
- (b) the reasons for the decision.

**(2)** Also, as soon as practicable after making the decision, the Ministers must—

- (a) unless the request about the declaration of the service was made by the Ministers—give the designated material for the decision to the applicant; and
- (b) if the applicant for the request about the declaration of the service

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<sup>11</sup> Part 6 (Investigations by authority)

is not the owner of the service—give the designated material for the decision to the owner of the service; and

- (c) give to the authority a written notice stating the decision and the reasons for the decision.

(3) If the Ministers do not publish as required under subsection (1) within 60 days after receiving the declaration recommendation, they are taken, at the end of the 60 day period—

- (a) to have decided not to declare the service; and
- (b) to have published notice of the decision.

(4) In this section—

**“designated material”**, for a decision of the Ministers to declare, or not to declare, a service, means—

- (a) a copy of the declaration recommendation; and
- (b) a written notice stating the decision and the reasons for the decision.

### **Factors affecting making of declaration**

**86.(1)** The Ministers must declare a candidate service if they are satisfied about all of the access criteria for the service.

(2) The Ministers must decide not to declare a candidate service if they are not satisfied about all of the access criteria for the service.

(3) Despite subsection (1), the Ministers may decide not to declare a candidate service if they are not satisfied that access (or increased access) to the service would be likely to have a substantial effect on a market.

(4) Despite subsections (1) and (2), the Ministers may declare part of a candidate service if they are satisfied about all of the access criteria for the part of the service.

### **Duration of declaration**

**87.(1)** A Ministerial declaration starts to operate on—

- (a) the day notice of the decision to declare the service is published in

the gazette; or

(b) if a later day of operation is stated in the notice—the later day.

(2) A Ministerial declaration continues in operation until its expiry date, unless it is earlier revoked.

### *Subdivision 5—Revocation of declaration*

#### **Recommendation to revoke**

**88.(1)** The authority may recommend to the Ministers that a Ministerial declaration be revoked.

(2) The authority may recommend revocation of a Ministerial declaration only if it is satisfied that, at the time of the recommendation, section 86<sup>12</sup> would prevent the Ministers from declaring the relevant service.

#### **Power of authority to conduct investigation**

**89.** For making a revocation recommendation, the authority may conduct an investigation about the declared service.

#### **Notice of investigation**

**90.(1)** Before starting an investigation under this subdivision, the authority must give reasonable notice of the investigation to—

- (a) the owner of the service; and
- (b) any other person the authority considers appropriate.

(2) The notice must—

- (a) state the authority's intention to conduct the investigation; and
- (b) state the subject matter of the investigation; and
- (c) invite the person to whom the notice is given to make written submissions to the authority on the subject matter within a

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<sup>12</sup> Section 86 (Factors affecting making of declaration)

- reasonable time stated in the notice; and
- (d) state the authority's address.

### **Procedures for investigation**

**91.** Part 6<sup>13</sup> applies to an investigation under this subdivision.

### **Revocation**

**92.(1)** On receiving a revocation recommendation, the Ministers must either revoke the Ministerial declaration or decide not to revoke the declaration.

**(2)** The Ministers may revoke a Ministerial declaration—

- (a) only after receiving a revocation recommendation; and
- (b) only if they are satisfied that, at the time of the revocation, section 86<sup>14</sup> would prevent the Ministers from declaring the relevant service.

### **Notice of decision**

**93.(1)** The Ministers must publish in the gazette—

- (a) notice of a decision to revoke, or not to revoke, a Ministerial declaration; and
- (b) the reasons for the decision.

**(2)** Also, as soon as practicable after making the decision, the Ministers must give a written notice stating the decision and the reasons for the decision to—

- (a) the owner of the service; and
- (b) the authority.

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<sup>13</sup> Part 6 (Investigations by authority)

<sup>14</sup> Section 86 (Factors affecting making of declaration)

**When revocation takes effect**

**94.** A decision of the Ministers to revoke a Ministerial declaration takes effect on—

- (a) the day notice of the decision is published in the gazette; or
- (b) if a later day of effect is stated in the notice—the later day.

*Subdivision 6—Other Matters***Effect of expiry or revocation of declaration**

**95.** The expiry or revocation of a Ministerial declaration does not affect—

- (a) the arbitration of an access dispute for which a dispute notice was given before the expiry or revocation; or
- (b) the operation or enforcement of a determination made in the arbitration of an access dispute for which a dispute notice was given before the expiry or revocation; or
- (c) the operation of an access agreement, or a right acquired, or liability incurred, under an access agreement, that was entered into before the expiry or revocation.

**Register of declarations**

**96.(1)** The authority must keep a register of Ministerial declarations in operation.

**(2)** The register must include, for each Ministerial declaration, details the authority considers appropriate.

*Division 3—Regulation based declarations***Declaration of service**

**97.(1)** A regulation may declare a service for this Act.

**(2)** A service may be declared under subsection (1) only if the service is a service for which the facility used, or to be used, to provide the service is a

public or new private facility.

(3) In this section—

**“new private facility”** means a private facility that—

- (a) first becomes operational after the commencement of the regulation so far as the regulation applies to the service to be provided by the facility; or
- (b) previously was a public facility and became a private facility after the commencement of the regulation so far as the regulation applies to the service to be provided by the facility.

### **Effect of ending of operation of declaration**

**98.** The ending of the operation of a regulation based declaration does not affect—

- (a) the arbitration of an access dispute for which a dispute notice was given before the operation of the declaration ended; or
- (b) the operation or enforcement of a determination made in the arbitration of an access dispute for which a dispute notice was given before the operation of the declaration ended; or
- (c) the operation of an access agreement, or a right acquired, or liability incurred, under an access agreement, that was entered into before the operation of the declaration ended.

### *Division 4—Access agreements for declared services*

#### *Subdivision 1—Negotiations for access agreements*

### **Obligation of access provider to negotiate**

**99.** An access provider of a declared service must, if required by an access seeker, negotiate with the access seeker for making an access agreement relating to the service.

**Obligations of parties to negotiations**

**100.** The access provider and access seeker must negotiate in good faith for reaching an access agreement.

**Obligation of access provider to satisfy access seeker's requirements**

**101.** In negotiations between an access provider and access seeker for an access agreement, the access provider must make all reasonable efforts to try to satisfy the reasonable requirements of the access seeker.

*Subdivision 2—Rights and obligations of parties to access agreements***Terms of access under separate agreements**

**102.** In entering into separate access agreements in relation to the same declared service, an access provider is not required to provide access on the same terms under each agreement.

**Requirement to produce access agreement**

**103.(1)** This section applies to an access agreement only if it is made in writing.

**(2)** The authority may, by written notice given to an access provider who is a party to an access agreement, require the access provider to give a copy of the agreement to the authority within the time (not less than 14 days) stated in the notice.

**(3)** The access provider must comply with the requirement within the time stated in the notice, unless the access provider has a reasonable excuse.

Maximum penalty for subsection (3)—500 penalty units or 6 months imprisonment.

**Preventing or hindering access**

**104.(1)** An access provider or user of a declared service, or a related body corporate of the access provider or user, must not engage in conduct for the purpose of preventing or hindering a user's access to the declared

service under an access agreement.<sup>15</sup>

(2) An access provider who is the owner or operator of a declared service engages in conduct for preventing or hindering a user's access to the declared service if, having regard to the relevant criterion, the access provider provides, or proposes to provide, access to the declared service to itself, or a related body corporate of the access provider, on more favourable terms than the terms on which the access provider provides, or proposes to provide, access to the declared service to a competitor of the access provider.

(3) For subsection (2), the relevant criterion is the terms, taken as a whole, on which the access provider provides, or proposes to provide, access to the declared service to itself and the competitor having regard, in particular, to—

- (a) the fees, tariffs or other payments to be made for access to the declared service by the access provider and the competitor; and
- (b) the nature and quality of the declared service provided, or proposed to be provided, to the access provider and competitor.

(4) An access provider or user of a declared service, or a related body corporate of the access provider or user, may be taken to have engaged in conduct for preventing or hindering a user's access to a service even though, after all the evidence has been considered, the existence of the purpose is ascertainable only by inference from the conduct of the access provider, user or related body corporate or other relevant circumstances.

(5) Subsections (2) and (4) do not limit the ways in which the purpose of an access provider or user, or a related body corporate of an access provider or user, may be established for subsection (1).

(6) An access provider or user of a declared service, or a related body corporate of the access provider or user, does not contravene subsection (1) if the conduct of the access provider, user or related body corporate is constituted by—

- (a) an act done in accordance with an access code or approved undertaking for the declared service; or

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<sup>15</sup> Provision for enforcing compliance with section 104(1) is made in division 8 (Enforcement), particularly section 153 (Orders to enforce prohibition on hindering access).

- (b) a reasonable act done in, and for, an emergency (including an emergency that involves, or may involve, injury to persons or damage to property).

(7) Subsection (2) applies despite section 102.<sup>16</sup>

(8) In this section—

**“competitor”**, of an access provider of a declared service, means a person who has, or seeks to have, access to the declared service to compete in a market with the access provider, or a related body corporate of the access provider.

### **Requirement to give information about access**

**105.(1)** The authority may take action under this section to find out whether an access provider who is an owner or operator of a declared service is complying with section 104(1) in relation to the declared service.

(2) The authority may, by written notice given to the access provider, require the access provider to give the authority, within the time (not less than 14 days) stated in the notice, stated information about the arrangements under which the access provider provides, or proposes to provide, access to the service to itself or a related body corporate of the access provider.

(3) The access provider must comply with the requirement within the time stated in the notice, unless the access provider has a reasonable excuse.

Maximum penalty—500 penalty units or 6 months imprisonment.

(4) An access provider is not required to comply with a requirement to give information if the access provider claims on the ground of self incrimination a privilege the access provider would be entitled to claim against giving the information were the access provider a witness in a prosecution for an offence in the Supreme Court.

(5) The authority or access provider may apply to the Supreme Court for a determination of the validity of a claim of privilege.

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<sup>16</sup> Section 102 (Terms of access under separate agreements)

**Transfer of rights under access agreement**

**106.(1)** A user of a declared service under an access agreement may transfer all or part of the user's interest in the agreement under this section.

**(2)** A transfer must be made by written notice given to the access provider providing the service to the user.

**(3)** The notice must state—

- (a) the interest being transferred; and
- (b) the name and address of the transferee; and
- (c) the date of the transfer.

**(4)** The date of transfer stated in the notice must not be earlier than the day on which the notice is given.

**(5)** Even if a user effects a transfer under this section, the user's obligations under the access agreement continue, unless the transferee and other parties to the access agreement otherwise agree.

**(6)** Subsection (1) has effect subject to—

- (a) an access code for the declared service; and
- (b) an approved undertaking for the declared service; and
- (c) if the access agreement has been approved by the authority under subdivision 3—the terms of the access agreement.

***Subdivision 3—Approval of certain access agreements*****Application of subdivision**

**107.** This subdivision applies to an access agreement only if the agreement affects the right of a user of a declared service under the agreement to transfer all or part of the user's interest in the agreement.

**Application for approval**

**108.(1)** The parties to an access agreement may apply to the authority for

approval of the agreement.

(2) An application must be made in the form approved by the authority.

### **Decision on application**

**109.(1)** The authority must consider an application for approval of an access agreement received by it and either approve, or refuse to approve, the agreement.

(2) In deciding whether to give the approval, the authority must have regard to—

- (a) the public interest, including the public interest in having competition in markets (whether or not in Australia); and
- (b) the interests of the access provider; and
- (c) the interests of persons who have, or may acquire, rights to use the declared service to which the agreement relates.

### **Notice of decision**

**110.(1)** If the authority decides to approve an access agreement, the authority must promptly give written notice of the decision to each of the parties to the agreement.

(2) If the authority decides not to approve an access agreement, the authority must promptly give to each of the parties to the agreement a written notice stating the decision and the reasons for the decision.

