Queensland

Queensland Competition Authority Act 1997

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Queensland

Queensland Competition Authority Act 1997

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Queensland Competition Authority Act 1997

An Act to establish the Queensland Competition Authority, give it powers and functions about pricing practices relating to 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

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(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 Dictionary

The dictionary in schedule 2 defines particular words in this Act.

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.

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(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 Minister or on its own initiative, to revise the criteria or give information or advice to the Minister about the criteria, to be used by the Minister for deciding whether to declare the following—

(i) a government business activity or non-government business activity to be a monopoly business activity;

(ii) a candidate water supply activity to be a monopoly water supply activity; and

(b) to make recommendations to the Minister for the revocation of declarations of monopoly business activities made by the Minister; and

(c) to conduct investigations and report to the Minister about pricing practices relating to monopoly business activities; and

(d) to conduct price monitoring investigations in relation to monopoly business activities and report the results of the investigations to the Minister; and

(e) to advise government agencies about complying with the principle of competitive neutrality; and

(f) to receive, investigate and report on complaints about the alleged failures of government agencies to comply with the principle of competitive neutrality; and

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(g) if directed by the Minister—under the direction, to investigate and report to the Minister on any matter relating to competition, industry or productivity; and

(h) to make recommendations to the Minister for the making or revocation of declarations of services under part 5; and

(i) to mediate to resolve access disputes; and

(j) if asked by the parties to access agreements—to mediate to resolve disputes under the agreements; and

(k) to conduct arbitration hearings for resolving access disputes; and

(l) if asked by the parties to access agreements—to arbitrate to resolve disputes under the agreements; and

(m) to conduct arbitration hearings about applications for arbitration under the *Water Supply (Safety and Reliability) Act 2008*, section 524(2); and

(n) to approve undertakings for services; and

(o) to monitor compliance with approved access undertakings; and

(p) to monitor compliance with water pricing determinations; and

(q) at the request of the Minister, or on its own initiative—to give information or advice to the Minister about—

(i) access codes or proposed access codes, or the contents of access codes or proposed access codes; or

(ii) water pricing determination codes or proposed water pricing determination codes, or the contents of water pricing determination codes or proposed water pricing determination codes; and

(r) to make distribution network codes, other than an initial distribution network code, under the *Electricity Act 1994* and the *Gas Supply Act 2003*; and

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(s) to monitor compliance with distribution network codes under the *Electricity Act 1994* and the *Gas Supply Act 2003*; and

(t) to review particular decisions under the *Electricity Act 1994*; and

(u) if directed by the Minister—to monitor compliance by a government agency, or conduct arbitration hearings for resolving disputes about a government agency's compliance, with a code of conduct the agency has agreed to abide by; and

(v) to perform other functions given to the authority under an Act, including, for example—

(i) performing a function or exercising a power delegated to it under an Act; or

(ii) doing an act it is directed to do under an Act; and

(w) to perform a function incidental to a function mentioned in paragraphs (a) to (v).

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.

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12 Directions by Minister about authority's functions

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

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

(a) in relation to the conduct of any investigation by the authority (except as provided in subsection (3) and section 24); or

(b) in relation to the content of any report of the authority; or

(c) in performing its functions under part 5.

(3) For the conduct of an investigation by the authority, other than an investigation of a competitive neutrality complaint, the Minister may direct the authority to consult with a stated entity.

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

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

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(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 monopoly business activities

Division 1 Application of part

13A What pt 3 is about

(1) This part is about—

(a) the declaration of monopoly business activities; and

(b) the investigation and reporting by the authority about pricing practices relating to monopoly business activities; and

(c) the conduct of price monitoring investigations by the authority in relation to monopoly business activities.

(2) This part applies generally to—

(a) government agencies; and

(b) other persons carrying on business activities involving services provided by means of facilities.

(3) The application of the part to an activity carried on by a local government entity depends on whether the activity is a significant business activity.

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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

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(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

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(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 monopoly business activities

14 Development of criteria for government business activities

Within 6 months after the commencement, the authority must—

(a) develop criteria for use by the Minister for deciding whether to declare a government business activity to be a monopoly business activity; and

(b) give written notice of the criteria to the Minister.

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14A Development of criteria for non-government business activities

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

(a) develop criteria for use by the Minister for deciding whether to declare a non-government business activity to be a monopoly business activity; and

(b) give written notice of the criteria to the Minister.

15 Revision of, and advice about, criteria

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

(a) revise the criteria given to the Minister under section 14 or 14A, including the criteria as previously revised under this section; and

(b) give information or advice to the Minister about the current criteria.

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

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.

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Division 2 Declarations of monopoly business activities

Subdivision 1 Government business activities

18 Request for declaration

The authority may ask the Minister—

(a) to declare a government business activity, whether or not it is a significant business activity, to be a monopoly business activity; and

Note—

For this part *significant business activity* is defined in the dictionary in schedule 2 as a significant business activity of a local government.

(b) if the declaration is made—to refer the monopoly business activity to it under section 23 or 23A.

