

Queensland



# QUEENSLAND COMPETITION AUTHORITY ACT 1997

**Reprinted as in force on 1 July 2003  
(includes commenced amendments up to 2003 Act No. 29)**

**Reprint No. 3**

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# Queensland



## QUEENSLAND COMPETITION AUTHORITY ACT 1997

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# QUEENSLAND COMPETITION AUTHORITY ACT 1997

[as amended by all amendments that commenced on or before 1 July 2003]

**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*

#### **1 Short title**

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

#### **2 Commencement**

Parts 3 and 4 commence on 1 July 1997.

#### **3 Act binds State**

(1) This Act binds the State.

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

#### **4 Extraterritorial operation**

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*

#### **5 Definitions—the dictionary**

The dictionary in the schedule defines particular words in this Act.

#### **6 Things done in relation to Ministers**

(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.

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

### *Division 1—Establishment of authority*

#### **7 Establishment of authority**

The Queensland Competition Authority is established.

## **8 Legal status of authority**

The authority—

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

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

(1) The authority represents the State.

(2) Without limiting subsection (1), the authority has all the rights, privileges and immunities of the State.

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

## **10 Authority's functions**

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 the following—
  - (i) a government business activity to be a government monopoly business activity;
  - (ii) a candidate water supply activity to be a monopoly water supply activity; and
- (b) to conduct investigations and report to the Ministers about pricing practices relating to government monopoly business activities and monopoly water supply 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—under the direction, to investigate, 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
- (fa) to mediate to resolve access disputes or water supply disputes; and
- (fb) if asked by the parties to access agreements or water supply agreements—to mediate to resolve disputes under the agreements; and
- (g) to conduct arbitration hearings for resolving access disputes or water supply disputes; and
- (ga) if asked by the parties to access agreements or water supply agreements—to arbitrate to resolve disputes under the agreements; and
- (gb) to conduct arbitration hearings about applications for arbitration under the *Water Act 2000*, section 891(2); and
- (h) to approve undertakings for—
  - (i) services; and
  - (ii) water supply activities carried on by water suppliers; 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).

## **11 Authority's powers**

(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.

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

(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>1</sup>); or
- (b) in relation to the content of any report of the authority; or
- (c) in performing its functions under part 5.<sup>2</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.

(5) Despite subsection (2), if a direction is a direction by the Ministers under section 10(e), the direction must state how the investigation is to be

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1 Section 24 (Directions of Ministers for Ministerial reference)

2 Part 5 (Access to services)

conducted and, for that purpose, may apply all or stated provisions of part 6 to the investigation.

(6) To the extent the direction applies all or stated provisions of part 6, the part or stated provisions apply to the investigation.

### **13 Public availability of directions**

(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—Application of part*

#### **13A What pt 3 is about**

(1) This part is about the declaration of government monopoly business activities, their investigation by the authority, and reports about their pricing activities.

(2) This part applies generally to government agencies as defined in the dictionary.

(3) The application of the part to an activity of a local government entity depends on whether the activity is a significant business activity as defined in the dictionary.

### **13B Application of part to responsible local governments consisting of 2 or more local governments**

(1) This section applies if the responsible local government for a local government entity consists of 2 or more local governments (the “**participants**”).

(2) If this part requires or permits something to be done by a responsible local government, the thing may be done by 1 or more of the participants for the responsible local government.

(3) If a provision of this part refers to a responsible local government doing something, the provision applies as if the provision referred to 1 or more of the participants for the responsible local government doing the thing for the responsible local government.

### **13C Application of part to responsible local government for giving notices**

(1) If this part requires or permits a notice to be given to a responsible local government and it consists of 2 or more local governments, the notice may be given to—

- (a) if there is a nominated local government for the responsible local government—the nominated local government; or
- (b) if the authority has requested notification of a nominated local government for the responsible local government but there is no nominated local government—any 1 of the local governments of which the responsible local government consists.

(2) A local government is the nominated local government for a responsible local government consisting of 2 or more local governments only if a written notice has been given to the authority in relation to the local government (the “**nominee**”) and the notice contains—

- (a) the nominee’s name and address for receiving notices; and

- (b) a signed statement by the other local governments that the nominee is authorised by them to receive notices under this part for all the local governments; and
- (c) a signed statement by the nominee agreeing to be the local government authorised to receive notices under this Act for all the local governments.

(3) For subsection (1)(b), the authority may request notification of a nominated local government for the responsible local government by giving a notice to each local government of which the responsible local government consists asking that a written notice be given to the authority containing—

- (a) the name, and address for receiving notices, of 1 of the local governments (also the “**nominee**”); and
- (b) a signed statement by the other local governments that the nominee is authorised by them to receive notices under this Act for all the local governments; and
- (c) a signed statement by the nominee agreeing to be the local government authorised to receive notices under this Act for all the local governments.

### **13D Application of part to local government entities and responsible local governments that are the same person**

(1) This section applies if—

- (a) this part requires or permits something to be done by both a local government entity and the responsible local government for the entity; and
- (b) the local government entity is not incorporated.

(2) The thing may be done by the local government entity or the responsible local government once and—

- (a) if the thing is done by the local government entity—it is taken to have also been done by the responsible local government; or
- (b) if the thing is done by the responsible local government—it is taken to have also been done by the local government entity.

**13E Application of part to local government entities and responsible local governments that are the same person for giving notices**

(1) This section applies if—

- (a) this part requires or permits a notice to be given to both a local government entity and the responsible local government for the entity; and
- (b) the local government entity is not incorporated.

(2) The notice may be given to the local government entity or the responsible local government once and—

- (a) if the notice is given to the local government entity—it is taken to have also been given to the responsible local government; or
- (b) if the notice is given to the responsible local government—it is taken to have also been given to the local government entity.

***Division 1A—Criteria for declarations of government monopoly business activities*****14 Development of criteria**

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.

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

(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.

## **16 Consultation about criteria**

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

## **17 Publication of criteria**

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***

## **18 Request for declaration**

The authority may ask the Ministers—

- (a) to declare a government business activity, whether or not it is a significant business activity,<sup>3</sup> 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>

## **18A Notice of requests relating to significant business activities**

(1) This section applies if the authority makes a request under section 18(a) relating to a significant business activity.

(2) The authority must give written notice of the request to the following, including details of the authority's reasons for making it—

- (a) the local government entity carrying on the activity;
- (b) the responsible local government for the entity.

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3 For this part “significant business activity” is defined in the dictionary as a significant business activity of a local government.

4 Section 23 (Investigations by authority—Ministerial reference)

### **18B Requests by local government entities and responsible local governments**

(1) A responsible local government for a local government entity may ask the Ministers—

- (a) to declare a government business activity that is a significant business activity to be a government monopoly business activity; and
- (b) if the declaration is made—to refer the government monopoly business activity to the authority under section 23.

(2) The responsible local government must give the authority a copy of the request.

### **19 Declaration by Ministers**

(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) Also, in deciding whether to make a declaration about a government business activity that is a significant business activity, the Ministers must consult with the local government entity carrying on the activity and the responsible local government for the entity.

(5) For a consultation under subsection (4), the Ministers must—

- (a) notify the responsible local government and the local government entity of the Ministers' intention to make a declaration about the significant business activity; and
- (b) give the responsible local government and the local government entity 90 days to make submissions to the Ministers about the intended declaration.

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

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

## **20 Declaration by regulation**

(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.

## **21 Public availability of requests**

The authority must—

- (a) keep a list of requests made during the preceding 2 years—
  - (i) by the authority under section 18; and
  - (ii) by responsible local governments under section 18B, of which the authority has been given a copy under section 18B(2); 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***

## **22 Investigations by authority—standing reference**

(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.

### **23 Investigations by authority—Ministerial reference**

(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.

(2A) In deciding whether to refer a government monopoly business activity that is a significant business activity to the authority under subsection (2), the Ministers must consult with the local government entity carrying on the activity and the responsible local government for the entity.

(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.

### **24 Directions of Ministers for Ministerial reference**

(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.

### **25 Notice of investigation**

(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) The notice must be given to—

- (a) the government agency carrying on the government monopoly business authority; or
- (b) if the investigation relates to a government monopoly business activity that is a significant business activity—
  - (i) the local government Minister; and
  - (ii) the responsible local government for the local government entity carrying on the 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.

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

(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—
  - (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) If the investigation relates to a government monopoly business activity involving the supply of water, the authority must have regard to water pricing determinations and water supply determinations.

(3) Subsections (1) and (2) do not limit the matters to which the authority may have regard in conducting an investigation.

## **27 Procedures for investigations**

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

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

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

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5 Part 6 (Investigations by authority)

- (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*

### **29 Application of division**

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.

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

(1) The authority must report the results of an investigation to the Ministers.

(2) If the investigation relates to a government monopoly business activity that is a significant business activity, the authority must also report the results of the investigation to—

- (a) the local government Minister; and
- (b) the responsible local government for the local government entity carrying on the activity.

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

When reporting the results of an investigation to the Ministers, the authority must give a copy of the report to the government agency carrying on the government monopoly business activity.

### **32 Multiple reports**

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

### **33 Contents of report**

(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.

### **34 Public availability of reports**

(1) A copy of a report must be made available for public inspection—

- (a) if the report relates to a government monopoly business activity that is not a significant business activity—by the Ministers within 2 days after the Ministers receive the report; or
- (b) if the report relates to a government monopoly business activity that is a significant business activity—
  - (i) by the Ministers within 2 days after the Ministers receive the report; and
  - (ii) by the local government Minister within 2 days after the Minister receives the report; and
  - (iii) by the responsible local government for the local government entity carrying on the activity within 2 days after the responsible local government receives the report.

(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.

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

(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—

- (a) for a report relating to a government monopoly business activity that is not a significant business activity—as if the Ministers received the report at the end of the period mentioned in subsection (1); or
- (b) for a report relating to a government monopoly business activity that is a significant business activity—as if the Ministers, the local government Minister and the responsible local government for the local government entity carrying on the activity received the report at the end of the period mentioned in subsection (1).

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

(1) This section applies to a report relating to a government monopoly business activity that is not a significant business activity.

(2) Within 90 days 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.

(3) Before making a decision under subsection (2) about a government monopoly business activity involving the supply of water, the Ministers must have regard to water pricing determinations and water supply determinations.

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

### **36A Decision of responsible local government about report**

(1) This section applies to a report relating to a government monopoly business activity that is a significant business activity.

(2) Within 90 days after the responsible local government for the local government entity carrying on the activity receives the report, the responsible local government must, by resolution—

- (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.

(3) Before making a decision under subsection (2) about a significant business activity involving the supply of water, the responsible local government must have regard to water pricing determinations and water supply determinations.

(4) As soon as practicable after making a decision under subsection (2), the responsible local government must—

- (a) notify the decision and the reasons for the decision by gazette notice; and
- (b) give a copy of the decision and the reasons for the decision to—
  - (i) the Ministers; and
  - (ii) the authority; and
  - (iii) the local government Minister; and
  - (iv) the local government entity carrying on the activity.

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

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.

**37A Register of recommendations and decisions relating to government monopoly business activities involving the supply of water**

(1) The authority must keep a register of—

- (a) the authority's recommendations about pricing practices contained in reports of the results of investigations about government monopoly business activities involving the supply of water; and
- (b) the Ministers' decisions under section 36(2)<sup>6</sup> relating to the recommendations.

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

- (a) the name of the government agency carrying on the government monopoly business activity;
- (b) the government monopoly business activity;
- (c) the reasons for the recommendation;
- (d) the day the report, in which the recommendation is made, is to be, or was, given to the Ministers.

(3) The register must also include, for each decision, details of the following—

- (a) the day the Ministers made the decision;
- (b) the day the Ministers' decision is to be, or was, notified under section 36(4).

**37B Register of recommendations and decisions relating to government monopoly business activities that are significant business activities involving the supply of water**

(1) The authority must keep a register of—

- (a) the authority's recommendations about pricing practices contained in the reports of the results of investigations about government monopoly business activities that are significant business activities involving the supply of water; and

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6 Section 36 (Decision of Ministers about report)

- (b) the decisions of the responsible local governments under section 36A(2) relating to the recommendations.

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

- (a) the name of the local government entity carrying on the government monopoly business activity;
- (b) the government monopoly business activity;
- (c) the reasons for the recommendation;
- (d) the day the report, in which the recommendation is made, is to be, or was, given to the responsible local government for the local government entity.

(3) The register must also include, for each decision, details of the following—

- (a) the day the responsible local government made the decision;
- (b) the day the responsible local government's decision is to be, or was, notified under section 36A(4).