## ***Division 5—Access disputes about declared services***

### ***Subdivision 1—Preliminary***

#### **Application of arbitration procedures to access disputes**

**111.(1)** Subdivision 3<sup>17</sup> applies in relation to the arbitration of a dispute

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<sup>17</sup> Subdivision 3 (Arbitration of access disputes and making of determinations)

about access to a service only if a notice of the dispute has been given to the authority by an access provider or access seeker under section 112.

(2) However, an access provider or access seeker may give a notice under section 112 about a dispute only if the access provider and access seeker have not agreed to deal with the dispute otherwise than by arbitration under this Act.

### *Subdivision 2—Notices about access disputes*

#### **Giving dispute notice**

**112.(1)** This section applies if—

- (a) an access provider and access seeker cannot agree on an aspect of access to a declared service; and
- (b) there is no access agreement between the access provider and access seeker relating to the service.

(2) Either the access provider or access seeker may notify the authority that an access dispute exists.

(3) For subsection (1), there is no access agreement between an access provider and access seeker relating to a declared service if the aspect about access to the service about which the access provider and access seeker cannot agree is increased access to the service.

#### **Requirements about dispute notice**

**113.(1)** A notice given under section 112(2) (a “**dispute notice**”) must be in writing.

(2) A dispute notice must—

- (a) state the name and address of the access provider or access seeker giving the notice; and
- (b) state the name and address of the other party involved in the access dispute; and
- (c) state the steps the party giving the notice has taken, or tried to

take, to satisfy its obligations about carrying out negotiations for an access agreement in good faith.<sup>18</sup>

### **Notice by authority of access dispute**

**114.** On receiving a dispute notice, the authority must give written notice of the access dispute—

- (a) if the dispute notice was given by an access seeker—to the access provider stated in the notice as being the access provider involved in the access dispute with the access seeker; and
- (b) if the dispute notice was given by an access provider—to the access seeker stated in the notice as being the access seeker involved in the access dispute with the access provider; and
- (c) to any other person the authority considers is appropriate to become a party to the arbitration of the access dispute.

### **Withdrawal of dispute notice**

**115.(1)** A dispute notice may be withdrawn only under this section.

**(2)** An access provider or access seeker may withdraw a dispute notice at any time before the authority makes its determination.

**(3)** However, the access provider may withdraw the dispute notice only with the written agreement of the access seeker.

**(4)** Subsection (2) applies whether the dispute notice was given by the access provider or access seeker.

**(5)** If a dispute notice is withdrawn, the notice is taken, for this part, never to have been given.

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<sup>18</sup> See section 100 (Obligations of parties to negotiations).

***Subdivision 3—Arbitration of access disputes and making of determinations***

**Parties to arbitration**

**116.** The parties to the arbitration of an access dispute are—

- (a) the access provider or access seeker who gives the dispute notice for the dispute; and
- (b) if the dispute notice is given by an access provider—the access seeker stated in the notice as being the access seeker involved in the access dispute with the access provider; and
- (c) if the dispute notice is given by an access seeker—the access provider stated in the notice as being the access provider involved in the access dispute with the access seeker; and
- (d) any other person who applies to the authority in writing to be made a party and is accepted by the authority as having a sufficient interest.

**Determination by authority**

**117.(1)** The authority must make a written determination in an arbitration on access to the declared service by the access seeker.

**(2)** However, the authority is not required to make a determination if it ends the arbitration under section 122.<sup>19</sup>

**(3)** The determination may deal with any matter relating to access to the service by the access seeker, including matters that were not the basis for the dispute notice for the access dispute.

**(4)** The authority is not required to make a determination that requires the access provider to provide access to the service by the access seeker.

**(5)** Before making a determination, the authority must give a draft determination to the parties.

**(6)** Subject to subsection (5), the authority is not required to consult with

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<sup>19</sup> Section 122 (Resolution of dispute by authority without arbitration or determination)

any entity before making a determination.

(7) When making a determination, the authority must give the parties its reasons for making the determination.

(8) The fact that a party to an arbitration did not engage in negotiations for an access agreement in good faith does not affect—

- (a) an arbitration; or
- (b) the making of a determination, or a determination made, in the arbitration.

### **Examples of determinations**

**118.(1)** Without limiting section 117(3), a determination may—

- (a) require the access provider to provide access to the service by the access seeker; or
- (b) require the access seeker to accept, and pay for, access to the service; or
- (c) state the terms on which the access seeker has access to the service; or
- (d) require the access provider to extend, or permit the extension of, the facility; or
- (e) require the access provider to permit another facility to be connected to the facility; or
- (f) include a requirement that the access provider and access seeker enter into an access agreement to give effect to a matter determined by the authority.

(2) Also, if the authority makes a determination that requires or permits the extension of a facility and none of the costs of the extension are to be paid by the access provider, the authority may make a determination that relates to the ownership of the extension.

### **Restrictions affecting making of determination**

**119.(1)** The authority must not make a determination that is inconsistent with an approved undertaking, or access code, for the service.

(2) Also, the authority must not make a determination that would have any of the following effects—

- (a) reduce the amount of the service able to be obtained by an access provider;
- (b) result in the access seeker, or someone else, becoming the owner, or 1 of the owners, of the facility, without the existing owner's agreement;
- (c) require an access provider to pay some or all of the costs of extending the facility.

(3) Despite subsection (2)(a), the authority may make a determination reducing the amount of the service able to be obtained by an access provider if—

- (a) the access provider is a party to the arbitration; and
- (b) the reduction does not prevent the access provider from obtaining a sufficient amount of the service to be able to meet the provider's reasonably anticipated requirements, as assessed by the authority, as at the time the dispute notice was given; and
- (c) if the authority considers the access provider is entitled to be compensated for the reduction—the amount of compensation is taken into account in fixing the amount to be paid by the access seeker for access to the service.

(4) Despite subsection (2)(c), the authority may make a determination requiring an access provider to extend, or permit the extension of, a facility.

(5) However, the authority may make a determination mentioned in subsection (4) only if—

- (a) the access provider is the owner of the facility; and
- (b) the authority is satisfied—
  - (i) the extension will be technically and economically feasible and consistent with the safe and reliable operation of the facility; and
  - (ii) the legitimate business interests of the owner of the facility are protected; and
- (c) for a determination requiring an access provider to extend a

facility—the authority imposes a requirement under the determination on a person other than the access provider to pay the costs of extending the facility.

(6) If the authority makes a determination mentioned in subsection (4), it must, in fixing the terms of access for the access seeker, take into account—

- (a) the costs to be paid by the parties for the extension; and
- (b) the benefits to the parties resulting from the extension.

(7) A determination has no effect if it is made in contravention of this section.

### **Matters to be considered by authority in making determination**

**120.(1)** In making a determination, the authority must have regard to the following matters—

- (a) the access provider's legitimate business interests and investment in the facility;
- (b) the legitimate business interests of persons who have, or may acquire, rights to use the service;
- (c) the public interest, including the benefit to the public in having competitive markets;
- (d) the value of the service to—
  - (i) the access seeker; or
  - (ii) a class of access seekers or users;
- (e) the direct costs to the access provider of providing access to the service, including any costs of extending the facility, but not costs associated with losses arising from increased competition;
- (f) the economic value to the access provider of any extensions to, or other additional investment in, the facility that the access provider or access seeker has undertaken or agreed to undertake;
- (g) the quality of the service;
- (h) the operational and technical requirements necessary for the safe and reliable operation of the facility;

(i) the economically efficient operation of the facility.

(2) The authority may take into account any other matters it considers are appropriate.

### **Conduct of arbitration**

**121.** Part 7<sup>20</sup> applies to an arbitration under this subdivision.

### **Resolution of dispute by authority without arbitration or determination**

**122.** The authority may decide not to start an arbitration, or at any time end an arbitration (without making a determination), if it considers that—

- (a) the giving of the dispute notice was vexatious; or
- (b) the subject matter of the dispute is trivial, misconceived or lacking in substance; or
- (c) the party who gave the dispute notice has not engaged in negotiations for an access agreement in good faith.

### **When determination takes effect**

**123.** A determination takes effect on—

- (a) the day the determination is made; or
- (b) if a later day of effect is stated in the determination—the later day.

### **Enforcement of determination**

**124.** A determination may be enforced in the way provided under division 8.<sup>21</sup>

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<sup>20</sup> Part 7 (Conduct of arbitration hearings by authority)

<sup>21</sup> Division 8 (Enforcement)

**Preventing or hindering access**

**125.(1)** An access provider or user of a declared service, or a related body corporate of the access provider or user, must not engage in conduct for the purpose of preventing or hindering a user's access to the declared service under a determination.<sup>22</sup>

(2) An access provider who is the owner or operator of a declared service engages in conduct for preventing or hindering a user's access to the declared service if, having regard to the relevant criterion, the access provider provides, or proposes to provide, access to the declared service to itself, or a related body corporate of the access provider, on more favourable terms than the terms on which the access provider provides, or proposes to provide, access to the declared service to a competitor of the access provider.

(3) For subsection (2), the relevant criterion is the terms, taken as a whole, on which the access provider provides, or proposes to provide, access to the declared service to itself and the competitor having regard, in particular, to—

- (a) the fees, tariffs or other payments to be made for access to the declared service by the access provider and the competitor; and
- (b) the nature and quality of the declared service provided, or proposed to be provided, to the access provider and competitor.

(4) An access provider or user of a declared service, or a related body corporate of the access provider or user, may be taken to have engaged in conduct for preventing or hindering a user's access to a service even though, after all the evidence has been considered, the existence of the purpose is ascertainable only by inference from the conduct of the access provider, user or related body corporate or other relevant circumstances.

(5) Subsections (2) and (4) do not limit the ways in which the purpose of an access provider or user, or a related body corporate of an access provider or user, may be established for subsection (1).

(6) An access provider or user of a declared service, or a related body corporate of the access provider or user, does not contravene subsection (1)

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<sup>22</sup> Provision for enforcing compliance with section 125(1) is made in section 153 (Orders to enforce prohibition on hindering access).

if the conduct of the access provider, user or related body corporate is constituted by—

- (a) an act done in accordance with an access code or approved undertaking for the declared service; or
- (b) a reasonable act done in, and for, an emergency (including an emergency that involves, or may involve, injury to persons or damage to property).

(7) In this section—

**“competitor”**, of an access provider of a declared service, means a person who has, or seeks to have, access to the declared service to compete in a market with the access provider, or a related body corporate of the access provider.

### **Requirement to give information about access**

**126.(1)** The authority may take action under this section to find out whether an access provider who is an owner or operator of a declared service is complying with section 125(1) in relation to the declared service.

(2) The authority may, by written notice given to the access provider, require the access provider to give the authority, within the time (not less than 14 days) stated in the notice, stated information about the arrangements under which the access provider provides, or proposes to provide, access to the service to itself or a related body corporate of the access provider.

(3) The access provider must comply with the requirement within the time stated in the notice, unless the access provider has a reasonable excuse.

Maximum penalty—500 penalty units or 6 months imprisonment.

(4) An access provider is not required to comply with a requirement to give information if the access provider claims on the ground of self incrimination a privilege the access provider would be entitled to claim against giving the information were the access provider a witness in a prosecution for an offence in the Supreme Court.

(5) The authority or access provider may apply to the Supreme Court for a determination of the validity of a claim of privilege.

**Register of determinations**

**127.(1)** The authority must keep a register of determinations.

**(2)** The register must include, for each determination, details of the following—

- (a) the names of the parties to the determination;
- (b) the service to which the determination relates;
- (c) the date the determination was made;
- (d) the date the determination is to take, or took, effect.

***Division 6—Access codes for declared services*****Making codes**

**128.(1)** The Ministers may make codes for this Act for declared services.

**(2)** Before making a code, the Ministers—

- (a) must publish the proposed code and invite persons to make submissions on it to the Ministers within the time stated by the Ministers; and
- (b) must ask the authority to give them information and advice about the code or its contents the authority considers appropriate; and
- (c) may ask the authority to give them information and advice about a stated matter relating to the code or its contents.