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.

18B Requests by local government entities and responsible local governments

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

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(a) to declare a government business activity that is a significant business activity to be a monopoly business activity; and

(b) if the declaration is made—to refer the monopoly business activity to the authority under section 23 or 23A.

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

19 Declaration by Minister

(1) The Minister may declare a government business activity to be a monopoly business activity.

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

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

(a) the current criteria given to the Minister by the authority for the purpose; and

(b) any information or advice about the current criteria given to the Minister by the authority.

(4) Also, in deciding whether to make a declaration about a government business activity that is a significant business activity, the Minister 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 Minister must—

(a) notify the responsible local government and the local government entity of the Minister's 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 Minister about the intended declaration.

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

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

(8) A declaration continues in operation until it is revoked.

20 Declaration by regulation

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

Subdivision 2 Non-government business activities

21A Declaration by Minister

(1) The Minister may declare a non-government business activity to be a monopoly business activity.

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

(3) In deciding whether to make the declaration, the Minister must—

(a) have regard to—

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(i) the relevant declaration criteria; and

(ii) any information or advice about the criteria given to the Minister by the authority; and

(b) consult with the person carrying on the activity.

(4) A declaration must identify the non-government business activity by reference to the person carrying on the activity.

(5) A declaration continues in operation until it is revoked.

21B Declaration by regulation

(1) A regulation may declare a non-government business activity to be a monopoly business activity.

(2) A declaration must identify the non-government business activity by reference to the person carrying on the activity.

21C Effect on declaration of change of person carrying on activity

(1) This section applies if—

(a) a non-government business activity is declared to be a monopoly business activity under this subdivision; and

(b) after the declaration is made, the person carrying on the activity changes.

(2) The change in the person carrying on the monopoly business activity does not affect the validity of the declaration.

(3) The declaration is taken to identify the monopoly business activity by reference to the new person carrying on the activity.

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Division 2A Revocation of declarations made by the Minister

21D Recommendation to revoke

(1) The authority may recommend to the Minister that a declaration of a monopoly business activity made by the Minister under section 19 or 21A (a ***part 3 Ministerial declaration***) be revoked.

(2) Without limiting subsection (1), a relevant entity for a monopoly business activity may ask the authority to recommend the revocation of the part 3 Ministerial declaration.

(3) The Minister may ask the authority to consider whether a part 3 Ministerial declaration should be revoked by the Minister.

(4) The authority may recommend the revocation of a part 3 Ministerial declaration only if the authority is satisfied that revocation would be appropriate having regard to the relevant declaration criteria.

(5) In this section—

relevant entity, for a monopoly business activity, means any of the following—

(a) the government agency or other person carrying on the activity;

(b) if the activity is a significant business activity—the responsible local government for the local government entity carrying on the activity.

21E Power of authority to conduct investigation

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

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21F 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 or other person carrying on the monopoly business activity; and

(b) if the activity is a significant business activity—the responsible local government for the local government entity carrying on the activity; and

(c) any other person the authority considers appropriate.

(2) The notice must state the following—

(a) the authority's intention to conduct the investigation;

(b) the subject matter of the investigation;

(c) an invitation to interested persons to make written submissions to the authority on the subject matter within a reasonable time stated in the notice;

(d) the authority's address.

21G Procedures for investigation

Part 6 applies to an investigation under this division.

21H Revocation

(1) The Minister may revoke a part 3 Ministerial declaration only if the Minister is satisfied that revocation would be appropriate having regard to the relevant declaration criteria.

(2) A part 3 Ministerial declaration may be revoked whether or not a revocation recommendation has been made.

(3) If the Minister receives a revocation recommendation, the Minister must either revoke the part 3 Ministerial declaration or decide not to revoke the declaration.

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21I Notice of decision

(1) The Minister must publish in the gazette—

(a) notice of a decision to revoke, or not to revoke, a part 3 Ministerial declaration; and

(b) the reasons for the decision.

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

(a) the government agency or other person carrying on the activity; and

(b) if the business activity is a significant business activity—the responsible local government for the local government entity carrying on the activity; and

(c) the authority.

21J When revocation takes effect

A decision of the Minister to revoke a part 3 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.

Division 3 Investigations about monopoly business activities

22 Meaning of *price monitoring investigation*

A ***price monitoring investigation***, in relation to a monopoly business activity, means an ongoing investigation in which the authority—

(a) monitors pricing practices relating to the activity; and

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(b) reports periodically to the Minister about the results of the investigation.

23 Investigations about pricing practices

(1) The Minister may refer a monopoly business activity to the authority for an investigation about the pricing practices relating to the activity.

(2) In deciding whether to refer a monopoly business activity that is a significant business activity or non-government business activity to the authority under subsection (1), the Minister must consult with—

(a) for a significant business activity—the local government entity carrying on the activity and the responsible local government for the entity; or

(b) for a non-government business activity—the person carrying on the activity.

(3) The authority must conduct the investigation.

(4) The Minister 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.

23A Price monitoring investigations

(1) The Minister may refer a monopoly business activity to the authority for a price monitoring investigation.