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

### *Division 1—Preliminary*

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

The principle of competitive neutrality is that a government agency carrying on a significant business activity should not enjoy a competitive advantage over competitors or potential competitors in a particular market solely because the agency's activities are not subject to 1 or more of the following—

- (a) full Commonwealth or State taxes or tax equivalent systems;
- (b) debt guarantee fees directed towards offsetting the competitive advantages of government guarantees;

- (c) procedural or regulatory requirements of the Commonwealth, the State or a local government on conditions equivalent to the conditions to which a competitor or potential competitor may be subject, including, for example, requirements about the protection of the environment and about planning and approval processes.

### **39 Significant business activity**

(1) For this part, 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>7</sup>

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

### **40 Time for doing things**

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.

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

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>7</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***

### **42 Grounds for complaint**

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.

### **43 Persons who may make complaint**

(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.

### **44 Making a complaint**

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.

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

(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*

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

(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).

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

(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.

**48 Notice of investigation**

(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.

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

(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;
- (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;

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- (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>8</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 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.

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<sup>8</sup> A copy of each policy may be inspected at the office of the Treasury Department at 100 George Street, Brisbane.

**50 Procedures for investigations**

Part 6<sup>9</sup> applies to an investigation under this division.

*Division 4—Reports of authority about investigations***51 Application of division**

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.

**52 Authority to report to Ministers**

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

**53 Multiple reports**

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

**54 Contents of reports**

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—

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- (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.

### **55 Public availability of reports**

(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.

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

(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).

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

(1) Within 90 days 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.

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

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

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

(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*

### **60 Purpose of accreditation**

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>10</sup>

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<sup>10</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.

## **61 Application for accreditation**

(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.

## **63 Decision on application**

(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.

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

(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.

## **65 Notice of decision**

(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.

## **66 Publication of decision**

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.

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

(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.

## **68 Surrender of accreditation**

(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.

## **69 Cancellation of accreditation**

(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*****69A Power of authority to conduct investigation**

(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.

**69B Notice of investigation**

(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.

**69C Matters to be considered by authority for investigation**

(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.

### **69D Procedures for investigations**

Part 6<sup>11</sup> applies to an investigation under this division.

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## PART 5—ACCESS TO SERVICES

### *Division 1—Interpretation*

#### **70 Meaning of “facility”**

(1) “**Facility**” includes—

- (a) rail transport infrastructure; and
- (b) port infrastructure; and
- (c) electricity, petroleum or gas transmission and distribution infrastructure; and
- (d) water and sewerage infrastructure, including treatment and distribution infrastructure.

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

#### **71 Meaning of “market”**

(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).

#### **72 Meaning of “service”**

(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.

### **73 References to facilities**

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.

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

(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.

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

(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*

## **76 Access criteria**

(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***

**77 Requests about declarations**

(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.

**78 Notice of request**

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

(2) The authority must—

- (a) immediately 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—immediately tell the owner of the withdrawal, or immediately give details of the amendment to the owner.

## **79 Making recommendation**

(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.

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

(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*

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

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

#### **82 Notice of investigation**

(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.

### **83 Procedures for investigation**

Part 6<sup>12</sup> applies to an investigation under this subdivision.

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

### **84 Making declaration**

(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 service is provided by means of a facility owned by a local government entity, the Ministers must consult with the local government entity, and the responsible local government for the entity, before doing anything under subsection (1).

(3) For consulting under subsection (2), the Ministers must—

- (a) notify the local government entity and the responsible local government of the Ministers' intention to make a declaration about the service; and
- (b) give the local government entity and the responsible local government 90 days to make submissions to the Ministers about the intended declaration.

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

### **85 Notice of decision**

(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.

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(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 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 90 days after the relevant day, they are taken, at the end of the 90 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.

**“relevant day”** means—

- (a) for a service provided by means of a facility owned by a local government entity—the day after the 90 day period given, under section 84(3)(b), to the local government entity to make submissions; or
- (b) otherwise—the day the Ministers receive the declaration recommendation.

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

(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.

## **87 Duration of declaration**

(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*

## **88 Recommendation to revoke**

(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 would prevent the Ministers from declaring the relevant service.

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

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

## **90 Notice of investigation**

(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.

## **91 Procedures for investigation**

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

## **92 Revocation**

(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.

## **93 Notice of decision**

(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—

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13 Part 6 (Investigations by authority)

14 Section 86 (Factors affecting making of declaration)

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

#### **94 When revocation takes effect**

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*

#### **95 Effect of expiry or revocation of declaration**

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

- (a) the mediation or arbitration of an access dispute for which an access dispute notice was given before the expiry or revocation; or
- (b) the operation or enforcement of an access determination made in the arbitration of an access dispute for which an access 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.

#### **96 Register of declarations**

(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*****97 Declaration of service**

(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.

**98 Effect of ending of operation of declaration**

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

- (a) the arbitration of an access dispute for which an access dispute notice was given before the operation of the declaration ended; or
- (b) the operation or enforcement of an access determination made in the arbitration of an access dispute for which an access 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*****99 Obligation of access provider to negotiate**

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.

**100 Obligations of parties to negotiations**

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

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

(1) 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.

(2) Without limiting subsection (1), and subject to any relevant access code or approved access undertaking, the access provider must give the access seeker the following—

- (a) information about the price at which the access provider provides the service, including the way in which the price is calculated;
- (b) information about the costs of providing the service, including the capital, operation and maintenance costs;
- (c) information about the value of the access provider's assets, including the way in which the value is calculated;
- (d) an estimate of the spare capacity of the service, including the way in which the spare capacity is calculated;
- (e) a diagram or map of the facility used to provide the service;
- (f) information about the operation of the facility;
- (g) information about the safety system for the facility;

- (h) if the authority makes a determination in an arbitration about access to the service under division 5, subdivision 3—information about the determination.

(3) Despite subsection (2), if the authority reasonably considers the disclosure of information under subsection (2) may be likely to damage the commercial activities of the access provider, an access seeker or an access user, the authority may—

- (a) allow the information to be categorised or aggregated so the disclosure is not unduly damaging; or
- (b) authorise the access provider not to give the access seeker 1 or more of the matters mentioned in subsection (2).

(4) Despite subsection (2), the authority may allow the matters mentioned in subsection (2)(a) to (c) to be given in the form of a reference tariff.

(5) The access provider or access seeker may ask the authority for advice or directions about a matter mentioned in this section.

(6) The access provider and the access seeker must not, without the consent of the giver of the information, disclose to another person information given under this section.

(7) In this section—

“**reference tariff**”, for a service, means a price, or formula for calculating a price, that has been approved by the authority to set the basis for negotiation of the price for access to the service under an access agreement.

### *Subdivision 2—Rights and obligations of parties to access agreements*

## **102 Terms of access under separate agreements**

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.

## **103 Requirement to produce access agreement**

(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.

### **104 Preventing or hindering access**

(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

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<sup>15</sup> Provision for enforcing compliance with section 104(1) is made in division 8 (Enforcement for pt 5), particularly section 153 (Orders to enforce prohibition on hindering access).

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 access 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) 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.

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

(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.

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

(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.

### **106 Transfer of rights under access agreement**

(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 access 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*****107 Application of subdivision**

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.

**108 Application for approval**

(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.

**109 Decision on application**

(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, including whether adequate provision has been made for compensation if the persons' rights are adversely affected.

**110 Notice of decision**

(1) If the authority decides to approve an access agreement, the authority must immediately 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 immediately 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*****111 Application of arbitration procedures to access disputes**

(1) Subdivision 3<sup>17</sup> applies in relation to the arbitration of a dispute 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*****112 Giving dispute notice**

(1) This section applies if—

- (a) an access provider and access seeker can not 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 can not agree is increased access to the service.

**113 Requirements about access dispute notice**

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

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

(2) An access 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 whether the dispute is to be dealt with by mediation or arbitration; and
- (d) 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> including, if the dispute is to be dealt with by arbitration, whether or not an attempt has been made to resolve the dispute by mediation under subdivision 2A.

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

On receiving an access 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.

#### **115 Withdrawal of access dispute notice**

(1) An access dispute notice may be withdrawn only under this section.

(2) An access provider or access seeker may withdraw an access dispute notice—

- (a) if the dispute is to be dealt with by mediation—at any time before a mediated resolution of the dispute is achieved; or

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

(b) if the dispute is to be dealt with by arbitration—at any time before the authority makes its determination.

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

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

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

### **115A Authority may refer access dispute to mediation**

(1) This section applies if—

(a) the authority has received an access dispute notice stating—

(i) the dispute is to be dealt with by arbitration; and

(ii) there has been no attempt to resolve the dispute by mediation; and

(b) the authority considers a mediated resolution of the dispute can be achieved.

(2) The authority must give the following persons a written notice asking them to attend a conference to attempt to resolve the dispute by mediation (a “**mediation conference**”)—

(a) the access seeker stated in the access dispute notice as being the access seeker involved in the access dispute with the access provider;

(b) the access provider stated in the access dispute notice as being the access provider involved in the access dispute with the access seeker.

#### *Subdivision 2A—Mediation of access disputes*

### **115B Parties to mediation of access disputes**

(1) If section 115A applies, the parties to the mediation of an access dispute are the persons to whom a notice under the section is given by the authority.

(2) If section 115A does not apply, the parties to the mediation of an access dispute are—

- (a) the access provider or access seeker who gives the access dispute notice for the access dispute; and
- (b) if the access 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 access 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.

### **115C Other persons may take part in mediation conference**

(1) A mediator may allow a person who applies to take part in a mediation conference to take part in the conference if—

- (a) the mediator is satisfied the person has a sufficient interest in the resolution of the access dispute; and
- (b) the parties to the mediation consent.

(2) However, the person does not become a party to the dispute.

### **115D Conduct of mediation under sdiv 2A**

Part 6A<sup>19</sup> applies to a mediation under this subdivision.

### **115E Mediation agreements**

(1) This section applies if the parties to the mediation of an access dispute reach an agreement on the resolution (a “**mediated resolution**”) of the dispute.

(2) The agreement must be put into writing and signed by or for the parties (the “**mediation agreement**”).

(3) The mediator must give a copy of the mediation agreement to the authority as soon as practicable after it is signed.

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19 Part 6A (Conduct of mediation)

**115F Reference of access dispute—by mediator**

(1) This section applies if—

- (a) any of the following apply—
  - (i) the mediator considers the parties to a mediation can not reach a mediated resolution of the access dispute the subject of the mediation;
  - (ii) a party to the mediation does not attend the mediation conference for the mediation;
  - (iii) the access dispute is not resolved within 4 months after the access dispute notice for the dispute was given to the authority; and
- (b) the access dispute notice has not been withdrawn.

(2) The mediator must, by written notice given to the authority, refer the dispute to the authority for arbitration.

**115G Reference of access dispute—by party**

A party to the mediation of an access dispute may, by a further access dispute notice, refer the dispute to the authority for arbitration if—

- (a) a signed mediation agreement exists for the dispute; and
- (b) the party claims that another party to the mediation agreement has not complied with the agreement within the time stated for it or, if no time is stated, within 90 days after the agreement is signed.

***Subdivision 3—Arbitration of access disputes and making of access determinations*****116 Parties to arbitration of access disputes**

(1) If the access dispute notice for an access dispute states the dispute is to be dealt with by arbitration, the parties to the arbitration of the dispute are—

- (a) the access provider or access seeker who gives the access dispute notice for the access dispute; and

- (b) if the access 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 access 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.

(2) If an access dispute is referred to the authority for arbitration by a mediator under section 115F, the parties to the arbitration of the dispute are—

- (a) the parties to the mediation to which the dispute relates; and
- (b) 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.

### **117 Access determination by authority**

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

(2) However, the authority is not required to make an access determination if it ends the arbitration under section 122.<sup>20</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 access dispute notice for the access dispute.

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

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

(6) Subject to subsection (5), the authority is not required to consult with any entity before making an access determination.

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<sup>20</sup> Section 122 (Resolution of access dispute by authority without arbitration or determination)

(7) When making an access 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 an access determination, or an access determination made, in the arbitration.

### **118 Examples of access determinations**

(1) Without limiting section 117(3), an access 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 an access 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 an access determination that relates to the ownership of the extension.

### **119 Restrictions affecting making of access determination**

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

(2) Also, the authority must not make an access 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 an access 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 access 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 an access determination requiring an access provider to extend, or permit the extension of, a facility.

(5) However, the authority may make an access 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 an access 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 an access 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) An access determination has no effect if it is made in contravention of this section.

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

(1) In making an access 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 relating to the matters mentioned in subsection (1) it considers are appropriate.

## **121 Conduct of arbitration**

Part 7<sup>21</sup> applies to an arbitration under this subdivision.

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

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

- (a) the giving of the access 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 access dispute notice has not engaged in negotiations for an access agreement in good faith.