**(3)** In making a code, the Ministers must have regard to—

- (a) any submissions about the proposed code received by them within the time stated by the Ministers for subsection (2)(a); and
- (b) any information or advice given to them by the authority.

**Status of codes**

**129.** A code is subordinate legislation under the *Statutory Instruments Act 1992*.

**Purpose and contents of codes**

**130.(1)** The purpose of a code is to set out rules that apply for access to the declared service covered by the code.

**(2)** For subsection (1), a code may provide for any issue about access to a declared service.

**(3)** In particular, a code may provide for the following—

- (a) requirements for the safe operation of the facility;
- (b) conduct constituting a hindrance to access to the service;
- (c) arrangements to be made by the owner to separate the owner's operations relating to the service from other operations of the owner relating to another commercial activity;
- (ca) arrangements for the transfer of all or part of the interest of a user of the service under an access agreement;
- (d) any issue that is necessary or desirable in the public interest.

**Expiry of codes**

**131.(1)** A code must state the expiry date of the code.

**(2)** The expiry date of a code must not be later than 10 years after the day of its making.

**Period of operation of access codes**

**132.** An access code continues in operation until its expiry day, unless it is earlier revoked.

*Division 7—Undertakings for declared and non-declared services**Subdivision 1—Preparation and approval of draft undertakings***Requirement of owner to give draft undertaking**

**133.(1)** The authority may, by written notice (an “**initial undertaking**”

**notice**”) given to an owner of a declared service, require the owner to give the authority a draft undertaking for the service—

- (a) within 90 days after receiving the notice; or
- (b) if the authority extends, or further extends, the period by written notice given to the owner in the period or extended period—within the period as extended.

(2) Without limiting the matters that may be dealt with in an undertaking, the requirement may relate to the matters mentioned in section 137(2).<sup>23</sup>

### **Consideration and approval of draft undertaking by authority**

**134.(1)** The authority must consider a draft undertaking given to it in response to an initial undertaking notice and either approve, or refuse to approve, the draft undertaking within the prescribed period.

(2) If the authority refuses to approve the draft undertaking, it must, within the prescribed period, give the owner a written notice (a **“secondary undertaking notice”**) stating the reasons for the refusal and asking the owner, within 60 days of receiving the notice—

- (a) to amend the draft undertaking in the way the authority considers appropriate; and
- (b) to give a copy of the amended draft undertaking to the authority.

(3) If the owner complies with the secondary undertaking notice, the authority may approve the draft undertaking.

(4) In this section—

**“prescribed period”** means—

- (a) the period of 60 days after the authority receives a draft undertaking in response to an initial undertaking notice; or
- (b) if the authority extends, or further extends, the period by written notice given to the owner in the period or extended period—the period as extended.

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<sup>23</sup> Section 137 (Contents of undertakings)

**Preparation and approval of draft undertaking by authority**

**135.** If an owner of a declared service does not comply with an initial or secondary undertaking notice, the authority may prepare, and approve, a draft undertaking for the declared service in relation to the owner.

**Submission and approval of voluntary draft undertaking**

**136.(1)** An owner of a declared service may, without receiving an initial undertaking notice, give a draft undertaking to the authority.

**(2)** An owner of a service that is not a declared service may give a draft undertaking to the authority.

**(3)** A person who expects to be the owner of a service (whether or not the service is a declared service) may give a draft undertaking to the authority.

**(4)** The authority must consider a draft undertaking given to it under this section and either approve, or refuse to approve, the draft undertaking.

**(5)** If the authority refuses to approve the draft undertaking, it must give to the person who gave the draft undertaking to the authority a written notice stating—

- (a) the reasons for the refusal; and
- (b) the way in which the authority considers it is appropriate to amend the draft undertaking.

**Contents of undertakings**

**137.(1)** An undertaking must state the expiry date of the undertaking.

**(2)** An undertaking for a service may include details of the following—

- (a) how charges for access to the service are to be calculated;
- (b) information to be given to access seekers;
- (ba) information to be given to the authority;
- (c) timeframes for giving information in the conduct of negotiations about access to the service;
- (d) how the spare capacity of the service is to be worked out;

- (da) arrangements for the transfer of all or part of the interest of a user of the service under an access agreement;
- (e) accounting requirements to be satisfied by the owner and a user in relation to the service or separate parts of the service;
- (ea) arrangements to be made by the owner to separate the owner's operations concerning the service from other operations of the owner concerning another commercial activity;
- (f) the provision of the service to users otherwise than by the owner to whom the undertaking relates;
- (g) terms relating to extending the facility;
- (h) requirements for the safe operation of the facility;
- (i) how contributions by users to the cost of establishing or maintaining the facility will be taken into account in calculating charges for access to the service;
- (j) provisions to be included in access agreements in relation to the service;
- (k) the review of the undertaking.

### **Factors affecting approval of draft undertaking**

**138.(1)** This section applies to the following draft undertakings—

- (a) a draft undertaking given to the authority in response to an initial undertaking notice (whether or not the draft undertaking is later amended in response to a secondary undertaking notice);
- (b) a draft undertaking prepared by the authority because of the failure of an owner of a declared service to comply with an initial or secondary undertaking notice;
- (c) a draft undertaking given to the authority by the owner of a declared service without receiving an initial undertaking notice.

**(2)** The authority may approve a draft undertaking only if it considers it appropriate to do so having regard to the following—

- (a) the legitimate business interests of the owner of the service;
- (b) the public interest, including the public interest in having

- competition in markets (whether or not in Australia);
- (c) the interests of persons who may seek access to the service;
  - (d) any other issues the authority considers relevant.
- (3) However, the authority may approve a draft undertaking only if—
- (a) it is satisfied the undertaking is consistent with any access code for the service; and
  - (b) it has published the undertaking and invited persons to make submissions on it to the authority within the time stated by the authority; and
  - (c) it has considered any submissions received by it within the time.

***Subdivision 2—Preparation and approval of draft amending undertakings***

**Requirement of owner to give draft amending undertaking**

**139.(1)** The authority may, by written notice (an “**initial amendment notice**”) given to the responsible person for an approved undertaking relating to a declared service, require the person to give the authority a draft undertaking amending the approved undertaking—

- (a) within 30 days after receiving the notice; or
- (b) if the authority extends, or further extends, the period by written notice given to the person in the period or extended period—within the period as extended.

(2) The authority may make a requirement under subsection (1) only if the authority considers it is necessary to amend the approved undertaking to make the undertaking consistent with a provision of this Act or an access code for the service to which the undertaking relates.

**Consideration and approval of draft amending undertaking by authority**

**140.(1)** The authority must consider a draft undertaking given to it in response to an initial amendment notice and either approve, or refuse to

approve, the draft undertaking within the prescribed period.

(2) If the authority refuses to approve the draft undertaking, it must, within the prescribed period, give the responsible person a written notice (a “**secondary amendment notice**”) stating the reasons for the refusal and asking the person, within 30 days of receiving the notice—

- (a) to amend the draft undertaking in the way the authority considers appropriate; and
- (b) to give a copy of the amended draft undertaking to the authority.

(3) If the responsible person complies with the secondary amendment notice, the authority may approve the draft undertaking.

(4) In this section—

“**prescribed period**” means—

- (a) the period of 30 days after the authority receives a draft undertaking in response to an initial amendment notice; or
- (b) if the authority extends, or further extends, the period by written notice given to the responsible person in the period or extended period—the period as extended.

### **Preparation and approval of draft amending undertaking by authority**

**141.** If the responsible person for an approved undertaking does not comply with an initial or secondary amendment notice, the authority may prepare, and approve, a draft undertaking amending the approved undertaking.

### **Submission and approval of voluntary draft amending undertaking**

**142.(1)** The responsible person for an approved undertaking may, without receiving an initial amendment notice, give to the authority a draft undertaking amending the approved undertaking.

(2) The authority must consider a draft undertaking given to it under subsection (1) and either approve, or refuse to approve, the draft undertaking.

(3) If the authority refuses to approve the draft undertaking, it must give to the responsible person a written notice stating—

- (a) the reasons for the refusal; and
- (b) the way in which the authority considers it is appropriate to amend the draft undertaking.

(4) In this section—

**“responsible person for an approved undertaking”** includes a person who gave the undertaking because the person expects to be the owner of the service to which the undertaking relates.

### **Factors affecting approval of draft amending undertaking**

**143.(1)** This section applies to the following draft undertakings amending approved undertakings—

- (a) a draft undertaking given to the authority in response to an initial amendment notice (whether or not the draft undertaking is later amended in response to a secondary amendment notice);
- (b) a draft undertaking prepared by the authority because of the failure of a responsible person to comply with an initial or secondary amendment notice;
- (c) a draft undertaking given to the authority by a responsible person without receiving an initial amendment notice.

(2) The authority may approve a draft undertaking only if it considers it appropriate to do so having regard to the matters mentioned in section 138(2)(a) to (d).<sup>24</sup>

(3) However, the authority may approve a draft undertaking only on the conditions mentioned in section 138(3).

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<sup>24</sup> Section 138 (Factors affecting approval of draft undertaking)

***Subdivision 3—Investigations about draft undertakings*****Application of subdivision**

**144.** This subdivision applies to the following draft undertakings—

- (a) a draft undertaking given to the authority in response to an initial undertaking notice or initial amendment notice;
- (b) a draft undertaking prepared by the authority because of the failure of a person to comply with—
  - (i) an initial or secondary undertaking notice; or
  - (ii) an initial or secondary amendment notice;
- (c) a draft undertaking (whether or not amending an approved undertaking) given to the authority by an owner of a declared service or a responsible person, without receiving an initial undertaking notice or initial amendment notice.

**Power of authority to conduct investigation**

**145.** The authority may conduct an investigation—

- (a) for deciding whether to approve, or to refuse to approve, a draft undertaking mentioned in section 144(a) or (c); or
- (b) for preparing or approving a draft undertaking mentioned in section 144(b).

**Notice of investigation**

**146.(1)** Before starting an investigation under this subdivision, the authority must give reasonable notice of the investigation to—

- (a) the owner of the service; and
- (b) any other person the authority considers appropriate.

**(2)** The notice must—

- (a) state the authority's intention to conduct the investigation; and
- (b) state the subject matter of the investigation; and

- (c) invite the person to whom the notice is given to make written submissions to the authority on the subject matter within a reasonable time stated in the notice; and
- (d) state the authority's address.

### **Procedures for investigation**

**147.** Part 6<sup>25</sup> applies to an investigation under this subdivision.

#### *Subdivision 4—Other matters*

### **Withdrawal of approved undertaking**

**148.(1)** An approved undertaking may be withdrawn at any time by the person who gave the relevant draft undertaking to the authority.

**(2)** The authority may withdraw an approved undertaking if it prepared the relevant draft undertaking.

**(3)** However, a withdrawal may be made only with the written agreement of—

- (a) for a withdrawal under subsection (1)—the authority; or
- (b) for a withdrawal under subsection (2)—the responsible person.

### **Period of operation of approved undertaking**

**149.** An approved undertaking—

- (a) comes into operation at the time of approval; and
- (b) continues in operation until the earlier of the following—
  - (i) the expiry date stated in the undertaking;
  - (ii) the withdrawal of the undertaking.

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<sup>25</sup> Part 6 (Investigations by authority)

**Register of approved undertakings**

**150.(1)** The authority must keep a register of approved undertakings in operation.

**(2)** The withdrawal of an approved undertaking must be noted in the register.

***Division 8—Enforcement*****References to person involved in a contravention**

**151.** In this division, a reference to a person involved in a contravention is a reference to a person who—

- (a) has aided, abetted, counselled or procured the contravention; or
- (b) has induced the contravention (whether through threats, promises or in another way); or
- (c) has been in any way (directly or indirectly) knowingly concerned in, or a party to, the contravention; or
- (d) has conspired with others to effect the contravention.

**Orders to enforce determination**

**152.(1)** This section applies if, on the application of a party to a determination, the court is satisfied that another party has engaged, is engaging, or proposes to engage, in conduct constituting a contravention of the determination.

**(2)** The court may make all or any of the following orders—

- (a) an order granting an injunction, on terms the court considers appropriate—
  - (i) restraining the other party from engaging in the conduct; or
  - (ii) if the conduct involves failing to do something—requiring the other party to do the thing;
- (b) an order directing the other party to compensate the applicant for loss or damage suffered because of the contravention;

(c) another order the court considers appropriate.

(3) If the court has power under subsection (2) to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do anything, the court may make any other order (including granting an injunction) it considers appropriate against any other person involved in the contravention concerned.

### **Orders to enforce prohibition on hindering access**

**153.(1)** This section applies if, on the application of a person, the court is satisfied that another person (the “**obstructor**”) has engaged, is engaging, or proposes to engage, in conduct constituting a contravention of section 104 or 125.<sup>26</sup>

(2) The court may make all or any of the following orders—

- (a) an order granting an injunction, on terms the court considers appropriate—
  - (i) restraining the obstructor from engaging in the conduct; or
  - (ii) if the conduct involves failing to do something—requiring the obstructor to do the thing;
- (b) an order directing the obstructor to compensate a person for loss or damage suffered by the person because of the contravention;
- (c) another order the court considers appropriate.

(3) If the court has power under subsection (2) to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do anything, the court may make any other order (including granting an injunction) it considers appropriate against any other person involved in the contravention concerned.

(4) The grounds on which the court may decide not to make an order under this section include the ground that division 5<sup>27</sup> provides a more appropriate way of dealing with the issue of the applicant’s access to the service concerned.

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<sup>26</sup> Section 104 (Preventing or hindering access) or 125 (Preventing or hindering access)

<sup>27</sup> Division 5 (Access disputes about declared services)

**Consent injunctions**

**154.** On an application for an enforcement injunction, the court may grant the injunction by consent of all of the parties to the proceeding (whether or not the court is satisfied that the section under which the application is made applies).

**Interim injunctions**

**155.(1)** The court may grant an interim injunction pending determination of an application for an enforcement injunction.

**(2)** If the application is made by the authority, the court must not require the authority or another person, as a condition of granting an interim injunction, to give an undertaking as to damages.

**Factors relevant to granting restraining injunction**

**156.** The court may grant an enforcement injunction restraining a person from engaging in conduct whether or not—

- (a) it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) the person has previously engaged in conduct of that kind; or
- (c) there is an imminent danger of substantial damage to someone else if the person engages in conduct of that kind.

**Factors relevant to granting mandatory injunction**

**157.** The court may grant an enforcement injunction requiring a person to do a thing whether or not—

- (a) it appears to the court that the person intends to fail again, or to continue to fail, to do the thing; or
- (b) the person has previously failed to do the thing; or
- (c) there is an imminent danger of substantial damage to someone else if the person fails to do the thing.

**Discharge or variation of injunction or order**

**158.** The court may discharge or vary an injunction or order granted or made under this division.

**Orders to enforce approved undertaking**

**158A.(1)** The authority or another person may apply to the court for an order under this section concerning an approved undertaking.

**(2)** An application may be made only if—

- (a) the applicant considers the responsible person for the undertaking has breached a term of the undertaking; and
- (b) the applicant considers—
  - (i) for an application made by the authority—a person's interests have been adversely affected by the breach; or
  - (ii) for an application made by someone else—the applicant's interests have been adversely affected by the breach.

**(3)** If the court is satisfied the responsible person has breached a term of the undertaking, the court may make all or any of the following orders—

- (a) an order directing the responsible person to comply with the term;
- (b) an order directing the responsible person to compensate anyone who has suffered loss or damage because of the breach;
- (c) another order the court considers appropriate.

**(4)** However, the court may make an order only if it is satisfied—

- (a) for an application made by the authority—a person's interests have been adversely affected by the breach; or
- (b) for an application made by someone else—the applicant's interests have been adversely affected by the breach.

***Division 9—Accounting procedures for declared services*****Preparation of cost allocation manual**

**159.(1)** The authority may prepare a cost allocation manual for use by the responsible operator of a declared service if—

- (a) the responsible operator has not prepared a cost allocation manual within 60 days of being asked to do so by the authority; or
- (b) if the responsible operator has prepared a cost allocation manual within the time—the authority is not satisfied the manual adequately deals with the allocation of costs.

**(2)** The authority may, from time to time, revise the manual.

**(3)** In preparing or revising a manual, the authority—

- (a) must consult with the responsible operator of the declared service; and
- (b) may consult with any other persons it considers appropriate; and
- (c) must, in so far as it considers it practicable, take account of the existing accounting system of the responsible operator of the declared service.

**Publication and distribution of manual**

**160.** The authority must—

- (a) publish the manual and any revised manual in the way it considers appropriate; and
- (b) give a copy of the manual and any revised manual to the responsible operator of the declared service.

**When manual binds responsible operator**

**161.** The cost allocation manual is binding on the responsible operator of the declared service to whom it relates from—

- (a) the day after a copy of the manual is received by the responsible operator; or

- (b) if a later day is stated in the manual as its day of effect—the later day.

### **Responsible operator must keep books and records under manual**

**162.** The responsible operator of a declared service must—

- (a) keep the books of account and other records that are necessary to comply with the cost allocation manual binding on it; and
- (b) keep the books and records in the way required by the manual.

Maximum penalty—500 penalty units or 6 months imprisonment.

### **Responsible operator to keep separate accounting records**

**163.(1)** The responsible operator of a declared service must keep accounting records for the service separately from accounting records relating to other operations of the responsible operator.

Maximum penalty—500 penalty units or 6 months imprisonment.

**(2)** Subsection (1) does not apply to the responsible operator of a declared service until the end of—

- (a) if paragraph (b) does not apply—the period of 6 months starting on the day the service became a declared service; or
- (b) if the authority, by written notice given to the responsible operator in the period mentioned in paragraph (a), fixes a longer period—the period fixed by the authority.

**(3)** A period fixed by the authority for subsection (2)(b) in relation to a declared service must end not later than 1 year after the day the service became a declared service.

## ***Division 10—Registers***

### **Keeping registers**

**164.** The authority may keep a register in the way it considers appropriate.

**Availability of registers for inspection**

**165.** The authority must keep each register open for inspection by members of the public during office hours on business days at—

- (a) the authority's head office; and
- (b) other places the authority considers appropriate.

**Inspection of registers**

**166.** The authority must, on payment of the fee prescribed under a regulation—

- (a) permit a person to inspect a register; or
- (b) give a person a copy of a register, or a part of it.

*Division 11—Other matters***Inconsistency between Act or access code and access agreement**

**167.** If a provision of this Act or an access code is inconsistent with a term of an access agreement, the provision prevails and the term is void to the extent of the inconsistency.

**Inconsistency between access agreement and undertaking**

**168.** A term of an access agreement relating to a declared service is not invalid merely because it excludes, changes or restricts the application or operation of, or is otherwise inconsistent with, a provision of an approved undertaking for the service.

**Authority's role for other access regimes**

**169.(1)** Subsection (2) applies if a law of another State that establishes an access regime permits functions to be conferred on the authority for the law, in accordance with an agreement between Queensland and the State concerned.

(2) The authority has the functions conferred on it in accordance with the agreement.

### **Role of bodies having functions for other access regimes**

**170.(1)** This section applies if a law of another State—

- (a) establishes an access regime; and
- (b) establishes a body to perform functions, or confers functions on a body, for the access regime; and
- (c) permits functions to be conferred on the authority for the law, in accordance with an agreement between Queensland and the State concerned.

(2) Functions may be conferred on the body mentioned in subsection (1)(b) for this Act, in accordance with the agreement.

## **PART 6—INVESTIGATIONS BY AUTHORITY**

### *Division 1—Preliminary*

#### **Application of part**

**171.** This part applies to the following investigations—

- (a) an investigation for part 3, division 3;
- (b) an investigation for part 4, division 3;
- (ba) an investigation for part 4, division 6;
- (c) an investigation for part 5, division 2, subdivision 3;

- (d) an investigation for part 5, division 2, subdivision 5;
- (e) an investigation for part 5, division 7, subdivision 3.<sup>28</sup>

### *Division 2—General conduct of investigations*

#### **Public seminars etc.**

**172.** The authority may hold public seminars, conduct workshops and establish working groups and task forces for an investigation.

#### **General procedures**

**173.(1)** In an investigation, the authority—

- (a) must act with as little formality as possible; and
- (b) is not bound by technicalities, legal forms or rules of evidence; and
- (c) may inform itself on any matter relevant to the investigation in any way it considers appropriate; and
- (d) must comply with natural justice.

**(2)** For subsection (1)(c), the authority may consult with persons as it considers appropriate.

**(3)** The authority may—

- (a) require information or submissions to be presented in writing; and

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<sup>28</sup> Part 3 (Pricing practices relating to government monopoly business activities), division 3 (Investigations about government monopoly business activities)  
Part 4 (Competitive neutrality and significant business activities), division 3 (Investigation of complaints)  
Part 5 (Access to services), division 2 (Ministerial declarations), subdivision 2 (Investigations about candidate services), subdivision 4 (Revocation of declaration)  
Part 5 (Access to services), division 7 (Undertakings for declared and non-declared services), subdivision 3 (Investigations about draft undertakings)

- (b) decide the matters on which information or submissions may be presented orally.

### **Consideration of submissions**

**174.(1)** In an investigation, the authority must consider all submissions that—

- (a) are made in response to an investigation notice; and
- (b) are received by the authority in the time stated in the notice.

**(2)** Despite subsection (1), unless the authority, in an investigation notice, approved the making of oral submissions, the authority is required to consider a submission only if it is in writing.

### ***Division 3—Hearings***

#### **Holding of hearings**

**175.** The authority may hold hearings for an investigation.

#### **Notice of hearings**

**176.(1)** Before starting the hearings, the authority must give reasonable notice of the hearings.

**(2)** The notice must be published in a newspaper circulating throughout the State.

**(3)** Also, the notice must be given to—

- (a) for an investigation under part 3<sup>29</sup>—the government agency carrying on the government monopoly business activity to which the investigation relates; and
- (b) for an investigation under part 4<sup>30</sup>—
  - (i) the government agency against which the complaint the

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<sup>29</sup> Part 3 (Pricing practices relating to government monopoly business activities)

<sup>30</sup> Part 4 (Competitive neutrality and significant business activities)

- subject of the investigation is made; and
- (ii) the responsible Minister for the government agency; and
  - (iii) the complainant; and
- (c) for an investigation under part 5<sup>31</sup>—the owner of the service to which the investigation relates, or to which the undertaking the subject of the investigation relates.
- (4)** The notice must state—
- (a) the authority’s intention to hold the hearings; and
  - (b) the subject matter of the hearings; and
  - (c) where and when the first of the hearings is to start.

### **Hearings normally to be in public**

**177.(1)** A hearing must be held in public.

**(2)** However, a hearing, or part of a hearing, may be held in private if the authority considers it is appropriate because of the confidential nature of any evidence or other matter or for another reason.

**(3)** If a hearing, or part of a hearing, is being held in private, the authority—

- (a) may give written directions about the persons who may be present; and
- (b) may give an oral or written direction to a person prohibiting or restricting, without the authority’s consent, the publication of—
  - (i) evidence given before the hearing; or
  - (ii) matters contained in documents given to the authority for the hearing.

**(4)** In giving a direction, the authority must have regard to the need for commercial confidentiality.

**(5)** A person must not—

- (a) be present at a hearing in contravention of a direction under

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<sup>31</sup> Part 5 (Access to services)

subsection (3)(a); or

(b) contravene a direction under subsection (3)(b).

Maximum penalty for subsection (5)—1 000 penalty units or 1 year's imprisonment.

### **Right to representation**

**178.** At a hearing, a person may appear in person or be represented by someone else.

### **Procedures at hearings**

**179.** Part 8, division 2<sup>32</sup> applies to a hearing, so far as the part is capable of applying, as if the hearing were a meeting of the authority.