## **123 When access determination takes effect**

An access 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.

## **124 Enforcement of access determination**

An access determination may be enforced in the way provided under division 8.<sup>22</sup>

## **125 Preventing or hindering access**

(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 determination.<sup>23</sup>

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21 Part 7 (Conduct of arbitration hearings by authority)

22 Division 8 (Enforcement for pt 5)

23 Provision for enforcing compliance with section 125(1) is made in section 153 (Orders to enforce prohibition on hindering access).

(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 access 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.

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

(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.

### **127 Register of access determinations**

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

(2) The register must include, for each access 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;
- (e) the authority's reasons for the determination.

(3) The details in the register of the authority's reasons for an access determination must not include details that are likely to damage the commercial activities of the parties to the determination.

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

#### **128 Making codes**

- (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 reasonable 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.

#### **129 Status of codes**

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

#### **130 Purpose and contents of codes**

- (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.

### **131 Expiry of codes**

(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.

### **132 Period of operation of access codes**

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

## ***Division 7—Access undertakings for declared and non-declared services***

### ***Subdivision 1—Preparation and approval of draft access undertakings***

### **133 Requirement of owner to give draft access undertaking**

(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 access 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 access undertaking, the requirement may relate to the matters mentioned in section 137(2).

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

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

(2) If the authority refuses to approve the draft access 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 access undertaking in the way the authority considers appropriate; and
- (b) to give a copy of the amended draft access undertaking to the authority.

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

(4) In this section—

“**prescribed period**” means—

- (a) the period of 60 days after the authority receives a draft access 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.

### **135 Preparation and approval of draft access undertaking by authority**

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 access undertaking for the declared service in relation to the owner.

**136 Submission and approval of voluntary draft access undertaking**

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

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

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

(5) If the authority refuses to approve the draft access undertaking, it must give to the person who gave the draft access 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 access undertaking.

**137 Contents of access undertakings**

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

(2) An access 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 or another person;
- (bb) an obligation on the owner to comply with decisions of the authority or another person about disputes about matters stated in the undertaking;
- (bc) information to be given to the authority about compliance with the undertaking and performance indicators stated in the undertaking;
- (c) time frames 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.

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

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

- (a) a draft access undertaking given to the authority in response to an initial undertaking notice (whether or not the draft access undertaking is later amended in response to a secondary undertaking notice);
- (b) a draft access 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 access undertaking given to the authority by the owner of a declared service without receiving an initial undertaking notice;
- (d) a draft access undertaking given to the authority by the owner of a service that is not a declared service, whether or not the draft undertaking is later amended in response to an initial or secondary undertaking notice.

**(2)** The authority may approve a draft access 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, including whether adequate provision has been made for compensation if the rights of users of the service are adversely affected;
- (d) any other issues the authority considers relevant.

(3) However, the authority may approve a draft access 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 access undertakings*

#### **139 Requirement of owner to give draft amending access undertaking**

(1) The authority may, by written notice (an “**initial amendment notice**”) given to the responsible person for an approved access undertaking relating to a declared service, require the person to give the authority a draft access undertaking amending the approved access 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 access undertaking to make the access undertaking consistent with a provision of this Act or an access code for the service to which the access undertaking relates.

### **140 Consideration and approval of draft amending access undertaking by authority**

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

(2) If the authority refuses to approve the draft access 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 access undertaking in the way the authority considers appropriate; and
- (b) to give a copy of the amended draft access undertaking to the authority.

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

(4) In this section—

“**prescribed period**” means—

- (a) the period of 30 days after the authority receives a draft access 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.

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

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

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

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

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

(3) If the authority refuses to approve the draft access 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 access undertaking.

(4) In this section—

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

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

(1) This section applies to the following draft access undertakings amending approved access undertakings—

- (a) a draft access undertaking given to the authority in response to an initial amendment notice (whether or not the draft access undertaking is later amended in response to a secondary amendment notice);
- (b) a draft access 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 access undertaking given to the authority by a responsible person without receiving an initial amendment notice.

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

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

***Subdivision 3—Investigations about draft access undertakings*****144 Application of subdivision**

This subdivision applies to the following draft access undertakings—

- (a) a draft access undertaking given to the authority in response to an initial undertaking notice or initial amendment notice;
- (b) a draft access 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 access undertaking (whether or not amending an approved access 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.

**145 Power of authority to conduct investigation**

The authority may conduct an investigation—

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

**146 Notice of investigation**

**(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.

### **147 Procedures for investigation**

Part 6<sup>24</sup> applies to an investigation under this subdivision.

#### *Subdivision 4—Other matters*

### **148 Withdrawal of approved access undertaking**

(1) An approved access 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 access 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.

### **149 Period of operation of approved access undertaking**

An approved access 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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24 Part 6 (Investigations by authority)

**150 Register of approved access undertakings**

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

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

**150A Obligation of responsible person to comply with approved access undertaking**

A responsible person must comply with an approved access undertaking given by, or applicable to, the responsible person.

*Division 8—Enforcement for pt 5***151 References to person involved in a contravention**

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.

**152 Orders to enforce access determination**

(1) This section applies if, on the application of a party to an access 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.

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

(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>25</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.

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<sup>25</sup> Section 104 (Preventing or hindering access) or 125 (Preventing or hindering access)

(4) The grounds on which the court may decide not to make an order under this section include the ground that division 5<sup>26</sup> provides a more appropriate way of dealing with the issue of the applicant's access to the service concerned.

### **154 Consent injunctions**

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).

### **155 Interim injunctions**

(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.

### **156 Factors relevant to granting restraining injunction**

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.

### **157 Factors relevant to granting mandatory injunction**

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

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26 Division 5 (Access disputes about declared services)

- (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.

### **158 Discharge or variation of injunction or order**

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

### **158A Orders to enforce approved access undertaking**

(1) The authority or another person may apply to the court for an order under this section concerning an approved access 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*****159 Preparation of cost allocation manual**

(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.

**160 Publication and distribution of manual**

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.

**161 When manual binds responsible operator**

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.

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

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.

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

(1) The responsible operator of a declared service must keep, in a form approved by the authority, 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.

(4) Despite section 239,<sup>27</sup> the authority may direct that the accounting records for the declared service be published by the responsible operator if the authority considers publication—

- (a) is in the public interest; and
- (b) would not be likely to damage the responsible operator's commercial activities.

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27 Section 239 (Confidential information)

*Division 11—Other matters***167 Inconsistency between Act or access code and access agreement**

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.

**168 Inconsistency between access agreement and access undertaking**

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 access undertaking for the service.

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

(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.

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

(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 5A—PRICING AND SUPPLY OF WATER**

### *Division 1—Preliminary*

#### **170A Application of part to partnerships and joint ventures**

(1) This section applies if a water supplier or water seeker (a “**water body**”) 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 a water body, the thing may be done by 1 or more of the participants for the water body.

(3) If a provision of this part refers to a water body doing something, the provision applies as if the provision referred to 1 or more of the participants for the water body doing the thing for the water body.

(4) Subsection (5) applies if—

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

(5) The provision mentioned in subsection (4) applies as if a reference to the water body were a reference to any person responsible for the day-to-day management and control of the water body.

(6) Subsection (7) applies if—

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

(7) The provision mentioned in subsection (6) applies as if a reference to the water body were a reference to each participant for the water body and to any other person responsible for the day-to-day management and control of the water body.

#### **170B Application of Act to authority for purposes of giving notices**

(1) Subsection (2) applies if this part requires or permits a notice to be given to a water supplier and the water supplier consists of 2 or more entities.

(2) The notice may be given to—

- (a) if there is a nominated entity for the water supplier—the nominated entity; or
- (b) if the authority has requested notification of a nominated entity for the water supplier but there is no nominated entity—any 1 of the entities of which the water supplier consists.

(3) An entity is the nominated entity for a water supplier consisting of 2 or more entities only if a written notice has been given to the authority in relation to the water supplier (the “**nominee**”) and the notice contains—

- (a) the nominee’s name and address for receiving notices; and
- (b) a signed statement by the other entities of which the water supplier consists that the nominee is authorised by them to receive notices under this Act for all the entities of which the water supplier consists; and
- (c) a signed statement by the nominee agreeing to be the entity authorised to receive notices under this Act for all the entities of which the water supplier consists.

(4) For subsection (2)(b), the authority may request notification of a nominated entity, for a water supplier consisting of 2 or more entities, by giving a notice to each entity of which the water supplier consists asking that a written notice be given to the authority containing—

- (a) the name, and address for receiving notices, of 1 of the entities of which the water supplier consists (also the “**nominee**”); and
- (b) a signed statement by the other entities comprising the water supplier that the nominee is authorised by them to receive notices under this Act for all the entities of which the water supplier consists; and
- (c) a signed statement by the nominee agreeing to be the entity authorised to receive notices under this Act for all the entities of which the water supplier consists.

***Division 2—Declarations and investigations of monopoly water supply activities***

***Subdivision 1—Criteria for declaration recommendations and declarations of monopoly water supply activities***

**170C Development of criteria**

Within 6 months after the commencement of this subdivision, the authority must—

- (a) develop criteria (the “**water supply criteria**”) for use by the Ministers for deciding whether to declare a candidate water supply activity to be a monopoly water supply activity; and
- (b) give written notice of the criteria to the Ministers.

**170D Revision of, and advice about, criteria**

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

- (a) revise the water supply criteria, 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.

**170E Consultation about criteria**

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

**170F Publication of criteria**

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

***Subdivision 2—Recommendation by authority for declaration of monopoly water supply activities***

**170G Requests about declarations of monopoly water supply activities**

(1) A person may ask the authority to recommend that a particular candidate water supply activity be declared by the Ministers to be a monopoly water supply activity.

(2) The Ministers may ask the authority to consider whether a particular candidate water supply activity should be declared by the Ministers to be a monopoly water supply activity.

(3) A request under subsection (1) or (2) must be in the form approved by the authority.

(4) Before the authority makes a recommendation about a request, the person or Ministers may—

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

(5) If a request is withdrawn, the request is taken, for this part, never to have been made.

**170H Notice of request**

(1) This section applies if a request under section 170G is made about a candidate water supply activity, other than by the water supplier carrying on the activity.

(2) The authority must—

- (a) tell the water supplier carrying on the activity that the authority has received the request; and
- (b) if the request is later withdrawn or amended—immediately tell the water supplier of the withdrawal or give details of the amendment to the water supplier.

**170I Making recommendation**

(1) After receiving a request under section 170G, the authority must recommend to the Ministers that—

- (a) the candidate water supply activity be declared to be a monopoly water supply activity; or
- (b) part of the activity, that is itself a water supply activity, be declared to be a monopoly water supply activity; or
- (c) the activity not be declared to be a monopoly water supply activity.

(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 water supply activity, or part of a candidate water supply activity, be declared to be a monopoly water supply activity, the authority must also 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 water supplier carrying on the activity, the authority must give the water supplier's name to the Ministers with the recommendation.

### **170J Factors affecting making of recommendation**

(1) The authority must recommend a candidate water supply activity be declared by the Ministers to be a monopoly water supply activity if the authority is satisfied about all of the water supply criteria in relation to the candidate water supply activity.

(2) The authority must recommend that a candidate water supply activity not be declared by the Ministers to be a monopoly water supply activity if the authority is not satisfied about all of the water supply criteria in relation to the candidate water supply activity.

(3) Despite subsection (1), the authority may recommend that a candidate water supply activity not be declared by the Ministers to be a monopoly water supply activity if the authority considers the request was not made in good faith or is frivolous.

(4) Subsection (3) 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 water supply activity be declared by the Ministers to be a monopoly water supply activity if the authority is satisfied about all of the water supply criteria for the part of the activity.

### *Subdivision 3—Investigations about candidate water supply activities*

#### **170K Power of authority to conduct investigation**

For making a recommendation under subdivision 2, the authority may conduct an investigation about the candidate water supply activity.

#### **170L Notice of investigation**

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

- (a) the water supplier carrying on the candidate water supply activity; 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 water supplier carrying on the activity; 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.

#### **170M Procedures for investigation**

Part 6<sup>28</sup> applies to an investigation under this subdivision.

***Subdivision 4—Declaration by Ministers*****170N Making declarations**

(1) After receiving a declaration recommendation, the Ministers must do 1 of the following—

- (a) declare the candidate water supply activity to be a monopoly water supply activity;
- (b) declare part of the activity, that is itself a water supply activity, to be a monopoly water supply activity;
- (c) decide not to declare the activity to be a monopoly water supply activity.

(2) If the Ministers declare the activity, or part of the activity, to be a monopoly water supply activity, the declaration must state the expiry date of the declaration.