### **Taking evidence**

**180.(1)** For holding a hearing, the authority may take evidence on oath or affirmation.

**(2)** For subsection (1), a member may administer an oath or affirmation to a person.

## ***Division 4—Witnesses at hearings***

### **Notice to witness**

**181.** For a hearing, the chairperson may, by written notice given to an officer of a government agency or to another person, require the officer or other person to attend before the authority at a stated time and place to give evidence or produce a stated document.

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<sup>32</sup> Part 8 (Other provisions about the authority), division 2 (Proceedings of authority)

**Witness fees**

**182.** A person (other than an officer of a government agency) given a notice to attend as a witness at a hearing is entitled to be paid—

- (a) the witness fees prescribed under a regulation; or
- (b) if no witness fees are prescribed—the reasonable witness fees decided by the chairperson.

**Failure of witness to attend**

**183.** A person given a notice to attend as a witness at a hearing must not, without reasonable excuse—

- (a) fail to attend as required by the notice; or
- (b) fail to continue to attend as required by a member, unless excused from further attendance by a member.

Maximum penalty—1 000 penalty units or 1 year's imprisonment.

**Other offences by witnesses**

**184.(1)** A person appearing as a witness at a hearing must not, without reasonable excuse—

- (a) fail to take an oath or make an affirmation when required by the chairperson; or
- (b) fail to answer a question the person is required to answer by a member; or
- (c) fail to produce a document the person is required to produce by a notice under section 181.<sup>33</sup>

Maximum penalty—1 000 penalty units or 1 year's imprisonment.

**(2)** It is a reasonable excuse to refuse to answer a question or produce a document on the ground that the answer or production of the document might tend to incriminate the person.

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<sup>33</sup> Section 181 (Notice to witness)

***Division 5—Other matters*****Giving information and documents to authority**

**185.(1)** For an investigation, the chairperson may, by written notice given to an officer of a government agency or to another person, require the officer or other person to do either or both of the following—

- (a) give a statement setting out stated information to the authority on or before a stated day;
- (b) produce a stated document to the authority on or before a stated day.

**(2)** The day stated in the notice for subsection (1)(a) or (b) must be reasonable.

**(3)** The person to whom the notice is given must comply with the notice to the extent to which the person is able to comply with it, unless the person has a reasonable excuse.

Maximum penalty—1 000 penalty units or 1 year's imprisonment.

**(4)** It is a reasonable excuse for a person to fail to comply with the notice if complying with the notice might tend to incriminate the person.

**Handling of documents**

**186.(1)** If a document is produced to the authority for an investigation, the authority may—

- (a) inspect the document; and
- (b) make copies of the document if it is relevant to the investigation.

**(2)** Also, the authority may take possession of the document, and keep it while it is necessary for the investigation.

**(3)** While it keeps a document, the authority must allow a person otherwise entitled to possession of it to inspect or copy the document at a reasonable time and place the authority decides.

**Confidential information**

**187.(1)** This section applies if a person believes that—

- (a) stated information made available, or to be made available, in an investigation is confidential; and
- (b) the disclosure of the information is likely to damage the person’s commercial activities.

**(2)** The person may—

- (a) inform the authority of the person’s belief; and
- (b) ask the authority not to disclose the information to another person.

**(3)** If the authority is satisfied the person’s belief is justified and that the disclosure of the information would not be in the public interest, the authority must take all reasonable steps to ensure the information is not, without the person’s consent, disclosed to another person other than—

- (a) the Ministers; or
- (b) if the investigation involves a government agency—the responsible Minister for the government agency; or
- (c) a member; or
- (d) an employee, consultant or agent of the authority who receives the information in the course of his or her duties; or
- (e) an entity that performs similar functions to the authority under a law of the Commonwealth, another State or a foreign country.

**(4)** This section applies despite sections 177, 184(1)(b) and 185.<sup>34</sup>

**(5)** In this section—

**“commercial activities”** means activities conducted on a commercial basis.

**“person”** includes a government agency.

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<sup>34</sup> Sections 177 (Hearings normally to be in public), 184 (Other offences by witnesses) and 185 (Giving information and documents to authority)

## **PART 7—CONDUCT OF ARBITRATION HEARINGS BY AUTHORITY**

### *Division 1—Preliminary*

#### **Application of part**

**188.** This part applies to the arbitration of an access dispute conducted by the authority for part 5, division 5, subdivision 3.<sup>35</sup>

#### **References to member**

**189.** In divisions 3 and 4, a reference to a member of the authority for an arbitration is a reference to a member of the authority as constituted for the arbitration.

### *Division 2—Constitution of authority for arbitration hearings*

#### **Constitution of authority**

**190.(1)** For an arbitration, the authority is to be constituted by 2 or more members nominated in writing by the chairperson.

**(2)** If an associate member is appointed for the arbitration, one of the members nominated by the chairperson must be the associate member.

#### **Presiding member**

**191.(1)** If the chairperson is a member of the authority as constituted for an arbitration, the chairperson is to preside at the arbitration.

**(2)** If the chairperson is not a member of the authority as constituted for an arbitration, the chairperson must nominate a member to preside at the arbitration.

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<sup>35</sup> Part 5 (Access to services), division 5 (Access disputes about declared services), subdivision 3 (Arbitration of access disputes and making of determinations)

**Reconstitution of authority**

**192.(1)** This section applies if a member of the authority who is 1 of the members who constitute the authority for an arbitration—

- (a) stops being a member of the authority; or
- (b) for any reason, is not available for the arbitration.

**(2)** For finishing the arbitration, the chairperson must direct that the authority is to be constituted by—

- (a) the remaining member or members; or
- (b) the remaining member or members together with 1 or more other members of the authority.

**(3)** If a direction is given under subsection (2), the authority as constituted under the direction—

- (a) must continue and finish the arbitration; and
- (b) for that purpose, may have regard to any record of the proceedings of the arbitration made by the authority as previously constituted.

**(4)** In subsection (1), a reference to a member of the authority who is 1 of the members who constitute the authority for an arbitration includes a reference to a member who is 1 of the members for that purpose because of the application on 1 or more occasions of subsection (2).

**Deciding questions**

**193.** If the authority is constituted for an arbitration by 2 or more members, any question before the authority is to be decided—

- (a) if paragraph (b) does not apply—according to the opinion of the majority of those members; or
- (b) if the members are evenly divided on the question—according to the opinion of the member presiding.

***Division 3—General conduct of arbitration hearings*****Hearing normally to be in private**

**194.(1)** An arbitration hearing must be held in private.

**(2)** However, if the parties agree, an arbitration hearing, or part of an arbitration hearing, may be held in public.

**(3)** If an arbitration hearing, or part of an arbitration hearing, is being held in private, the member presiding at the arbitration may give written directions about the persons who may be present.

**(4)** In giving a direction, the member presiding must have regard to the wishes of the parties and the need for commercial confidentiality.

**(5)** A person must not be present at an arbitration hearing in contravention of a direction under subsection (3).

Maximum penalty for subsection (5)—1 000 penalty units or 1 year's imprisonment.

**Right to representation**

**195.** In an arbitration hearing, a party may appear in person or be represented by someone else.

**General procedures**

**196.(1)** In an arbitration, the authority—

- (a) must act with as little formality as possible; and
- (b) is not bound by technicalities, legal forms or rules of evidence; and
- (c) may inform itself on any matter relevant to the dispute the subject of the arbitration in any way it considers appropriate; and
- (d) must comply with natural justice; and
- (e) must act as speedily as a proper consideration of the dispute allows.

**(2)** In acting under subsection (1)(e), the authority must have regard to

the need to carefully and quickly inquire into and investigate the dispute and all matters affecting the merits and fair settlement of the dispute.

(3) The authority may—

- (a) decide the periods that are reasonable and necessary for the fair and adequate presentation of the respective cases of the parties to an access dispute; and
- (b) require that the cases be presented within the periods.

(4) The authority may—

- (a) require evidence or argument to be presented in writing; and
- (b) decide the matters on which it will hear oral evidence or argument.

(5) The authority may conduct an arbitration hearing by telephone, video link or another form of communication that allows reasonably contemporaneous and continuous communication between the authority and the parties to the arbitration.

### **Particular powers of authority**

**197.(1)** The authority may do any of the following things for an arbitration—

- (a) give a direction in the course of, or for, the arbitration;
- (b) hear and decide the arbitration in the absence of a person who has been given a notice to appear;
- (c) sit at any place;
- (d) adjourn to any time and place;
- (e) refer any matter to an expert for the matter and accept the expert's statement as evidence;
- (f) generally give directions, and do things, that are necessary or expedient for the speedy hearing and determination of the access dispute.

(2) In this section—

“**expert**”, for a matter, means a person whom the authority reasonably

believes is an independent person whose profession or reputation gives authority to a statement made by the person about the matter.

### **Disclosing information**

**198.(1)** The authority may give an oral or written direction to a person prohibiting or restricting the person from divulging or communicating to anyone else, without the authority's consent, stated information given to the person in the course of an arbitration.

(2) A person must not contravene a direction under subsection (1).

Maximum penalty for subsection (2)—1 000 penalty units or 1 year's imprisonment.

### **Taking evidence**

**199.(1)** For conducting an arbitration, the authority may take evidence on oath or affirmation.

(2) For subsection (1), a member may administer an oath or affirmation to a person.

## ***Division 4—Witnesses at arbitration hearings***

### **Notice to witness**

**200.** For an arbitration hearing, the member presiding at the hearing may, by written notice given to an officer of a government agency or to another person, require the officer or other person to attend before the authority at a stated time and place to give evidence or produce a stated document.

### **Witness fees**

**201.** A person (other than an officer of a government agency) given a notice to attend as a witness at an arbitration hearing is entitled to be paid—

(a) the witness fees prescribed under a regulation; or

- (b) if no witness fees are prescribed—the reasonable witness fees decided by the member presiding at the hearing.

### **Failure of witness to attend**

**202.** A person given a notice to attend as a witness at an arbitration hearing must not, without reasonable excuse—

- (a) fail to attend as required by the notice; or  
(b) fail to continue to attend as required by a member, unless excused from further attendance by a member.

Maximum penalty—1 000 penalty units or 1 year’s imprisonment.

### **Other offences by witnesses**

**203.(1)** A person appearing as a witness at an arbitration hearing must not, without reasonable excuse—

- (a) fail to take an oath or make an affirmation when required by the member presiding at the hearing; or  
(b) fail to answer a question the person is required to answer by a member; or  
(c) fail to produce a document the person is required to produce by a notice under section 200.<sup>36</sup>

Maximum penalty—1 000 penalty units or 1 year’s imprisonment.

(2) It is a reasonable excuse to refuse to answer a question or produce a document on the ground that the answer or production of the document might tend to incriminate the person.

## ***Division 5—Other matters***

### **Contempt**

**204.** A person must not do any act or thing in relation to an arbitration

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<sup>36</sup> Section 200 (Notice to witness)

that would be a contempt of court if the authority were a court of record.

Maximum penalty—500 penalty units or 6 months imprisonment.

### **Giving information and documents to authority**

**205.(1)** For an arbitration hearing, the member presiding at the hearing may, by written notice given to an officer of a government agency or to another person, require the officer or other person to do either or both of the following—

- (a) give a statement setting out stated information to the authority on or before a stated day;
- (b) produce a stated document to the authority on or before a stated day.

**(2)** The day stated in the notice for subsection (1)(a) or (b) must be reasonable.

**(3)** The person to whom the notice is given must comply with the notice to the extent to which the person is able to comply with it, unless the person has a reasonable excuse.

Maximum penalty—1 000 penalty units or 1 year's imprisonment.

**(4)** It is a reasonable excuse for a person to fail to comply with the notice if complying with the notice might tend to incriminate the person.

### **Handling of documents**

**206.(1)** If a document is produced to the authority for an arbitration, the authority may—

- (a) inspect the document; and
- (b) make copies of the document if it is relevant to the arbitration.

**(2)** Also, the authority may take possession of the document, and keep it while it is necessary for the arbitration.

**(3)** While it keeps a document, the authority must allow a person otherwise entitled to possession of it to inspect or copy the document at a reasonable time and place the authority decides.