**170O Notice of decision**

(1) The Ministers must publish in the gazette—

- (a) notice of the decision to declare the candidate water supply activity in whole or in part, or not to declare the activity, to be a monopoly water supply activity; 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 activity 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 activity is not the water supplier carrying on the activity—give the designated material for the decision to the water supplier carrying on the activity; 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 90 days after receiving the declaration recommendation, they are taken, at the end of the 90 day period—

- (a) to have decided not to declare the activity to be a monopoly water supply activity; 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 candidate water supply activity to be a monopoly water supply activity, means—

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

### **170P Factors affecting making of declaration**

(1) The Ministers must declare a candidate water supply activity to be a monopoly water supply activity if they are satisfied about all of the water supply criteria for the activity.

(2) The Ministers must decide not to declare a candidate water supply activity to be a monopoly water supply activity if they are not satisfied about all of the water supply criteria for the activity.

(3) Despite subsections (1) and (2), the Ministers may declare part of a candidate water supply activity to be a monopoly water supply activity if they are satisfied about all of the water supply criteria for the part of the activity.

### **170Q Duration of declaration**

(1) A declaration of a monopoly water supply activity starts to operate on—

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

(2) A declaration of a monopoly water supply activity continues in operation until its expiry date, unless it is earlier revoked.

***Subdivision 5—Revocation of declaration*****170R Recommendation to revoke**

(1) The authority may recommend to the Ministers that a declaration of a monopoly water supply activity be revoked.

(2) The authority may recommend revocation only if it is satisfied that, at the time of the recommendation, section 170P would prevent the Ministers from declaring the relevant water supply activity to be a monopoly water supply activity.

**170S Power of authority to conduct investigation**

For making a revocation recommendation, the authority may conduct an investigation about the declared monopoly water supply activity.

**170T Notice of investigation**

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

- (a) the water supplier carrying on the monopoly water supply activity; 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 a written submission to the authority on the subject matter within a reasonable time stated in the notice; and
- (d) state the authority's address.

**170U Procedures for investigation**

Part 6<sup>29</sup> applies to an investigation under this subdivision.

**170V Revocation**

(1) On receiving a revocation recommendation, the Ministers must either revoke the declaration of the monopoly water supply activity or decide not to revoke the declaration.

(2) The Ministers may revoke the declaration—

- (a) only after receiving a revocation recommendation; and
- (b) only if they are satisfied that, at the time of the revocation, section 170P<sup>30</sup> would prevent the Ministers from declaring the relevant water supply activity to be a monopoly water supply activity.

**170W Notice of decision**

(1) The Ministers must publish in the gazette—

- (a) notice of a decision to revoke, or not to revoke, a declaration of a monopoly water supply activity; 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 water supplier carrying on the activity; and
- (b) the authority.

**170X When revocation takes effect**

A decision of the Ministers to revoke a declaration of a monopoly water supply activity 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.

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30 Section 170P (Factors affecting making of declaration)

***Subdivision 6—Other matters about monopoly water supply declarations*****170Y Effect of expiry or revocation of declaration**

The expiry or revocation of a declaration of a monopoly water supply activity does not affect—

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

**170Z Register of declarations**

(1) The authority must keep a register of declarations of monopoly water supply activities in operation.

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

***Subdivision 7—Investigations about monopoly water supply activities and making water pricing determinations*****170ZA Investigations by authority**

(1) The Ministers may refer a monopoly water supply 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.

(2) The authority must conduct the investigations.

(3) 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.

(4) A notice under subsection (3) must state the reasons for the withdrawal or amendment of the reference.

### **170ZB Directions of Ministers for Ministerial reference**

(1) In referring a monopoly water supply 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.

### **170ZC Notice of investigation**

(1) Before starting an investigation under this subdivision, 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 water supplier carrying on the monopoly water supply 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.

### **170ZD Procedures for investigations**

Part 6<sup>31</sup> applies to an investigation under this subdivision.

### **170ZE Ending of authority's jurisdiction for investigation**

The authority's jurisdiction to continue an investigation about a monopoly water supply activity ends if—

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

### **170ZF Water pricing determination by authority**

(1) The authority must make a written determination (a “**water pricing determination**”) in an investigation about a monopoly water supply activity.

(2) However, the authority is not required to make a water pricing determination in an investigation if its jurisdiction to continue the investigation ends under section 170ZE.

(3) The determination must—

- (a) deal with the pricing practices relating to the activity; and
- (b) give the reasons for making the determination; and
- (c) if the Ministers give the authority a direction for the investigation—include details of the direction; and
- (d) deal with any matter relating to the pricing practices that the authority considers appropriate.

(4) Before making a water pricing determination, the authority must give a draft determination to the water supplier carrying on the activity.

(5) Subject to subsection (4), the authority is not required to consult with any entity before making a water pricing determination.

(6) When making a water pricing determination, the authority must give the water supplier carrying on the activity its reasons for making the determination.

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31 Part 6 (Investigations by authority)

**170ZG Water pricing determinations may state how to calculate price**

Without limiting section 170ZF(3), a water pricing determination may state how to calculate the price at which the water supplier must carry on the monopoly water supply activity.

**170ZH Restrictions affecting making of water pricing determination**

(1) The authority must not make a water pricing determination for a monopoly water supply activity that is inconsistent with—

- (a) a water supply determination relating to the activity; or
- (b) an approved water supply undertaking for the activity; or
- (c) if the activity is a declared service—an access determination relating to the service; or
- (d) if the activity is a service, whether or not a declared service—an approved access undertaking for the service.

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

**170ZI Matters to be considered by authority in making water pricing determination**

(1) In making a water pricing determination, 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) decisions by the Ministers and local governments under part 3 about pricing practices of government monopoly business activities involving the supply of water;
- (e) the legitimate business interests of the water supplier carrying on the monopoly water supply activity to which the investigation relates;
- (f) the legitimate business interests of persons who have, or may acquire, rights to have the monopoly water supply activity provided to them by the water supplier;

- (g) in relation to the monopoly water supply activity—
  - (i) the cost of providing the activity in an efficient way, having regard to relevant interstate and international benchmarks; and
  - (ii) the actual cost of providing the activity; and
  - (iii) the quality of the activities constituting the water supply activity; and
  - (iv) the quality of the water being supplied;
- (h) the appropriate rate of return on water suppliers' assets;
- (i) the effect of inflation;
- (j) the impact on the environment of prices charged by the water supplier;
- (k) considerations of demand management;
- (l) social welfare and equity considerations, including community service obligations, the availability of goods and services to consumers and the social impact of pricing practices;
- (m) the need for pricing practices not to discourage socially desirable investment or innovation by water suppliers;
- (n) legislation and government policies relating to ecologically sustainable development;
- (o) legislation and government policies relating to occupational health and safety and industrial relations;
- (p) economic and regional development issues, including employment and investment growth.

(2) The authority may have regard to any other matters related to the matters mentioned in subsection (1) it considers are appropriate.

### **170ZJ When water pricing determination takes effect**

A water pricing 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.

**170ZK Enforcement of water pricing determination**

A water pricing determination may be enforced in the way provided under division 6.<sup>32</sup>

**170ZL Water suppliers' pricing practices**

A water supplier carrying on a monopoly water supply activity to which a water pricing determination relates must adopt pricing practices consistent with the determination.

**170ZM Register of water pricing determinations**

(1) The authority must keep a register of water pricing determinations.

(2) For each determination, the register must include details of the following—

- (a) the name of the water supplier carrying on the monopoly water supply activity to which the determination relates;
- (b) the monopoly water supply activity;
- (c) the day the determination was made;
- (d) the day the determination is to take, or took, effect;
- (e) the authority's reasons for the determination.

(3) The details of the authority's reasons for the determination must not include details that are likely to damage the commercial activities of the water supplier.

***Division 3—Water supply agreements*****170ZMA Definition for div 3**

In this division—

**“water supply activity”** means carrying on a business the main purpose of which is supplying water to another person (other than supplying bottled or containerised water), whether or not supplying the water includes water delivery services or water storage.

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32 Division 6 (Enforcement for pt 5A)

**170ZN Obligation of private water supplier to negotiate**

A water supplier must, if required by a water seeker, negotiate with the water seeker for making a water supply agreement.

**170ZO Obligations of parties to negotiations for water supply agreements**

The water supplier and water seeker must negotiate in good faith for reaching a water supply agreement.

**170ZP Obligation of water supplier to satisfy water seeker's requirements**

(1) In negotiations between a water supplier and a water seeker for a water supply agreement, the water supplier must make all reasonable efforts to try to satisfy the reasonable requirements of the water seeker.

(2) Without limiting subsection (1), and subject to any relevant approved water supply undertaking, the water supplier must give the water seeker the following—

- (a) information about the price at which the water supplier provides the water supply activity, including the way in which the price is calculated;
- (b) information about the amount of spare water available for supply by the water supplier;
- (c) if the authority has made a water supply determination or a water pricing determination about the water supply activity carried on by the water supplier—information about the determination.

**170ZQ Terms of supply under separate water supply agreements**

In entering into separate water supply agreements, a water supplier is not required to provide the water supply activity on the same terms under each agreement.

***Division 4—Water supply disputes******Subdivision 1—Preliminary*****170ZQA Definition for div 4**

In this division—

**“water supply activity”** means carrying on a business the main purpose of which is supplying water to another person (other than supplying bottled or containerised water), whether or not supplying the water includes water delivery services or water storage.

**170ZR Application of dispute resolution procedures to water supply disputes**

(1) Subdivision 3 applies to the mediation, and subdivision 4 applies to the arbitration, of a water supply dispute only if a notice of the dispute has been given to the authority by a water supplier or water seeker under section 170ZS.

(2) However, a water supplier or water seeker may give a notice under section 170ZS about a water supply dispute only if the water supplier and water seeker have not agreed to deal with the dispute otherwise than by mediation or arbitration under this Act.

***Subdivision 2—Notices about water supply disputes*****170ZS Giving water supply dispute notice**

(1) This section applies if—

- (a) a water supplier and water seeker can not agree on an aspect of the provision of a water supply activity; and
- (b) there is no water supply agreement between the water supplier and water seeker; and
- (c) the water supplier is in a position to exercise market power for providing the activity.

(2) Either the water supplier or water seeker may notify the authority that a water supply dispute exists.

(3) For subsection (1), there is no water supply agreement between a water supplier and water seeker if the aspect of providing the activity about which the water supplier and water seeker can not agree is increased supply of water.

### **170ZT Requirements about water supply dispute notice**

(1) A notice given under section 170ZS(2) (a “**water supply dispute notice**”) must be in writing.

(2) A water supply dispute notice must—

- (a) state the name and address of the water supplier or water seeker giving the notice; and
- (b) state the name and address of the other party involved in the water supply dispute; and
- (c) state the basis for asserting that the water supplier is in a position to exercise market power for the provision of the water supply activity; and
- (d) state whether the dispute is to be dealt with by mediation or arbitration; and
- (e) state the steps the party giving the notice has taken, or tried to take, to satisfy its obligations about carrying out negotiations for a water supply agreement in good faith, including, if the dispute is to be dealt with by arbitration, whether or not an attempt has been made to resolve the dispute by mediation under subdivision 3.

### **170ZU Notice by authority of water supply dispute**

On receiving a water supply dispute notice, the authority must give written notice of the water supply dispute—

- (a) if the water supply dispute notice was given by a water supplier—to the water seeker stated in the notice as being the water seeker involved in the water supply dispute with the water supplier; and
- (b) if the water supply dispute notice was given by a water seeker—to the water supplier stated in the notice as being the water supplier involved in the water supply dispute with the water seeker; and

- (c) to any other person the authority considers is appropriate to become a party to the water supply dispute.

### **170ZV Withdrawal of water supply dispute notice**

(1) A water supply dispute notice may be withdrawn only under this section.

(2) A water supplier or water seeker may withdraw a water supply dispute notice—

- (a) if the dispute is to be dealt with by mediation—at any time before a mediated resolution of the dispute has been achieved; or
- (b) if the dispute is to be dealt with by arbitration—at any time before the authority makes its determination.

(3) However, the water supplier may withdraw the water supply dispute notice only with the written agreement of the water seeker.

(4) Subsection (2) applies whether the water supply dispute notice was given by the water supplier or water seeker.

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

### **170ZW Authority may refer water supply dispute to mediation**

(1) This section applies if—

- (a) the authority has received a water supply dispute notice stating—
  - (i) the dispute is to be dealt with by arbitration; and
  - (ii) there has been no attempt to resolve the dispute by mediation; and
- (b) the authority considers a mediated resolution of the dispute can be achieved.

(2) The authority must give the following persons a written notice asking them to attend a conference to deal with the dispute by mediation (a “mediation conference”)—

- (a) the water seeker stated in the water supply dispute notice as being the water seeker involved in the water supply dispute with the water supplier;

- (b) the water supplier stated in the water supply dispute notice as being the water supplier involved in the water supply dispute with the water seeker.