### **Confidential information**

**207.(1)** This section applies if a party to an arbitration (the “**applicant**”) believes that—

- (a) stated information to be made available in the arbitration is confidential; and
- (b) the disclosure of the information to another party to the arbitration is likely to damage the applicant’s commercial activities.

**(2)** The applicant may—

- (a) inform the authority of the applicant’s belief; and
- (b) ask the authority not to disclose the information to the other party.

**(3)** On receiving a request, the authority must—

- (a) inform the other party or parties of the request and general nature of the information to which the request relates; and
- (b) ask the other party or parties whether there is any objection to the authority complying with the request.

**(4)** If a party objects to the authority complying with a request, the party may inform the authority of its objection and the reasons for it.

**(5)** If, after considering a request, and any objection and any further submission a party has made about the request, the authority is satisfied the applicant’s belief is justified and that the disclosure of the information to another party would not be in the public interest, the authority must take all reasonable steps to ensure the information is not, without the applicant’s consent, disclosed to the other party.

**(6)** In this section—

“**commercial activities**” means activities conducted on a commercial basis.

### **Costs**

**208.(1)** In an arbitration, the authority may make any order it considers appropriate about—

- (a) the payment by a party (the “**designated party**”) of the costs, or part of the costs, incurred by another party in the conduct of the arbitration; or

- (b) the payment by a party (also the “**designated party**”) of the costs, or part of the costs, incurred by the authority in conducting the arbitration.

(2) The costs ordered to be paid by a designated party to another party or the authority may be recovered by the other party or authority as a debt owing to the other party or authority by the designated party.

(3) If, in an arbitration, the dispute notice is withdrawn before the authority makes a determination, a reference in this section to the costs incurred by a party in the conduct of the arbitration, or to the costs incurred by the authority in conducting the arbitration, includes a reference to the costs incurred by the party or authority in relation to the arbitration before the notice is withdrawn.

(4) This section applies despite section 115(5).<sup>37</sup>

## **PART 8—OTHER PROVISIONS ABOUT THE AUTHORITY**

### *Division 1—Membership of authority*

#### **Composition of authority**

**209.(1)** The authority consists of at least 3 members.

(2) The members are to be appointed by the Governor in Council.

(3) In appointing a member, regard must be had to the desirability of the members collectively having knowledge and understanding of commerce, economics, the interests of consumers and the interests of the Government in government agencies that carry on business activities.

(4) A member must be appointed under this Act and not the *Public Service Act 1996*.

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<sup>37</sup> Section 115 (Withdrawal of dispute notice)

**Chairperson and deputy chairperson of authority**

**210.(1)** The Governor in Council must appoint a member as chairperson, and another member as deputy chairperson, of the authority.

**(2)** An appointment under subsection (1) may be made by the instrument appointing the person concerned as a member of the authority.

**Duration of appointment**

**211.(1)** A member is appointed for the term (not longer than 5 years) stated in the member's instrument of appointment.

**(2)** The office of a member becomes vacant if—

- (a) the member resigns by signed notice of resignation given to the Ministers; or
- (b) the member is found guilty of an indictable offence; or
- (c) the member's appointment is ended under subsection (3).

**(3)** The Governor in Council may end a member's appointment if—

- (a) the member engages in misbehaviour; or
- (b) the member becomes incapable of performing the duties of a member because of physical or mental incapacity; or
- (c) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for their benefit; or
- (d) the member is absent from 3 consecutive meetings of the authority without the authority's approval and without reasonable excuse.

**Conditions of appointment**

**212.(1)** A member is entitled to be paid the remuneration and allowances that may be decided by the Governor in Council.

**(2)** A member holds office on the conditions not provided for by this Act

that are decided by the Governor in Council.

(3) A member may be appointed on a full-time or part-time basis.

### **Recommendation of appointment of associate member**

**213.(1)** For a particular investigation or arbitration, the chairperson may recommend the appointment of a person as an associate member of the authority to the Ministers.

(2) The chairperson may recommend the appointment of a person as an associate member only if the chairperson is satisfied the person is suitably qualified for appointment because of the person's knowledge of, or experience in, issues relevant to the investigation or arbitration.

### **Appointment of associate member**

**214.(1)** The Governor in Council may appoint the person recommended by the chairperson to be an associate member of the authority for the particular investigation or arbitration.

(2) The associate member is taken to be a member of the authority for the exercise of the authority's powers under this Act for the particular investigation or arbitration.

(3) The associate member holds office on the conditions decided by the Governor in Council.

(4) The Governor in Council may, at any time, end the appointment of an associate member for any reason or none.

## ***Division 2—Proceedings of authority***

### **Times and places of meetings**

**215.(1)** The authority may hold its meetings when and where it decides.

(2) The chairperson—

(a) may call a meeting of the authority at any time; and

- (b) must call a meeting if asked by at least the required minimum number of members.

### **Presiding member at meetings**

**216.(1)** The chairperson presides at all meetings of the authority at which the chairperson is present.

(2) If the chairperson is absent, the deputy chairperson presides.

(3) If both the chairperson and deputy chairperson are absent, the member chosen by the members present at the meeting presides.

### **Quorum and voting at meetings**

**217.(1)** At a meeting of the authority—

- (a) the required minimum number of members constitute a quorum; and
- (b) a question is decided by a majority of the votes of the members present and voting; and
- (c) each member present has a vote on each question to be decided and, if the votes are equal, the member presiding has a casting vote.

(2) However, an associate member may vote at a meeting of the authority only if the meeting is held for the investigation for which the member is appointed.

### **Conduct of proceedings**

**218.(1)** Subject to this division, the authority may conduct its proceedings (including its meetings) in the way it considers appropriate.

(2) The authority may hold meetings, or allow members to take part in its meetings, by telephone, video link or another form of communication that allows reasonably contemporaneous and continuous communication between the members taking part in the meeting.

(3) A member who takes part in a meeting of the authority under subsection (2) is taken to be present at the meeting.

(4) A resolution is a valid resolution of the authority, even though it is not passed at a meeting of the authority, if—

- (a) the required minimum number of members give written agreement to the resolution; and
- (b) notice of the resolution is given under procedures approved by the authority.

### **Disclosure of interests**

**219.(1)** This section applies to a member if—

- (a) the member, or a person who, under a regulation, is related to the member, has a direct or indirect interest in an issue being considered, or about to be considered, by the authority; and
- (b) the interest could conflict with the proper performance of the member's duties about the consideration of the issue.

(2) However, this section does not apply to the member if the interest consists only of the receipt of goods or services that—

- (a) also are available to members of the public; and
- (b) are made available on the same terms as apply to members of the public.

(3) As soon as practicable after the relevant facts come to the member's knowledge, the member must disclose the nature of the interest to a meeting of the authority.

(4) As soon as practicable after the nature of the interest is disclosed, the authority must give written notice of the disclosure to the Ministers.

(5) Unless the Ministers otherwise direct, the member must not—

- (a) be present when the authority considers the issue; or
- (b) take part in a decision of the authority on the issue.

(6) If, because of this section, a member is not present at a meeting of the authority for considering or deciding an issue, but there would be a quorum if the member were present, the remaining members present are a quorum for considering or deciding the issue at the meeting.

(7) A disclosure under subsection (3) must be recorded in the authority's minutes.

## **Minutes**

220. The authority must keep minutes of its proceedings.

### *Division 3—Staff of authority*

#### **Chief executive officer**

221.(1) The authority may engage a chief executive officer (however called).

(2) The chief executive officer is responsible for ensuring the authority is managed as required by the policies of the authority.

(3) A member must not be engaged as chief executive officer.

#### **Authority staff**

222. The authority may engage the other employees it considers necessary to perform its functions.

#### **Conditions of employment**

223.(1) The authority may decide its employees' conditions of appointment.

(2) However, subsection (1) has effect subject to any award, certified agreement, enterprise flexibility agreement, industrial agreement or Queensland workplace agreement.

(3) The *Public Service Act 1996* does not apply for the appointment of the authority's employees.

(4) In this section—

“**conditions of employment**” includes conditions about the length of the employment and ending the employment.

“**employee**”, of the authority, includes the chief executive officer.

**Alternative staffing arrangements**

**224.** The authority may arrange with the chief executive of a government agency for the services of staff, or for facilities, of the agency to be made available to the authority.

**Rights of former public service officers**

**225.(1)** This section applies to a person who—

- (a) is employed by the authority in a permanent or full-time capacity; and
- (b) immediately before being so employed, was a public service officer.

**(2)** The employee may claim against the authority the leave and other entitlements that had accrued to the employee as a public service officer and had not been taken, or claimed and paid.

**(3)** For accruing long service leave and other entitlements, the period for which the employee was a public service officer immediately before becoming an employee of the authority is taken to be service as an employee of the authority.

**(4)** The authority may ask the Treasurer to pay to it from the consolidated fund an amount, calculated on an actuarial basis, that represents the fair value of the leave and other entitlements that an employee of the authority may claim against the authority.

**(5)** The Treasurer may agree to the request and pay the amount from the consolidated fund without further appropriation.

**(6)** This section does not authorise an employee of the authority to claim or receive a benefit twice for the same entitlement.

**Superannuation schemes**

**226.(1)** The authority may—

- (a) establish and maintain, or amend, superannuation schemes; or
- (b) join in establishing or amending superannuation schemes; or
- (c) take part in superannuation schemes.

(2) The auditor general may audit a scheme established and maintained by the authority.

### **Superannuation for former public service officers**

**227.(1)** Subsection (2) applies if—

- (a) a person is employed by the authority in a permanent or full-time capacity; and
- (b) immediately before being so employed, the person was—
  - (i) a public service officer; and
  - (ii) a member of the superannuation scheme.

(2) The person—

- (a) continues to be a member of the superannuation scheme; and
- (b) for paragraph (a), is taken to be eligible for membership of the scheme under the *Superannuation (State Public Sector) Act 1990*.

(3) If the authority establishes or maintains, joins in establishing, or takes part in, a superannuation scheme, other than the superannuation scheme (the “**authority’s scheme**”), a person to whom subsection (2) applies may, under arrangements prescribed under a regulation—

- (a) stop being a member of the superannuation scheme; and
- (b) become a member of the authority’s scheme.

(4) In this section—

“**superannuation scheme**” means the State Public Sector Superannuation Scheme.

### ***Division 4—Other matters***

#### **Seal**

**228.** Judicial notice must be taken of the imprint of the authority’s common seal appearing on a document, and the document must be presumed to have been properly sealed unless the contrary is proved.

**Application of certain Acts**

**229.** The authority is—

- (a) a unit of public administration under the *Criminal Justice Act 1989*; and
- (b) an agency under the *Equal Opportunity in Public Employment Act 1992*; and
- (c) a statutory body under the *Financial Administration and Audit Act 1977*; and
- (d) a public authority under the *Libraries and Archives Act 1988*; and
- (e) an agency under the *Parliamentary Commissioner Act 1974*.

**PART 9—OFFENCES****False or misleading statements**

**230.(1)** A person must not state anything to the authority the person knows is false or misleading in a material particular.

Maximum penalty—1 000 penalty units or 1 year's imprisonment.

**(2)** It is enough for a complaint against a person for an offence against subsection (1) to state that the statement made was false or misleading to the person's knowledge.

**False, misleading or incomplete documents**

**231.(1)** A person must not give the authority a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—1 000 penalty units or 1 year's imprisonment.

**(2)** However, a person does not commit an offence against subsection (1) if the person, when giving the document—

- (a) tells the authority, to the best of the person's knowledge, how it is

false, misleading or incomplete; and

- (b) if the person has, or can reasonably obtain, the correct information—gives the authority the correct information.

(3) Unless the authority agrees that the information to be given to the authority under subsection (2)(a) or (b) may be given orally, a person does not comply with the paragraph unless the information is given in writing.

(4) It is enough for a complaint against a person for an offence against subsection (1) to state that the document was false, misleading or incomplete to the person's knowledge.

### **Obstructing members or employees of authority**

**232.(1)** A person must not obstruct a member or employee of the authority in the exercise of the member's or employee's functions under this Act, unless the person has a reasonable excuse.

Maximum penalty—1 000 penalty units or 1 year's imprisonment.

(2) In this section—

“**obstruct**” includes hinder, intimidate or threaten.

### **Intimidation**

**233.(1)** A person must not act improperly towards another person because the other person, in the conduct of an investigation or arbitration by the authority—

- (a) proposes to appear, or has appeared, as a witness before the authority; or
- (b) proposes to produce, or has produced, a document to the authority; or
- (c) proposes to give, or has given, information to the authority.

Maximum penalty—1 000 penalty units or 1 year's imprisonment.

(2) For subsection (1), a person acts improperly towards another person if the person—

- (a) threatens or intimidates the other person; or

- (b) coerces the other person to do, or not to do, something; or
- (c) causes or procures damage, loss or disadvantage to the other person.

## **PART 10—MISCELLANEOUS**

### **Cabinet matter not to be disclosed**

**234.(1)** This Act does not enable the authority or a member to require a person to produce a document containing exempt matter or to answer a question or give a statement relating to exempt matter.

**(2)** For this section, a certificate purporting to be signed by the attorney-general stating that a document contains, or a question relates to, exempt matter is evidence of the matter stated.

### **Cabinet matters**

**235.(1)** Matter is “**exempt matter**” if—

- (a) it has been submitted, or is proposed by a Minister to be submitted, to Cabinet for its consideration and was brought into existence for the purpose of submission for consideration by Cabinet; or
- (b) it forms part of an official record of Cabinet; or
- (c) it is a draft of matter mentioned in paragraph (a) or (b); or
- (d) it is a copy of, or contains an extract from, matter or a draft of matter mentioned in paragraph (a) or (b); or
- (e) its disclosure would involve the disclosure of any deliberation or decision of Cabinet, other than matter that has been officially published by decision of Cabinet.

**(2)** Matter is not exempt under subsection (1) if it is merely factual or statistical matter unless—

- (a) the disclosure of the matter under this Act would involve the

- disclosure of any deliberation or decision of Cabinet; and
- (b) the fact of the deliberation or decision has not been officially published by decision of Cabinet.

### **Responsibility for acts or omissions of representatives**

**236.(1)** In this section—

**“representative”** means—

- (a) of a corporation—an executive officer, employee or agent of the corporation;
- (b) of an individual—an employee or agent of the individual.

**“state of mind”** of a person includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

**(2)** Subsections (3) and (4) apply in a proceeding for an offence against this Act.

**(3)** If it is relevant to prove a person’s state of mind about a particular act or omission, it is enough to show—

- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative’s actual or apparent authority; and
- (b) the representative had the state of mind.

**(4)** An act done or omitted to be done for a person by a representative of the person within the scope of the representative’s actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

### **Protection from liability of member or employee**

**237.(1)** A member or employee of the authority is not civilly liable for an act done, or omission made, in good faith under this Act.

(2) If subsection (1) prevents a civil liability attaching to a member or employee, the liability attaches instead to the authority.

### **Protection from liability of person giving information to authority**

**238.** A person is not liable in any way for any loss, damage or injury suffered by another person because of the giving in good faith of information to the authority for this Act.

### **Confidential information**

**239.(1)** This section applies if—

- (a) information about a person (other than information to which section 187 or 207 applies) is received by the authority; and
- (b) the authority believes the disclosure of the information—
  - (i) would be likely to damage the person’s commercial activities; and
  - (ii) would not be in the public interest; and
- (c) an entity that performs similar functions to the authority under a law of the Commonwealth, another State or a foreign country.

(2) The authority must take all reasonable steps to ensure the information is not, without the person’s consent, disclosed to another person other than—

- (a) a member; or
- (b) an employee, consultant or agent of the authority who receives the information in the course of his or her duties.

(3) In this section—

“**commercial activities**” means activities conducted on a commercial basis.

“**person**” includes a government agency.

### **Secrecy**

**240.(1)** A person to whom this section applies must not—

- (a) make a record of protected information; or
- (b) whether directly or indirectly, divulge or communicate to a person protected information about another person or a government agency.

Maximum penalty—1 000 penalty units or 1 year’s imprisonment.

(2) However, subsection (1) does not apply if—

- (a) the record is made, or the information is divulged or communicated—
  - (i) under this Act; or
  - (ii) in the performance of duties, as a person to whom this section applies, under this Act; or
  - (iii) with the consent of the person or agency to whom the protected information relates; or
- (b) the information is divulged or communicated to an entity that performs similar functions to the authority under a law of the Commonwealth, another State or a foreign country; or
- (c) the protected information is otherwise publicly available.

(3) Unless it is necessary to do so for carrying this Act into effect, a person to whom this section applies is not required—

- (a) to divulge or communicate protected information to a court; or
- (b) to produce a protected document in court.

(4) In this section—

“**court**” includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

“**employee**” includes a consultant or agent.

“**person to whom this section applies**” means a person who is, or has been, a member or employee of the authority.

“**produce**” includes permit access to.

“**protected document**” means a document that—

- (a) contains information about a person or government agency; and

- (b) is obtained or made by a person to whom this section applies in the course of, or because of, the person's duties under this Act.

**“protected information”** means information that—

- (a) is about a person or government agency; and
- (b) is disclosed to, or obtained by, a person to whom this section applies in the course of, or because of, the person's duties under this Act.

### **Draft reports**

**241.** In preparing a report under this Act, the authority may give a draft of the report to the persons it considers appropriate.

### **Annual reports**

**242.** The authority must include in its annual report as a statutory body under the *Financial Administration and Audit Act 1977*—

- (a) details of each request made by the authority under section 18;<sup>38</sup> and
- (b) comments about the implementation of, and any failure to implement, recommendations mentioned in section 36;<sup>39</sup> and
- (c) details of each complaint under section 42<sup>40</sup> accepted by the authority for investigation and the results of each investigation; and
- (d) decisions of the Ministers under section 57<sup>41</sup> on reports of the results of investigations about competitive neutrality; and
- (e) accreditations granted by the authority under section 63.<sup>42</sup>

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<sup>38</sup> Section 18 (Request for declaration)

<sup>39</sup> Section 36 (Decision of Ministers about report)

<sup>40</sup> Section 42 (Grounds for complaint)

<sup>41</sup> Section 57 (Decision of Ministers about report)

<sup>42</sup> Section 63 (Decision on application)

## **Delegation**

**243.** The chairperson may delegate the chairperson's powers under this Act to another member or the authority's chief executive officer.

## **Tabling reports**

**244.(1)** This section applies to a report received by the Ministers and mentioned in section 34 or 55.<sup>43</sup>

**(2)** If the Ministers must make the report, or a part of the report, available for public inspection, the Ministers must ensure the report or part of the report is tabled in the Legislative Assembly within 14 sitting days after the report is received by the Ministers.

**(3)** If the authority has recommended that the report, or a part of the report, not be available for public inspection for a stated period, the Ministers must ensure the recommendation, and the authority's reasons for the recommendation, are tabled in the Legislative Assembly within 14 sitting days after the report is received by the Ministers.

## **Regulation-making power**

**245.(1)** The Governor in Council may make regulations under this Act.

**(2)** A regulation may be made for or about fees or charges for services provided, or functions performed, by the authority.

**(3)** In particular, a regulation may provide for the payment of fees or charges to the authority for—

- (a)** the conduct by the authority of investigations under part 4;<sup>44</sup> or
- (b)** the consideration of applications for accreditation, or the granting of accreditation, under part 4.

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<sup>43</sup> Sections 34 (Public availability of reports) and 55 (Public availability of reports)

<sup>44</sup> Part 4 (Competitive neutrality and significant business activities)

**SCHEDULE****DICTIONARY**

section 5

**“access agreement”** means an agreement—

- (a) between an access provider of a declared service and another person providing for access to the service by the other person; and
- (b) that is entered into after the commencement of section 99<sup>45</sup> (whether it is entered into before or after the service is declared).

**“access code”** means a code mentioned in part 5, division 6.<sup>46</sup>

**“access criteria”** see section 76.

**“access provider”**, for a service, means the entity that, as an owner, operator or user of the facility used, or to be used, to provide the service (whether or not the service is a declared service) has given, or is able to give, someone else access to the service under an access agreement.

**“access seeker”**, for a service, means a person who wants access, or increased access, to the service.

**“applicant”** means—

- (a) for part 4, division 5—a government agency that applies to the authority for accreditation under section 61;<sup>47</sup> or
- (b) for part 5, division 2, subdivision 1—
  - (i) if subparagraph (ii) does not apply—a person by whom a

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<sup>45</sup> Section 99 (Obligation of access provider to negotiate)

<sup>46</sup> Part 5 (Access to services), division 6 (Access codes for declared services)

<sup>47</sup> Section 61 (Application for accreditation)

## SCHEDULE (continued)

request is made to the authority under section 77;<sup>48</sup> or

- (ii) if a request is made to the authority under section 77 by the Ministers—the Ministers.

**“approved undertaking”** means an undertaking approved by the authority, and includes the undertaking as amended with the authority’s approval.

**“associate member”** means a person appointed as an associate member of the authority by the Governor in Council.

**“authority”** means the Queensland Competition Authority.

**“business activity”** means a trading in goods or services.

**“Cabinet”** includes a Cabinet committee or subcommittee.

**“candidate service”** means—

- (a) a service for which the facility used, or to be used, to provide the service is a public facility; or
- (b) a service—
- (i) for which the facility used, or to be used, to provide the service is a private facility; and
- (ii) that is declared under a regulation to be a candidate service.

**“chairperson”** means the chairperson of the authority.

**“competition policy”** means the policies, contained in the following agreements,<sup>49</sup> aimed at increasing the level of competition in the Australian economy—

- (a) the conduct code agreement;
- (b) the competition principles agreement;
- (c) the implementation agreement.

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<sup>48</sup> Section 77 (Requests about declarations)

<sup>49</sup> Copies of the agreements may be inspected at the authority’s office in Brisbane.

## SCHEDULE (continued)

**“competition principles agreement”** means the agreement titled competition principles agreement, made on 11 April 1995 by the Commonwealth, the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory of Australia, as in force for the time being.

**“competitive advantage”** means—

- (a) a financial advantage; or
- (b) a regulatory advantage; or
- (c) a procedural advantage; or
- (d) any other advantage because of government ownership or control.

*Example of financial advantage—*

An advantage enjoyed by a government agency carrying on a significant business activity because of the agency being exempt from State or Commonwealth taxation that applies to a person making a complaint.

*Example of regulatory advantage—*

An advantage enjoyed by a government agency carrying on a significant business activity because of the agency being exempt from planning and approval procedure that applies to a person making a complaint.

*Example of procedural advantage—*

An advantage enjoyed by a government agency carrying on a significant business activity because of the agency having better access to government information in a government tender process than a person making a complaint.

**“complainant”** means a person making a complaint to the authority under section 42.<sup>50</sup>

**“conduct code agreement”** means the agreement titled conduct code agreement, made on 11 April 1995 by the Commonwealth, the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australian Capital Territory and the Northern

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<sup>50</sup> Section 42 (Grounds for complaint)

## SCHEDULE (continued)

Territory of Australia, as in force for the time being.

“**court**” means the Supreme Court.

“**declaration**” means a Ministerial or regulation based declaration.

“**declaration recommendation**” means a recommendation made by the authority under section 79.<sup>51</sup>

“**declared service**” means a service for which a declaration is in operation.

“**deputy chairperson**” means the deputy chairperson of the authority.

“**determination**” means a determination made by the authority under part 5, division 5, subdivision 3.<sup>52</sup>

“**director**” see the Corporations Law, section 9.<sup>53</sup>

“**dispute notice**” see section 113.

“**enforcement injunction**” means an injunction under section 152 or 153.<sup>54</sup>

“**entity**” includes a partnership and joint venture.

“**executive officer**”, of a corporation, means a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer.

“**exempt matter**” see section 235.

“**facility**” see section 70.