### *Subdivision 3—Mediation of water supply disputes*

#### **170ZX Parties to mediation of water supply disputes**

(1) If section 170ZW applies, the parties to the mediation of a water supply dispute are the persons to whom a notice under the section is given by the authority.

(2) If section 170ZW does not apply, the parties to the mediation of a water supply dispute are—

- (a) the water supplier or water seeker who gives the water supply dispute notice for the water supply dispute; and
- (b) if the water supply dispute notice is given by a water supplier—the water seeker stated in the notice as being the water seeker involved in the water supply dispute with the water supplier; and
- (c) if the water supply dispute notice is given by a water seeker—the water supplier stated in the notice as being the water supplier involved in the water supply dispute with the water seeker.

#### **170ZY Other persons may take part in mediation conference**

(1) A mediator may allow a person who applies to take part in a mediation conference to take part in the conference if—

- (a) the mediator is satisfied the person has a sufficient interest in the resolution of the water supply dispute; and
- (b) the parties to the mediation consent.

(2) However, the person does not become a party to the dispute.

#### **170ZZ Conduct of mediation under subdivision**

Part 6A<sup>33</sup> applies to a mediation under this subdivision.

**170ZZA Mediation agreements**

(1) This section applies if the parties to the mediation of a water supply dispute agree on a resolution (a “**mediated resolution**”) of the dispute.

(2) The agreement must be put into writing and signed by or for the parties (the “**mediation agreement**”).

(3) The mediator must give a copy of the signed agreement to the authority as soon as practicable after it is signed.

**170ZZB Reference of water supply dispute—by mediator**

(1) This section applies if—

(a) any of the following apply—

(i) the mediator considers the parties to a mediation can not achieve a mediated resolution of the water supply dispute the subject of the mediation;

(ii) a party to the mediation does not attend the mediation conference for the mediation;

(iii) the water supply dispute is not resolved within 4 months after the water supply dispute notice for the dispute was given to the authority; and

(b) the water supply dispute notice has not been withdrawn.

(2) The mediator must, by written notice to the authority, refer the dispute to the authority for arbitration.

**170ZZC Reference of water supply dispute—by party**

A party to the mediation of a water supply dispute may, by a further water supply dispute notice, refer the dispute to the authority for arbitration if—

(a) a signed mediation agreement exists for the dispute; and

(b) the party claims that another party to the mediation agreement has not complied with the agreement within the time stated for it or, if no time is stated, within 90 days after the agreement is signed.

***Subdivision 4—Arbitration of water supply disputes and making of water supply determinations***

**170ZZD Parties to arbitration of water supply disputes**

(1) If the water supply dispute notice for a water supply dispute states the dispute is to be dealt with by arbitration, the parties to the arbitration of the dispute are—

- (a) the water supplier or water seeker who gives the water supply dispute notice for the water supply dispute; and
- (b) if the water supply dispute notice is given by a water supplier—the water seeker stated in the notice as being the water seeker involved in the water supply dispute with the water supplier; and
- (c) if the water supply dispute notice is given by a water seeker—the water supplier stated in the notice as being the water supplier involved in the water supply dispute with the water 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.

(2) If a water supply dispute is referred by a mediator to the authority for arbitration under section 170ZZB, the parties to the arbitration of the dispute are—

- (a) the parties to the mediation to which the dispute relates; and
- (b) 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.

**170ZZE Water supply determination by authority**

(1) The authority must make a written determination (a “**water supply determination**”) in an arbitration of a water supply dispute.

(2) However, the authority is not required to make a water supply determination if it ends the arbitration under section 170ZZJ.<sup>34</sup>

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34 Section 170ZZJ (Resolution of water supply dispute by authority without arbitration or determination)

(3) The water supply determination may deal with any matter relating to the provision of the water supply activity by the water supplier, including matters that were not the basis for the water supply dispute notice for the water supply dispute.

(4) The authority is not required to make a water supply determination that requires the water supplier to supply water to the water seeker.

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

(6) Subject to subsection (5), the authority is not required to consult with any entity before making a water supply determination.

(7) When making a water supply 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 a water supply agreement in good faith does not affect—

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

### **170ZZF Examples of water supply determinations**

Without limiting section 170ZZE(3), a water supply determination may—

- (a) require the water supplier to supply water to the water seeker; or
- (b) require the water seeker to accept water from the water supplier; or
- (c) state the terms on which the water seeker is supplied with water from the water supplier; or
- (d) include a requirement that the water supplier and water seeker enter into a water supply agreement to give effect to a matter determined by the authority; or
- (e) include a requirement that the water supplier charge no more than a stated maximum price for the water supply activity it provides; or
- (f) include a requirement that the water supplier calculate the price for the water supply activity it provides in a particular way.

**170ZZG Restrictions affecting making of water supply determinations**

(1) The authority must not make a water supply determination relating to a water supply activity that is inconsistent with—

- (a) an approved water supply undertaking for the activity; or
- (b) a water pricing determination for the activity; or
- (c) if the activity is a declared service—an access determination relating to the service; or
- (d) if the activity is a service, whether or not a declared service—an approved access undertaking for the service.

(2) Also, the authority must not make a water supply determination that—

- (a) would have either of the following effects—
  - (i) a reduction in the amount of water able to be obtained by a water supplier;
  - (ii) the water seeker, or someone else, becoming the owner, or 1 of the owners, of the water, without the existing owner's agreement; or
- (b) is inconsistent with an Act regulating the management of water; or
- (c) requires the transfer of an instrument given under an Act that—
  - (i) regulates the management of water; or
  - (ii) confers interests in water on the holder of the instrument.

(3) Despite subsection (2)(a), the authority may make a determination reducing the amount of water able to be obtained by the water supplier if—

- (a) the water supplier is a party to the arbitration; and
- (b) the reduction does not prevent the water supplier from obtaining a sufficient amount of water to be able to meet the water supplier's reasonably anticipated requirements, as assessed by the authority, as at the time the water supply dispute notice was given; and
- (c) if the authority considers the water supplier 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 water seeker for the supply of water.

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

**170ZZH Matters to be considered by authority in making a water supply determination**

(1) In making a water supply determination, 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) decisions by the Ministers and local governments under part 3 about pricing practices of government monopoly business activities involving the supply of water;
- (e) the legitimate business interests of the water supplier;
- (f) the legitimate business interests of persons who have, or may acquire, rights to have a water supply activity provided to them by the water supplier;
- (g) in relation to the water supply activity—
  - (i) the cost of providing the activity in an efficient way, having regard to relevant interstate and international benchmarks; and
  - (ii) the actual cost of providing the activity; and
  - (iii) the quality of the activities constituting the water supply activity; and
  - (iv) the quality of the water being supplied;
- (h) the appropriate rate of return on the assets of water suppliers;
- (i) the effect of inflation;
- (j) the impact on the environment of prices charged by the water supplier;
- (k) considerations of demand management;
- (l) social welfare and equity considerations, including community service obligations, the availability of goods and services to consumers and the social impact of pricing practices;

- (m) the need for pricing practices not to discourage socially desirable investment or innovation by water suppliers;
- (n) legislation and government policies relating to ecologically sustainable development;
- (o) legislation and government policies relating to occupational health and safety and industrial relations;
- (p) economic and regional development issues, including employment and investment growth.

(2) The authority may take into account any other matters relating to the matters mentioned in subsection (1).

### **170ZZI Conduct of arbitration under subdivision**

Part 7<sup>35</sup> applies to an arbitration under this subdivision.

### **170ZZJ Resolution of water supply dispute by authority without arbitration or determination**

The authority may decide not to start an arbitration, or at any time to end an arbitration under this subdivision without making a water supply determination, if it considers that—

- (a) the giving of the water supply dispute notice was vexatious; or
- (b) the subject matter of the water supply dispute is trivial, misconceived or lacking in substance; or
- (c) the party who gave the dispute notice has not engaged in negotiations for a water supply agreement in good faith; or
- (d) the water supplier is not in a position to exercise market power.

### **170ZZK When water supply determination takes effect**

A water supply 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.

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35 Part 7 (Conduct of arbitration hearings by authority)

**170ZZL Enforcement of water supply determination**

A water supply determination may be enforced in the way provided under division 6.<sup>36</sup>

**170ZZM Register of water supply determinations**

(1) The authority must keep a register of water supply determinations.

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

- (a) the names of the parties to the determination;
- (b) the water supply activity to which the determination relates;
- (c) the date the determination was made;
- (d) the date the determination is to take, or took, effect;
- (e) the authority's reasons for the determination.

(3) The details of the authority's reasons for the determination must not include details that are likely to damage the commercial activities of the parties to the determination.

**170ZZN Water supply determination not a substitute for seeking access to a service**

A water supply determination requiring the supply of water does not remove or change a water seeker's rights or obligations under part 5, division 4.<sup>37</sup>

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36 Division 6 (Enforcement for pt 5A)

37 Part 5 (Access to services), division 4 (Access agreements for declared services)

***Division 5—Water supply undertakings******Subdivision 1—Submission and approval of draft undertakings*****170ZZO Submission and approval of draft water supply undertaking**

(1) A water supplier may give a draft water supply undertaking to the authority.

(2) A person who expects to be a water supplier may give a draft water supply undertaking to the authority.

(3) The authority must consider a draft water supply undertaking given to it and either approve, or refuse to approve, it.

(4) If the authority refuses to approve the draft undertaking, it must give 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.

**170ZZP Contents of water supply undertakings**

(1) A water supply undertaking must state the expiry date of the undertaking.

(2) A water supply undertaking may include details of the following—

- (a) how prices for a water supply activity are to be calculated;
- (b) information about the basis on which a water supply activity will be provided, including terms to be included in water supply agreements with water seekers;
- (c) how negotiations for water supply agreements will be conducted;
- (d) information to be given to water seekers;
- (e) information to be given to the authority or another person;
- (f) an obligation on the water supplier to comply with decisions of the authority or another person about matters stated in the undertaking;

- (g) information to be given to the authority about compliance with the undertaking and performance indicators stated in the undertaking;
- (h) time frames for giving information in the conduct of negotiations for water supply agreements;
- (i) how the water supplier will calculate the amount of spare water available for supply by the water supplier;
- (j) arrangements for the transfer of all or part of the interest of a person to whom a water supply activity is provided under a water supply agreement;
- (k) accounting requirements to be satisfied by the water supplier and a person to whom a water supply activity is provided;
- (l) provision of water supply activities by water suppliers other than the water supplier giving the undertaking;
- (m) requirements for the safe provision of a water supply activity;
- (n) if the provision of water supply activity by the water supplier is a service for which an access undertaking has been approved under part 5—the access undertaking;
- (o) a review of the undertaking.

### **170ZZQ Factors affecting approval of draft water supply undertaking**

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

- (a) the legitimate business interests of the water supplier giving the undertaking;
- (b) the public interest, including the public interest in having competition in markets, whether or not in Australia;
- (c) the interests of water seekers;
- (d) any other issues the authority considers relevant.

(2) However, the authority may approve a draft water supply undertaking only if—

- (a) it is satisfied the undertaking is consistent with the following—
  - (i) for a water supply activity that is a declared service—an access determination relating to the service;

- (ii) for a water supply activity that is a service, whether or not it is a declared service—an approved access undertaking 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 water supply undertakings***

**170ZZR Requirement of responsible person to give draft amending water supply undertaking**

(1) The authority may, by written notice (an “**initial amendment notice**”) given to the responsible person for an approved water supply undertaking relating to a water supply activity, 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.

**170ZZS Consideration and approval of draft amending water supply undertaking by authority**

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

(2) If the authority refuses to approve the draft water supply 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 water supply undertaking in the way the authority considers appropriate; and
- (b) to give a copy of the amended draft water supply undertaking to the authority.

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

(4) In this section—

**“prescribed period”** means—

- (a) the period of 30 days after the authority receives a draft water supply 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.

### **170ZZT Preparation and approval of draft amending water supply undertaking by authority**

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

### **170ZZU Submission and approval of voluntary draft amending undertaking**

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

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

(3) If the authority refuses to approve the draft water supply 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 water supply undertaking.

(4) In this section—

**“responsible person for an approved water supply undertaking”** includes a person who gave the water supply undertaking because the person expects to be the water supplier carrying on the water supply activity to which the water supply undertaking relates.

### **170ZZV Factors affecting approval of draft amending water supply undertaking**

(1) This section applies to the following draft water supply undertakings amending approved water supply undertakings—

- (a) a draft water supply undertaking given to the authority in response to an initial amendment notice, whether or not the draft water supply undertaking is later amended in response to a secondary amendment notice;
- (b) a draft water supply 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 water supply undertaking given to the authority by a responsible person without receiving an initial amendment notice.