“**goods**” includes—

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<sup>51</sup> Section 79 (Making recommendation)

<sup>52</sup> Part 5 (Access to services), division 5 (Access disputes about declared services), subdivision 3 (Arbitration of access disputes and making of determinations)

<sup>53</sup> Corporations Law, section 9 (Dictionary)

<sup>54</sup> Section 152 (Orders to enforce determination) or 153 (Orders to enforce prohibition on hindering access)

## SCHEDULE (continued)

- (a) animals, including fish; and
- (b) minerals, trees and crops (whether or not on, under or attached to land); and
- (c) water; and
- (d) gas or electricity.

**“government”** means the government of the State.

**“government agency”** means—

- (a) a government company or part of a government company; or
- (b) a State instrumentality, agency, authority, or entity or a division, branch or other part of a State instrumentality, agency, authority or entity; or
- (c) a department or a division, branch or other part of a department; or
- (d) a government owned corporation.

**“government business activity”** means a business activity carried on by a government agency.

**“government company”** means a corporation incorporated under the Corporations Law all the stocks or shares in the capital of which are beneficially owned by the State.

**“government monopoly business activity”** means a government business activity declared to be a government monopoly business activity under a regulation or by the Ministers.

**“implementation agreement”** means the agreement titled the agreement to implement national competition policy and related reforms, made on 11 April 1995 by the Commonwealth, the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory of Australia, as in force for the time being.

**“initial amendment notice”** see section 139.

## SCHEDULE (continued)

**“initial undertaking notice”** see section 133.

**“investigation”** means an investigation conducted under this Act.

**“investigation notice”** means—

- (a) for an investigation under part 3, division 3<sup>55</sup>—a notice of the investigation given under section 25; or
- (b) for an investigation under part 4, division 3<sup>56</sup>—a notice of the investigation given under section 48; or
- (c) for an investigation under part 5, division 2,<sup>57</sup> subdivision 2—a notice of the investigation given under section 82; or
- (d) for an investigation under part 5, division 2, subdivision 4—a notice of the investigation given under section 90; or
- (e) for an investigation under part 5, division 7, subdivision 3<sup>58</sup>—a notice of the investigation given under section 146.

**“market”** see section 71.

**“member”** means a member of the authority, and includes—

- (a) the chairperson and deputy chairperson; and
- (b) for a particular investigation—an associate member appointed for the investigation; and
- (c) for a particular arbitration—an associate member appointed for the arbitration.

**“Ministerial declaration”** means a declaration made by the Ministers

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<sup>55</sup> Part 3 (Pricing practices relating to government monopoly business activities), division 3 (Investigations about government monopoly business activities)

<sup>56</sup> Part 4 (Competitive Neutrality and significant business activities), division 3 (Investigation of complaints)

<sup>57</sup> Part 5 (Access to services), division 2 (Ministerial declarations), subdivision 2 (Investigations about candidate services), subdivision 4 (Revocation of declaration)

<sup>58</sup> Part 5, (Access to services), division 7 (Undertakings for declared and non-declared services), subdivision 3 (Investigations about draft undertakings)

## SCHEDULE (continued)

under part 5, division 2.<sup>59</sup>

**“Ministers”** means the Premier and the Treasurer.

**“Ministers’ decision notice”** see section 57.

**“owner”**, for a service, means the owner of the facility used, or to be used, to provide the service (whether or not the service is a declared service).

**“party”** means—

- (a) for the arbitration of an access dispute—a party to the arbitration;<sup>60</sup> or
- (b) for a determination—a party to the arbitration in which the authority made the determination.

**“port infrastructure”** see *Transport Infrastructure Act 1994*, schedule 3.<sup>61</sup>

**“price”** includes any rate, fee, levy and charge and any other valuable consideration (however described).

**“pricing practice”**, for a government monopoly business activity, means the level and structure of prices for the business activity or anything that affects the level and structure of the prices.

**“principle of competitive neutrality”** see section 38.

**“private facility”** means a facility that is not a public facility.

**“public facility”** means a facility owned (whether legally or beneficially and whether entirely or in part) by the State, and includes a facility owned by a water board.

**“rail transport infrastructure”** see *Transport Infrastructure Act 1994*, schedule 3.

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<sup>59</sup> Part 5 (Access to services), division 2 (Ministerial declarations)

<sup>60</sup> The issue of who is a party in the arbitration of an access dispute is dealt with in section 116 (Parties to arbitration).

<sup>61</sup> *Transport Infrastructure Act 1994*, schedule 3—

**“port infrastructure”** includes transport infrastructure relating to ports.

## SCHEDULE (continued)

**“reasonably believes”** means believes on grounds that are reasonable in all the circumstances.

**“register”** means any of the following registers kept by the authority—

- the register of Ministerial declarations
- the register of determinations
- the register of approved undertakings
- the register of conduct notices under the *Electricity Act 1994*, section 120S.<sup>62</sup>

**“regulation based declaration”** means a declaration made under a regulation declaring a service.

**“related body corporate”**, of another body corporate, means—

- (a) a body corporate that is related to the other body corporate under the Corporations Law, section 50;<sup>63</sup> or
- (b) another entity that is a subsidiary of the other body corporate under the *Government Owned Corporations Act 1993*, section 3.<sup>64</sup>

**“required minimum number”** of members means the number that is half the number of members of which the authority for the time being

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<sup>62</sup> Section 120S (Register of conduct notices)

<sup>63</sup> Corporations Law, section 50—

**Related bodies corporate**

**50.** Where a body corporate is:

- (a) a holding company of another body corporate;
- (b) a subsidiary of another body corporate; or
- (c) a subsidiary of a holding company of another body corporate;

the first-mentioned body and the other body are related to each other.

<sup>64</sup> *Government Owned Corporations Act 1993*, section 3—

**“subsidiary”** has the meaning given by the Corporations Law, and includes—

- (a) for a GOC or candidate GOC—a government entity declared by regulation to be a subsidiary of the GOC or candidate GOC; and
- (b) for a candidate GOC associate—a GOC Act entity declared by regulation to be a subsidiary of the associate.

## SCHEDULE (continued)

consists or, if that number is not a whole number, the next higher whole number.

**“responsible Minister”**, for a government agency, means—

- (a) for a government agency that is a department or a division, branch or other part of a department—the Minister administering the department; or
- (b) for a government agency established under an Act—the Minister administering the Act; or
- (c) for a government agency that is a government owned corporation—its shareholding Ministers under the *Government Owned Corporations Act 1993*; or
- (d) in any other case—the Minister nominated by the Ministers to be responsible for the government agency.

**“responsible operator”**, of a declared service, means—

- (a) if paragraph (b) does not apply—the owner of the declared service; or
- (b) if there is in force a written notice given to the authority by the owner of the declared service stating that a person whose name and address is stated in the notice is a person authorised by the owner to manage and operate for the owner the facility used to provide the service—the person stated in the notice.

**“responsible person”**, for an approved undertaking, means the person to whom the undertaking applies as an owner of the relevant service.

**“revocation recommendation”** means a recommendation made by the authority under section 88<sup>65</sup> that a Ministerial declaration be revoked.

**“secondary amendment notice”** see section 140.

**“secondary undertaking notice”** see section 134.

**“service”** (other than for part 5) includes—

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<sup>65</sup> Section 88 (Recommendation to revoke)

## SCHEDULE (continued)

- (a) the supply of goods; and
- (b) the making available for use of facilities of any kind; and
- (c) the conferring of rights, benefits or privileges; and
- (d) the exercise of the general functions of a government agency.

**“service”**, for part 5, see section 72.

**“significant business activity”** see section 39.

**“undertaking”**, for a service, means a written undertaking setting out—

- (a) details of the terms on which an owner of the service undertakes to provide access to the service; and
- (b) other information about the provision of access to the service.

**“user”**, for a service, means a person who has access to the service under an access agreement or determination.

**“water board”** means—

- (a) the Gladstone Area Water Board established under the *Gladstone Area Water Board Act 1984*; or
- (b) the South East Queensland Water Board established under the *South East Queensland Water Board Act 1979*; or
- (c) the Townsville/Thuringowa Water Supply Board established under the *Townsville/Thuringowa Water Supply Board Act 1987*; or
- (d) a board established under the *Water Resources Act 1989*.

**ENDNOTES****1 Index to endnotes**

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 9 February 1998. Future amendments of the Queensland Competition Authority Act 1997 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

**3 Key****Key to abbreviations in list of legislation and annotations**

<b>AIA</b>	=	<b>Acts Interpretation Act 1954</b>	<b>(prev)</b>	=	<b>previously</b>
<b>amd</b>	=	<b>amended</b>	<b>proc</b>	=	<b>proclamation</b>
<b>ch</b>	=	<b>chapter</b>	<b>prov</b>	=	<b>provision</b>
<b>def</b>	=	<b>definition</b>	<b>pt</b>	=	<b>part</b>
<b>div</b>	=	<b>division</b>	<b>pubd</b>	=	<b>published</b>
<b>exp</b>	=	<b>expires/expired</b>	<b>R[X]</b>	=	<b>Reprint No.[X]</b>
<b>gaz</b>	=	<b>gazette</b>	<b>RA</b>	=	<b>Reprints Act 1992</b>
<b>hdg</b>	=	<b>heading</b>	<b>reloc</b>	=	<b>relocated</b>
<b>ins</b>	=	<b>inserted</b>	<b>renum</b>	=	<b>renumbered</b>
<b>lap</b>	=	<b>lapsed</b>	<b>rep</b>	=	<b>repealed</b>
<b>notfd</b>	=	<b>notified</b>	<b>s</b>	=	<b>section</b>
<b>om</b>	=	<b>omitted</b>	<b>sch</b>	=	<b>schedule</b>
<b>o in c</b>	=	<b>order in council</b>	<b>sdiv</b>	=	<b>subdivision</b>
<b>p</b>	=	<b>page</b>	<b>SIA</b>	=	<b>Statutory Instruments Act 1992</b>
<b>para</b>	=	<b>paragraph</b>	<b>SL</b>	=	<b>subordinate legislation</b>
<b>prec</b>	=	<b>preceding</b>	<b>sub</b>	=	<b>substituted</b>
<b>pres</b>	=	<b>present</b>	<b>unnum</b>	=	<b>unnumbered</b>
<b>prev</b>	=	<b>previous</b>			

## 4 Table of earlier reprints

### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	17 July 1997

## 5 List of legislation

### **Queensland Competition Authority Act 1997 No. 25**

date of assent 22 May 1997

pts 3–4 commenced 1 July 1997 (see s 2)

remaining provisions commenced on date of assent

as amended by—

### **Electricity Amendment Act (No. 3) 1997 No. 77 pts 1, 4**

date of assent 5 December 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 19 December 1997 (1997 SL No. 472)

## 6 List of annotations

### **Authority's functions**

**10** amd 1997 No. 77 s 87

### **Further information to support application**

**s 62** om 1997 No. 77 s 88

### **PART 4—COMPETITIVE NEUTRALITY AND SIGNIFICANT BUSINESS ACTIVITIES**

#### **Division 6—Investigations about accreditation**

**div 6 (ss 69A–69D)** ins 1997 No. 77 s 89

#### **Purpose and contents of codes**

**s 130** amd 1997 No. 77 s 90

#### **Contents of undertakings**

**s 137** amd 1997 No. 77 s 91

#### **Orders to enforce approved undertaking**

**s 158A** ins 1997 No. 77 s 92

#### **Application of part**

**s 171** amd 1997 No. 77 s 93

**Confidential information**

**s 187** amd 1997 No. 77 s 94

**Superannuation for former public service officers**

**s 227** amd 1997 No. 77 s 95

**Protection from liability of member or employee**

**s 237** amd 1997 No. 77 s 96

**Confidential information**

**s 239** amd 1997 No. 77 s 97

**Secrecy**

**240** amd 1997 No. 77 s 98

**SCHEDULE—DICTIONARY**

def “**register**” amd 1997 No. 77 s 99(1)

def “**related body corporate**” sub 1997 No. 77 s 99(2)