(2) The authority may approve a draft water supply undertaking only if it considers it appropriate to do so having regard to the matters mentioned in section 170ZZQ(1)(a) to (d).<sup>38</sup>

(3) However, the authority may approve a draft water supply undertaking only on the conditions mentioned in section 170ZZQ(2).

### *Subdivision 3—Investigations about draft water supply undertakings*

#### **170ZZW Application of subdivision**

This subdivision applies to the following draft water supply undertakings—

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<sup>38</sup> Section 170ZZQ (Factors affecting approval of draft water supply undertaking)

- (a) a draft water supply undertaking given to the authority under section 170ZZO;<sup>39</sup>
- (b) a draft water supply undertaking given to the authority in response to an initial amendment notice;
- (c) a draft water supply undertaking amending an approved water supply undertaking given to the authority under section 170ZZU;
- (d) a draft water supply undertaking prepared by the authority because of the failure of a person to comply with an initial or secondary amendment notice.

### **170ZZX Power of authority to conduct investigation**

The authority may conduct an investigation—

- (a) for deciding whether to approve, or to refuse to approve, a draft water supply undertaking mentioned in section 170ZZW(a), (b) or (c); or
- (b) for preparing or approving a draft water supply undertaking mentioned in section 170ZZW(d).

### **170ZZY Notice of investigation**

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

- (a) the water supplier carrying on the water supply activity; 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.

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39 Section 170ZZO (Submission and approval of draft water supply undertaking)

**170ZZZ Procedures for investigation**

Part 6<sup>40</sup> applies to an investigation under this subdivision.

*Subdivision 4—Other matters about water supply undertakings***170ZZZA Withdrawal of approved water supply undertaking**

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

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

**170ZZZB Period of operation of approved water supply undertaking**

An approved water supply 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 water supply undertaking;
  - (ii) the withdrawal of the water supply undertaking.

**170ZZZC Register of approved water supply undertakings**

(1) The authority must keep a register of approved water supply undertakings in operation.

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

### **170ZZZD Obligation of responsible person to comply with water supply undertaking**

A responsible person must comply with an approved water supply undertaking given by, or otherwise applicable to, the responsible person.

### ***Division 6—Enforcement for pt 5A***

### **170ZZZE References to person involved in contraventions**

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.

### **170ZZZF Orders to enforce water supply and pricing determinations**

(1) This section applies if—

- (a) on the application of a party to a water supply determination, the court is satisfied that another party (the “**contravening person**”), has engaged, is engaging, or proposes to engage, in conduct constituting a contravention of the determination; or
- (b) on the application of a person other than a party to a water supply determination, the court is satisfied that a water supplier (also the “**contravening person**”) is engaging, or proposes to engage, in conduct constituting a contravention of a water pricing 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 a contravening person from engaging in the conduct; or

- (ii) if the conduct involves failing to do something—requiring a contravening person to do the thing;
- (b) an order directing a contravening person 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 contravening person from engaging in particular conduct, or requiring a contravening 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.

### **170ZZZG Consent injunctions**

On 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.

### **170ZZZH Interim injunctions**

(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.

### **170ZZZI Factors relevant to granting restraining injunction**

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.

**170ZZZJ Factors relevant to granting mandatory injunction**

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.

**170ZZZK Discharge or variation of injunction or order**

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

**170ZZZL Orders to enforce approved water supply undertaking**

(1) The authority or another person may apply to the court for an order under this section concerning an approved water supply 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.

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

### *Division 1—Preliminary*

#### **171 Application of part**

This part applies to the following investigations—

- (a) an investigation for part 3, division 3;<sup>41</sup>
- (b) an investigation for part 4, division 3;
- (ba) an investigation for part 4, division 6;<sup>42</sup>
- (c) an investigation for part 5, division 2, subdivision 3;
- (d) an investigation for part 5, division 2, subdivision 5;<sup>43</sup>
- (e) an investigation for part 5, division 7, subdivision 3;<sup>44</sup>
- (f) an investigation for part 5A, division 2, subdivision 3;
- (g) an investigation for part 5A, division 2, subdivision 5;

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41 Part 3 (Pricing practices relating to government monopoly business activities), division 3 (Investigations about government monopoly business activities)

42 Part 4 (Competitive neutrality and significant business activities), divisions 3 (Investigation of complaints) and 6 (Investigations about accreditation)

43 Part 5 (Access to services), division 2 (Ministerial declarations), subdivisions 3 (Investigations about candidate services) and 5 (Revocation of declaration)

44 Part 5 (Access to services), division 7 (Access undertakings for declared and non-declared services), subdivision 3 (Investigations about draft access undertakings)

- (h) an investigation for part 5A, division 2, subdivision 7;<sup>45</sup>
- (i) an investigation for part 5A, division 5, subdivision 3.<sup>46</sup>

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

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

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

#### **173 General procedures**

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

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45 Part 5A (Pricing and supply of water), division 2 (Declarations and investigations of monopoly water supply activities), subdivisions 3 (Investigations about candidate water supply activities), 5 (Revocation of declaration) and 7 (Investigations about monopoly water supply activities and making water pricing determinations)

46 Part 5A (Pricing and supply of water), division 5 (Water supply undertakings), subdivision 3 (Investigations about draft water supply undertakings)

**174 Consideration of submissions**

(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*****175 Holding of hearings**

The authority may hold hearings for an investigation.

**176 Notice of hearings**

(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>47</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>48</sup>—
  - (i) the government agency against which the complaint the subject of the investigation is made; and
  - (ii) the responsible Minister for the government agency; and
  - (iii) the complainant; and

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47 Part 3 (Pricing practices relating to government monopoly business activities)

48 Part 4 (Competitive neutrality and significant business activities)

- (c) for an investigation under part 5<sup>49</sup>—the owner of the service to which the investigation relates, or to which the access undertaking the subject of the investigation relates; and
  - (d) for an investigation under part 5A<sup>50</sup>—the water supplier carrying on the water supply activity 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.

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

(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 subsection (3)(a); or

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49 Part 5 (Access to services)

50 Part 5A (Pricing and supply of water)

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

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

### **178 Right to representation**

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

### **179 Procedures at hearings**

Part 8, division 2<sup>51</sup> applies to a hearing, so far as the part is capable of applying, as if the hearing were a meeting of the authority.

### **180 Taking evidence**

(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*

### **181 Notice to witness**

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.

### **182 Witness fees**

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

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51 Part 8 (Other provisions about the authority), division 2 (Proceedings of authority)

- (b) if no witness fees are prescribed—the reasonable witness fees decided by the chairperson.

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

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.

### **184 Other offences by witnesses**

(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.

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*

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

(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.

### **186 Handling of documents**

(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.

### **187 Confidential information**

(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>52</sup>

(5) In this section—

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

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

## **PART 6A—CONDUCT OF MEDIATION**

### *Division 1—Preliminary*

#### **187A Application of part**

This part applies to the following—

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52 Sections 177 (Hearings normally to be in public), 184 (Other offences by witnesses) and 185 (Giving information and documents to authority)

- (a) the mediation of an access dispute for part 5, division 5, subdivision 2A;
- (b) the mediation of a water supply dispute for part 5A, division 4, subdivision 3.<sup>53</sup>

### *Division 2—Constitution of mediator for mediation conferences*

#### **187B Constitution of mediator**

(1) For a mediation, the mediator is to be constituted by 1 or more appropriately qualified persons nominated in writing by the chairperson.

(2) The mediator, as constituted under subsection (1), must include an associate member chosen, under section 214D(2), for the mediation.

(3) In this section—

**“appropriately qualified”** includes having the qualifications, experience or standing appropriate to exercise the power.

#### **187C Presiding person**

(1) If the mediator for a mediation is constituted by 1 person, the person is to preside at the mediation.

(2) If the mediator for a mediation is constituted by more than 1 person and includes the chairperson, the chairperson is to preside at the mediation.

(3) If the mediator for a mediation is constituted by more than 1 person but does not include the chairperson, the chairperson must nominate a person to preside at the mediation.

#### **187D Reconstitution of mediator**

(1) This section applies if the person who constitutes, or 1 of the persons who constitutes, the mediator for a mediation—

- (a) stops being a member of the authority; or

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53 Part 5 (Access to services), division 5 (Access disputes about declared services), subdivision 2A (Mediation of access disputes)

Part 5A (Pricing and supply of water), division 4 (Water supply disputes), subdivision 3 (Mediation of water supply disputes)

(b) for any reason, is not available for the mediation conference.

(2) For finishing the mediation, the chairperson must direct that the mediator is to be constituted by—

(a) if the mediator is constituted by 1 person—by another person directed by the chairperson; or

(b) if the mediator is constituted by more than 1 person—by the remaining person or persons.

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

(a) must continue and finish the mediation; and

(b) for that purpose, may have regard to any notes of the mediation conference made by the mediator as previously constituted.

(4) In subsection (1), a reference to the person who constitutes, or is 1 of the persons who constitutes, the mediator for a mediation includes a reference to the person who constitutes, or is 1 of the persons who constitutes, a mediator for that purpose because of the application on 1 or more occasions of subsection (2).

### **187E Deciding questions**

If the mediator is constituted for a mediation by more than 1 person, any question before the mediator is to be decided—

(a) if paragraph (b) does not apply—according to the opinion of the majority of those persons; or

(b) if the persons are evenly divided on the question—according to the opinion of the person presiding.

### *Division 3—General conduct of mediation conferences*

#### **187F Conference to be in private**

(1) A mediation conference must be held in private.

(2) However, the mediator may give written directions about the persons who may be present at the conference.

(3) In giving a direction, the mediator must have regard to the wishes of the parties and the need for commercial confidentiality.

(4) A person must not be present at a mediation conference in contravention of a direction under subsection (2).

Maximum penalty for subsection (4)—1 000 penalty units or 1 year's imprisonment.

### **187G Limited right to representation**

(1) At a mediation conference, each party to the dispute must conduct the party's own case.

(2) However, a party may be represented by someone else if—

- (a) the party is a corporation; or
- (b) the mediator is satisfied the party should be permitted to be represented by someone else.

### **187H General procedures**

(1) In a mediation conference, the mediator—

- (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 himself, herself or themselves on any matter relevant to the mediation in any way the mediator considers appropriate; and
- (d) must comply with natural justice.

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

### **187I Parties' attendance at conference not compellable**

A party to a mediation can not be compelled to attend a mediation conference.

### **187J No official record of mediation conference**

(1) A person must not make an official record of anything said at a mediation conference.

Maximum penalty—40 penalty units.

(2) A mediator does not commit an offence against subsection (1) merely by making notes of the mediation conference.

#### *Division 4—Other matters*

### **187K Confidential information**

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

- (a) stated information made available, or to be made available, in a mediation conference 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 mediator of the person's belief; and
- (b) ask the mediator not to disclose the information to another person.

(3) If the mediator is satisfied the person's belief is justified and disclosure of the information would not be in the public interest, the mediator must take all reasonable steps to ensure the information is not, without the person's consent, disclosed to another person.

(4) In this section—

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

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

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

### *Division 1—Preliminary*

#### **188 Application of part**

This part applies to the following arbitrations—

- (a) the arbitration of an access dispute conducted by the authority for part 5, division 5, subdivision 3;
- (b) the arbitration of a water supply dispute conducted by the authority for part 5A, division 4, subdivision 4;
- (c) the arbitration for an application under the *Water Act 2000*, section 891(2).<sup>54</sup>

#### **188A Consolidation of arbitration of access and water supply disputes**

The arbitration of an access dispute and a water supply dispute may be consolidated by the authority if—

- (a) the owner of the service the subject of the access dispute is the same person as the water supplier carrying on the water supply activity to which the water supply dispute relates; and
- (b) the access seeker for the service is the same person as the water seeker who is party to the water supply dispute.

#### **189 References to member**

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.

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54 Part 5 (Access to services), division 5 (Access disputes about declared services), subdivision 3 (Arbitration of access disputes and making of access determinations)  
Part 5A (Pricing and supply of water), division 4 (Water supply disputes), subdivision 4 (Arbitration of water supply disputes and making of water supply determinations)  
*Water Act 2000*, section 891 (Who may apply for arbitration)

***Division 2—Constitution of authority for arbitration hearings*****190 Constitution of authority**

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

(2) The authority, as constituted under subsection (1), must include an associate member chosen, under section 214D(1), for the arbitration.

**191 Presiding member**

(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.

**192 Reconstitution of authority**

(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).

### **193 Deciding questions**

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***

#### **194 Hearing normally to be in private**

(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.

#### **195 Right to representation**

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

**196 General procedures**

(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 a 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.

**197 Particular powers of authority**

(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 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.

### **198 Disclosing information**

(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.

### **199 Taking evidence**

(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*

### **200 Notice to witness**

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.

**201 Witness fees**

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.

**202 Failure of witness to attend**

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.

**203 Other offences by witnesses**

(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.

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*****204 Contempt**

A person must not do any act or thing in relation to an arbitration that would be a contempt of court if the authority were a court of record.

Maximum penalty—500 penalty units or 6 months imprisonment.

**205 Giving information and documents to authority**

(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.

**206 Handling of documents**

(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.

## **207 Confidential information**

(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.

**208 Costs**

(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>55</sup>

## **PART 8—OTHER PROVISIONS ABOUT THE AUTHORITY**

### *Division 1—Membership of authority*

**209 Composition of authority**

- (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,

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55 Section 115 (Withdrawal of access dispute notice)

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*.

## **210 Chairperson and deputy chairperson of authority**

(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.

## **211 Duration of appointment**

(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.

**212 Conditions of appointment**

(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.

***Division 1A—Panel of associate members*****213 Panel**

There is to be a panel of associate members.

**214 Appointment of persons to panel**

(1) The Governor in Council may, by gazette notice, appoint a person as an associate member.

(2) A person is qualified to be recommended by the Minister for appointment as an associate member only if the Minister is satisfied the person is appropriately qualified for appointment because of the person's knowledge of, or experience in, issues relevant to investigations, mediations or arbitrations under this Act.

**214A Term of appointment**

An associate member may be appointed for a term not longer than 5 years.

**214B Conditions of appointment**

An associate member holds office on the conditions decided by the Governor in Council.

**214C Vacation of office**

An associate member vacates the member's office if—

- (a) the member resigns by signed notice of resignation given to the Minister; or
- (b) the Governor in Council, by written notice given to the member, removes the member from the panel of associate members.

### **214D Choice of 1 or more associate members for a particular investigation, mediation or arbitration**

(1) For a particular investigation or arbitration, the chairperson may choose 1 or more associate members to be a member, or members, of the authority for the investigation or arbitration.

(2) An associate member chosen to be a member of the authority for a particular investigation is taken to be a member of the authority for the exercise of the authority's powers under this Act for the investigation.

(3) For a particular mediation, the chairperson may choose 1 or more associate members to be 1 or more of the persons who constitute the mediator for the mediation.

## ***Division 2—Proceedings of authority***

### **215 Times and places of meetings**

- (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.

### **216 Presiding member at meetings**

(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.

**217 Quorum and voting at meetings**

(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.

**218 Conduct of proceedings**

(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.

**219 Disclosure of interests**

(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.

## **220 Minutes**

The authority must keep minutes of its proceedings.

### *Division 3—Staff of authority*

## **221 Chief executive officer**

(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.

## **222 Authority staff**

The authority may engage the other employees it considers necessary to perform its functions.

## **223 Conditions of employment**

(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.

## **224 Alternative staffing arrangements**

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.

## **225 Rights of former public service officers**

(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.

## **226 Superannuation schemes**

(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.

## **227 Superannuation for former public service officers**

(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 3A—Registers*

#### **227A Keeping registers**

For each register to be kept by the authority under this Act, the authority may keep the register in the way it considers appropriate.

#### **227B Availability of registers for inspection**

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.

#### **227C Inspection of registers**

On payment of the fee prescribed under a regulation, the authority must—

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

### *Division 4—Other matters*

#### **228 Seal**

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.

**229 Application of certain Acts**

The authority is—

- (a) a unit of public administration under the *Crime and Misconduct Act 2001*; 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
- (e) an agency under the *Ombudsman Act 2001*.

**PART 9—OFFENCES****230 False or misleading statements**

(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.

**231 False, misleading or incomplete documents**

(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.

### **232 Obstructing members or employees of authority**

(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.

### **233 Intimidation**

(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

### 234 Cabinet matter not to be disclosed

(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.

### 235 Cabinet matters

(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.

### 236 Responsibility for acts or omissions of representatives

(1) In this section—

“**representative**” means—

- (a) of a corporation—an executive officer, employee or agent of the corporation; or
- (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.

### **237 Protection from liability of member or employee**

(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.

### **238 Protection from liability of person giving information to authority**

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.

### **239 Confidential information**

(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.

(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; or
- (c) an entity that performs similar functions to the authority under a law of the Commonwealth, another State or a foreign country.

(3) In this section—

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

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

## 240 Secrecy

(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.

## **241 Draft reports**

In preparing a report under this Act, the authority may give a draft of the report to the persons it considers appropriate.

## 242 Annual reports

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>56</sup> and
- (b) comments about the implementation of, and any failure to implement, recommendations mentioned in section 36;<sup>57</sup> and
- (c) details of each complaint under section 42<sup>58</sup> accepted by the authority for investigation and the results of each investigation; and
- (d) decisions of the Ministers under section 57<sup>59</sup> on reports of the results of investigations about competitive neutrality; and
- (e) accreditations granted by the authority under section 63.<sup>60</sup>

## 243 Delegation

The chairperson may delegate the chairperson's powers under this Act to another member or the authority's chief executive officer.

## 244 Tabling reports

(1) This section applies to a report received by the Ministers and mentioned in section 34 or 55.<sup>61</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

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56 Section 18 (Request for declaration)

57 Section 36 (Decision of Ministers about report)

58 Section 42 (Grounds for complaint)

59 Section 57 (Decision of Ministers about report)

60 Section 63 (Decision on application)

61 Section 34 (Public availability of reports) or 55 (Public availability of reports)

the recommendation, are tabled in the Legislative Assembly within 14 sitting days after the report is received by the Ministers.

### **244A Approval of forms**

The authority may approve forms for use under this Act.

### **245 Regulation-making power**

(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>62</sup> or
- (b) the consideration of applications for accreditation, or the granting of accreditation, under part 4.

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62 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>63</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>64</sup>

**“access criteria”** see section 76.

**“access determination”** see section 117(1).

**“access dispute notice”** see section 113(1).

**“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.

**“access undertaking”**, for a service, means a written undertaking that sets out details of the terms on which an owner of the service undertakes to provide access to the service whether or not it sets out other information about the provision of access to the service.

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63 Section 99 (Obligation of access provider to negotiate)

64 Part 5 (Access to services), division 6 (Access codes for declared services)

## SCHEDULE (continued)

**“applicant”** means—

- (a) for part 4, division 5—a government agency that applies to the authority for accreditation under section 61;<sup>65</sup> or
- (b) for part 5, division 2, subdivision 1—
  - (i) if subparagraph (ii) does not apply—a person by whom a request is made to the authority under section 77;<sup>66</sup> or
  - (ii) if a request is made to the authority under section 77 by the Ministers—the Ministers.

**“approved access undertaking”** means an access undertaking approved by the authority under part 5, and includes the access undertaking as amended with the authority’s approval.

**“approved undertaking”** means an undertaking approved by the authority, and includes the undertaking as amended with the authority’s approval.

**“approved water supply undertaking”** means a water supply undertaking approved by the authority under part 5A, and includes the water supply undertaking as amended with the authority’s approval.

**“associate member”** means a member of the panel of associate members.

**“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.

**“candidate water supply activity”** means a water supply activity that is—

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65 Section 61 (Application for accreditation)

66 Section 77 (Requests about declarations)

## SCHEDULE (continued)

- (a) carried on by a water supplier; and
- (b) declared under a regulation to be a candidate water supply activity.

**“chairperson”** means the chairperson of the authority.

**“competition policy”** means the policies, contained in the following agreements,<sup>67</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.

**“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.

**“complainant”** means a person making a complaint to the authority under section 42.<sup>68</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 Territory of Australia, as in force for the time being.

**“court”** means the Supreme Court.

**“declaration”** means—

- (a) for part 5—a Ministerial declaration or regulation-based declaration; or
- (b) for part 5A—a declaration of a monopoly water supply activity.

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<sup>67</sup> Copies of the agreements may be inspected at the authority’s office in Brisbane.

<sup>68</sup> Section 42 (Grounds for complaint)

## SCHEDULE (continued)

**“declaration of a monopoly water supply activity”** means a declaration of a candidate water supply activity to be a monopoly water supply activity made by the Ministers under part 5A, division 2.

**“declaration recommendation”** means—

- (a) for part 5—a recommendation made by the authority under section 79; or
- (b) for part 5A—a recommendation made by the authority under section 170I.

**“declared service”** means a service for which a declaration is in operation.

**“deputy chairperson”** means the deputy chairperson of the authority.

**“director”** see the Corporations Act, section 9.<sup>69</sup>

**“dispute notice”** means an access dispute notice or a water supply dispute notice.

**“enforcement injunction”** means—

- (a) for part 5—an injunction under section 152 or 153; or
- (b) for part 5A—an injunction under section 170ZZZF.

**“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—

- (a) animals, including fish; and
- (b) minerals, trees and crops (whether or not on, under or attached to land); and
- (c) water, including treated and waste water; and
- (d) gas or electricity.

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<sup>69</sup> Corporations Act, section 9 (Dictionary)

## SCHEDULE (continued)

**“government”** means—

- (a) for part 3—
  - (i) the government of the State; or
  - (ii) a local government; or
- (b) other than for part 3—the government of the State.

**“government agency”** means—

- (a) for parts 3 and 5A—
  - (i) a government agency under paragraph (b); or
  - (ii) a local government entity; or
- (b) other than for parts 3 and 5A—
  - (i) a government company or part of a government company;  
or
  - (ii) a State instrumentality, agency, authority or entity, or a division, branch or other part of a State instrumentality, agency, authority or entity; or
  - (iii) a department or a division, branch or other part of a department; or
  - (iv) a government owned corporation.

**“government business activity”** means—

- (a) for a government agency other than a local government entity—a business activity carried on by the government agency; or
- (b) for a government agency that is a local government entity—a significant business activity carried on by the government agency.

**“government company”** means a corporation incorporated under the Corporations Act all the stocks or shares in the capital of which are beneficially owned by the State or a government agency.

**“government monopoly business activity”** means a government business activity declared to be a government monopoly business activity under a regulation or by the Ministers.

## SCHEDULE (continued)

**“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”**—

- (a) for part 5—see section 139; or
- (b) for part 5A—see section 170ZZR.

**“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>70</sup>—a notice of the investigation given under section 25; or
- (b) for an investigation under part 4, division 3<sup>71</sup>—a notice of the investigation given under section 48; or
- (c) for an investigation under part 5, division 2, subdivision 3—a notice of the investigation given under section 82; or
- (d) for an investigation under part 5, division 2, subdivision 5<sup>72</sup>—a notice of the investigation given under section 90; or
- (e) for an investigation under part 5, division 7, subdivision 3<sup>73</sup>—a notice of the investigation given under section 146; or
- (f) for an investigation under part 5A, division 2, subdivision 3—a notice of the investigation given under section 170L; or

70 Part 3 (Pricing practices relating to government monopoly business activities), division 3 (Investigations about government monopoly business activities)

71 Part 4 (Competitive neutrality and significant business activities), division 3 (Investigation of complaints)

72 Part 5 (Access to services), division 2 (Ministerial declarations), subdivisions 3 (Investigations about candidate services) and 5 (Revocation of declaration)

73 Part 5, (Access to services), division 7 (Access undertakings for declared and non-declared services), subdivision 3 (Investigations about draft access undertakings)

## SCHEDULE (continued)

- (g) for an investigation under part 5A, division 2, subdivision 5—a notice of the investigation given under section 170T; or
- (h) for an investigation under part 5A, division 2, subdivision 7<sup>74</sup>—a notice of the investigation given under section 170ZC; or
- (i) for an investigation under part 5A, division 5, subdivision 3<sup>75</sup>—a notice of the investigation given under section 170ZZY.

**“local government entity”** means—

- (a) a local government or part of a local government; or
- (b) a local government owned corporation.

**“local government Minister”** means the Minister administering the *Local Government Act 1993*.

**“local government owned corporation”** means a local government owned corporation under the *Local Government Act 1993*, chapter 8, part 7.<sup>76</sup>

**“market”** see section 71.

**“mediated resolution”**—

- (a) of an access dispute—see section 115E(1); or
- (b) of a water supply dispute—see section 170ZZA(1).

**“mediation agreement”**—

- (a) for part 5, division 5, subdivision 2A—see section 115E(2); or
- (b) for part 5A, division 4, subdivision 3—see section 170ZZA(2).

**“mediation conference”**—

- (a) for part 5, division 5, subdivision 2—see section 115A(2); or

74 Part 5A (Pricing and supply of water), division 2 (Declarations and investigations of monopoly water supply activities), subdivisions 3 (Investigations about candidate water supply activities), 5 (Revocation of declaration) and 7 (Investigations about monopoly water supply activities and making water pricing determinations)

75 Part 5A (Pricing and supply of water), division 5 (Water supply undertakings), subdivision 3 (Investigations about draft water supply undertakings)

76 *Local Government Act 1993*, chapter 8 (National competition reform of significant business activities), part 7 (Local government owned corporations)

## SCHEDULE (continued)

(b) for part 5A, division 3, subdivision 3, subdivision 2—see section 170ZW(2).

**“mediator”**, for a mediation, means 1 or more persons constituted as a mediator under part 6A, division 2.

**“member”** means a member of the authority, and includes—

- (a) the chairperson and deputy chairperson; and
- (b) for a particular investigation or arbitration—an associate member chosen, under section 214D(1), for the investigation or arbitration.

**“Ministerial declaration”** means a declaration of a service made by the Ministers under part 5, division 2.<sup>77</sup>

**“Ministers”** means the Premier and the Treasurer.

**“Ministers’ decision notice”** see section 57.

**“monopoly water supply activity”** means a candidate water supply activity declared by the Ministers, under section 170N, to be a monopoly water supply activity.

**“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).

**“panel of associate members”** means the panel of associate members mentioned in section 213.

**“party”** means—

- (a) for the mediation of an access or water supply dispute—a party to the mediation;<sup>78</sup> or

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<sup>77</sup> Part 5 (Access to services), division 2 (Ministerial declarations)

<sup>78</sup> The issue of who is a party in the mediation of an access dispute is dealt with in section 115B (Parties to mediation of access disputes). The issue of who is a party in the mediation of a water supply dispute is dealt with in section 170ZX (Parties to mediation of water supply disputes).

## SCHEDULE (continued)

- (b) for the arbitration of an access or water supply dispute—a party to the arbitration;<sup>79</sup> or
- (c) for an access determination—a party to the arbitration in which the authority made the access determination; or
- (d) for a water supply determination—a party to the arbitration in which the authority made the water supply determination; or
- (e) for the arbitration of an application for arbitration under the *Water Act 2000*, section 891(2)—a party to the arbitration.

**“port infrastructure”** see *Transport Infrastructure Act 1994*, schedule 3.<sup>80</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 or a government agency, and includes a facility owned by a water authority.

**“rail transport infrastructure”** see *Transport Infrastructure Act 1994*, schedule 3.

**“reasonably believes”** means believes on grounds that are reasonable in all the circumstances.

**“register”** means any of the following registers kept by the authority—

- (a) the register of recommendations and Ministerial decisions relating to government monopoly business activities involving the supply of water;

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79 The issue of who is a party in the arbitration of an access dispute is dealt with in section 116 (Parties to arbitration of access disputes). The issue of who is a party in the arbitration of a water supply dispute is dealt with in section 170ZZD (Parties to arbitration of water supply disputes).

80 *Transport Infrastructure Act 1994*, schedule 3—

**“port infrastructure”** includes transport infrastructure relating to ports.

## SCHEDULE (continued)

- (b) the register of recommendations and Ministerial decisions relating to government monopoly business activities that are significant business activities involving the supply of water;
- (c) the register of Ministerial declarations under part 5;
- (d) the register of access determinations;
- (e) the register of approved access undertakings;
- (f) the register of conduct notices under the *Electricity Act 1994*, section 120S;<sup>81</sup>
- (g) the register of declarations of monopoly water supply activities;
- (h) the register of water pricing determinations;
- (i) the register of water supply determinations;
- (j) the register of approved water supply undertakings.

**“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 Act, section 50;<sup>82</sup> or

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81 *Electricity Act 1994*, section 120S (Register of conduct notices)

82 Corporations Act, section 50—

**Related bodies corporate**

**50.** Where a body corporate is:

- (a) a holding company of another body corporate; or
  - (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.

## SCHEDULE (continued)

- (b) another entity that is a subsidiary of the other body corporate under the *Government Owned Corporations Act 1993*, section 3.<sup>83</sup>

**“required minimum number”** of members means the number that is half the number of members of which the authority for the time being consists or, if that number is not a whole number, the next higher whole number.

**“responsible local government”**, for a local government entity, means—

- (a) for a local government entity that is a local government or part of a local government—the local government; or
- (b) for a local government entity that is a local government owned corporation—
- (i) if a local government holds all the shares in the local government owned corporation—the local government; or
- (ii) if 2 or more local governments hold shares in the local government owned corporation—the local governments.

**“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.

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83 *Government Owned Corporations Act 1993*, section 3—

**“subsidiary”** has the meaning given by the Corporations Act, 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)

**“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”** means—

- (a) for an approved access undertaking—the person to whom the undertaking applies as an owner of the relevant service; or
- (b) for an approved water supply undertaking—the person to whom the undertaking applies as a water supplier carrying on the relevant water supply activity.

**“revocation recommendation”** means—

- (a) for part 5—a recommendation made by the authority under section 88; or
- (b) for part 5A—a recommendation made by the authority under section 170R.

**“secondary amendment notice”**—

- (a) for part 5—see section 140(2); or
- (b) for part 5A—see section 170ZZS(2).

**“secondary undertaking notice”** see section 134.

**“service”** (other than for parts 5 and 5A) includes—

- (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 parts 5 and 5A, see section 72.

## SCHEDULE (continued)

**“significant business activity”** means—

- (a) for part 3—a significant business activity of a local government under the *Local Government Act 1993*, section 545;<sup>84</sup> or
- (b) for part 4—see section 39(1).

**“user”**, for a service, means a person who has access to the service under an access agreement or access determination.

**“water authority”** means—

- (a) a water authority established under the *Water Act 2000*; or
- (b) the Townsville/Thuringowa Water Supply Board established under the *Townsville/Thuringowa Water Supply Board Act 1987*.

**“water pricing determination”** see section 170ZF(1).

**“water seeker”** means a person seeking water from a water supplier.

**“water supplier”** means—

- (a) an entity, other than the State or a government agency, that—
  - (i) carries on, or negotiates to carry on, a water supply activity; and
  - (ii) is not owned, whether legally or beneficially and whether entirely or in part, by the State or a government agency; or
- (b) SEQ Water Corporation Limited ACN 088 729 766.

**“water supply activity”** means—

- (a) for part 5A, division 3—see section 170ZMA; or
- (b) for part 5A, division 4—see section 170ZQA; or
- (c) other than for part 5A, divisions 3 and 4—carrying on a business, the main purpose of which is—
  - (i) water storage, including water storage for another person; or
  - (ii) water delivery services; or

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<sup>84</sup> See the *Local Government Act 1993*, section 545 (Definitions for ch 8). Under section 545, “significant business activity” is defined by a combination of definitions to effectively refer to the provision of specified services by specified local governments.

## SCHEDULE (continued)

- (iii) supplying water to another person, other than supplying bottled or containerised water.

**“water supply agreement”** means an agreement between a water seeker and water supplier for the water supplier to provide water supply activities to the water seeker.

**“water supply criteria”** see section 170C.

**“water supply determination”** see section 170ZZE(1).

**“water supply dispute notice”** see section 170ZT(1).

**“water supply undertaking”**, for a water supply activity, means a written undertaking that sets out details of the terms on which a water supplier undertakes to provide a water supply activity to water seekers whether or not it sets out other information about carrying on the activity.

## 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 1 July 2003. 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

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

### TABLE OF REPRINTS

Reprint No.	Amendments included	Effective	Reprint date
1	none	1 July 1997	17 July 1997
1A	to 1997 Act No. 77	19 December 1997	9 February 1998
1B	to 1997 Act No. 77	19 December 1997	21 September 1998
1C	to 1999 Act No. 46	19 December 1997	6 December 1999
1D	to 1999 Act No. 46	17 March 2000	28 March 2000
1E	to 2000 Act No. 15	26 May 2000	2 June 2000
1F	to 2000 Act No. 34	1 October 2000	13 October 2000
1G	to 2000 Act No. 34	1 October 2000	3 November 2000
2	to 2000 Act No. 34	1 October 2000	1 December 2000
2A	to 2001 Act No. 31	7 June 2001	20 June 2001
2B	to 2001 Act No. 45	15 July 2001	31 August 2001
2C	to 2001 Act No. 73	3 December 2001	14 December 2001
2D	to 2001 Act No. 73	1 January 2002	11 January 2002 (Column discontinued) Notes
2E	to 2002 Act No. 11	1 July 2002	
2F	to 2002 Act No. 56	1 November 2002	
3	to 2003 Act No. 29	1 July 2003	

## 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

amending legislation—

### **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)

### **South East Queensland Water Board (Reform Facilitation) Act 1999 No. 46 ss 1, 2(2), 20 sch 1**

date of assent 17 September 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 17 March 2000 (see ss 2(2), 8 and notice publ gaz 16 March 2000 p 989)

**Queensland Competition Authority Amendment Act 2000 No. 15 (this Act is amended, see amending legislation below)**

date of assent 26 May 2000  
 commenced on date of assent

amending legislation—

**Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1–2(1), 3 sch (amends 2000 No. 15 above)**

date of assent 25 October 2000  
 commenced 26 May 2000 (see s 2(1) and 2000 No. 15)

**Water Act 2000 No. 34 ss 1–2, 1145 sch 3**

date of assent 13 September 2000  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 October 2000 (2000 SL No. 257)

**Financial Administration and Other Legislation Amendment Act 2001 No. 31 ss 1, 48 sch**

date of assent 7 June 2001  
 commenced on date of assent

**Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3**

date of assent 28 June 2001  
 ss 1–2 commenced on date of assent  
 sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)  
 remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

**Crime and Misconduct Act 2001 No. 69 ss 1–2, 378 sch 1**

date of assent 8 November 2001  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 January 2002 (2001 SL No. 221)

**Ombudsman Act 2001 No. 73 ss 1–2, 96 sch 1**

date of assent 13 November 2001  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 3 December 2001 (2001 SL No. 224)

**Public Records Act 2002 No. 11 ss 1, 2(2), 62 sch 1**

date of assent 24 April 2002  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 July 2002 (2002 SL No. 115)

**Treasury Legislation Amendment Act 2002 No. 56 ss 1–2(1), pt 6**

date of assent 1 November 2002  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced on date of assent (see s 2(1))

**Gas Supply Act 2003 No. 29 ss 1–2, ch 8 pt 6**

date of assent 23 May 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2003 (2003 SL No. 121)

**6 List of annotations****Authority’s relationship with State**

s 9 amd 2001 No. 45 s 29 sch 3

**Authority’s functions**

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

s 12 amd 2000 No. 15 s 3A

**PART 3—PRICING PRACTICES RELATING TO GOVERNMENT MONOPOLY  
BUSINESS ACTIVITIES****Division 1—Application of part**

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

div 1A (ss 14–17) (prev div 1) renum 2000 No. 15 s 4

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**Requests by local government entities and responsible local governments**

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s 19 amd 2000 No. 15 s 8

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**Investigations by authority—Ministerial reference**

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**Notice of investigation**

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amd 2002 No. 56 s 22

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amd 2002 No. 56 s 25(3)

def “**government business activity**” sub 2000 No. 15 s 48(1)–(2)def “**government company**” amd 2001 No. 45 s 29 sch 3; 2002 No. 56 s 25(4)def “**initial amendment notice**” sub 2000 No. 15 s 48(1)–(2)def “**investigation notice**” amd 2000 No. 15 s 48(4)def “**local government entity**” ins 2000 No. 15 s 48(2)

- def “**local government Minister**” ins 2000 No. 15 s 48(2)
- def “**local government owned corporation**” ins 2000 No. 15 s 48(2)
- def “**mediated resolution**” ins 2000 No. 15 s 48(2)
- def “**mediation agreement**” ins 2000 No. 15 s 48(2)
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- def “**Ministerial declaration**” amd 2000 No. 15 s 48(6)
- def “**monopoly water supply activity**” ins 2000 No. 15 s 48(2)
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- def “**party**” sub 2000 No. 15 s 48(1)–(2)  
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- def “**public facility**” amd 2000 No. 15 s 48(7); 2000 No. 34 s 1145 sch 3;  
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- def “**register**” amd 1997 No. 77 s 99(1)  
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- def “**service**”, for parts 5 and 5A, amd 2000 No. 15 s 48(8)
- def “**significant business activity**” sub 2000 No. 15 s 48(1)–(2) (amd  
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- def “**water supply criteria**” ins 2000 No. 15 s 48(2)
- def “**water supply determination**” ins 2000 No. 15 s 48(2)
- def “**water supply dispute notice**” ins 2000 No. 15 s 48(2)
- def “**water supply undertaking**” ins 2000 No. 15 s 48(2)