(2) In deciding whether to refer a monopoly business activity that is a significant business activity or non-government business activity to the authority under subsection (1), the Minister must consult with—

(a) for a significant business activity—the local government entity carrying on the activity and the responsible local government for the entity; or

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(b) for a non-government business activity—the person carrying on the activity.

(3) In referring a monopoly business activity to the authority under subsection (1), the Minister must give the authority a written notice stating—

(a) the period for which the price monitoring investigation is to be conducted; and

(b) how often the authority must periodically report the results of the investigation to the Minister.

(4) The authority must conduct the investigation.

(5) Unless the reference is earlier withdrawn or the period of the investigation is amended under subsection (6), the reference ends at the end of the period stated in the notice under subsection (3)(a).

(6) The Minister may, by written notice given to the authority, withdraw or amend the reference at any time before it ends.

(7) A notice under subsection (6) must state the reasons for the withdrawal or amendment of the reference.

24 Directions of Minister for investigation

(1) In referring a monopoly business activity to the authority for an investigation, the Minister 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 Minister within a stated period;

(d) to make a recommendation to the Minister about a stated matter, including, for example, if the activity was referred to the authority under section 23(1), a recommendation about—

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(i) whether a price monitoring investigation should be conducted in relation to the activity; or

(ii) if a price monitoring investigation were to be conducted in relation to the activity, what the nature of the investigation should be, including, for example, the matters mentioned in section 23A(3)(a) and (b).

(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 on the authority's website.

(3) The notice must be given to—

(a) the government agency or other person carrying on the monopoly business activity; or

(b) if the investigation relates to a 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 authority may also give the notice to anyone else it considers appropriate.

(5) 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.

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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 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 assets;

(f) the effect of inflation;

(g) the impact on the environment of prices charged by the government agency or other person carrying on the monopoly business activity;

(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 and persons carrying on non-government business activities;

(k) legislation and government policies relating to ecologically sustainable development;

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(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) if the monopoly business activity is a government business activity—any directions given by the government to the government agency by which the monopoly business activity is carried on.

(2) If the investigation relates to a monopoly business activity involving the supply of water, the authority must have regard to water pricing 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 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 monopoly business activity ends if—

(a) the activity stops being a monopoly business activity; or

(b) the reference of the activity to the authority by the Minister is withdrawn, or otherwise ends under section 23A.

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

(a) the Minister; and

(b) if the monopoly business activity is a non-government business activity—the person carrying on the activity.

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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, including the periodic reporting of the results of a price monitoring investigation; and

(b) a report of the authority of the results of the investigation.

30 Authority to report to Minister

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

(2) Also, if the investigation is a price monitoring investigation, the authority must periodically report the results of the investigation to the Minister as required under the notice given to the authority under section 23A(3).

(3) If the investigation relates to a monopoly business activity that is a significant business activity, the authority must, on the same day as it reports the results of the investigation to the Minister, give a copy of the report 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 or other person carrying on activity

On the same day as it reports the results of an investigation to the Minister, the authority must give a copy of the report to the government agency or other person carrying on the monopoly business activity.

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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) if the investigation is not a price monitoring investigation—its recommendations about the pricing practices relating to the monopoly business activity; and

(b) any recommendations made by the authority as required under a direction given to the authority by the Minister for the investigation; and

(c) the reasons for its recommendations; and

(d) if the investigation is a price monitoring investigation—the information obtained by the authority about the pricing practices relating to the monopoly business activity; and

(e) if the Minister 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) The authority must make a copy of a report available for public inspection as soon as practicable after giving the report to the Minister.

(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.

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35 Delaying public availability of reports

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

(2) The decision and the reasons for it must be stated in the report.

(3) Section 34(1) applies to the report, or part of the report, to which the decision relates as if the report were given to the Minister at the end of the period mentioned in subsection (1).

36 Decision of Minister about particular recommendations in report—monopoly business activity that is a government business activity, other than a significant business activity

(1) This section applies to recommendations about pricing practices, or price monitoring recommendations, contained in a report relating to a monopoly business activity that is a government business activity, other than a significant business activity.

(2) Within 90 days after the Minister receives a report, the Minister must—

(a) accept (with or without qualification), or reject, the recommendations; or

(b) accept (with or without qualification) some of the recommendations and reject the other recommendations.

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

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

(5) In this section—

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price monitoring recommendations means recommendations about—

(a) whether a price monitoring investigation should be conducted in relation to the monopoly business activity; or

(b) what the nature of a future price monitoring investigation in relation to the activity should be.

36A Decision of responsible local government about particular recommendations in report—monopoly business activity that is a significant business activity

(1) This section applies to recommendations about pricing practices contained in a report relating to a 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; or

(b) accept, with or without qualification, some of the recommendations 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.

(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 Minister; and

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(ii) the authority; and

(iii) the local government Minister; and

(iv) the local government entity carrying on the activity.

36B Response to report of person carrying on activity—monopoly business activity that is a non-government business activity

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

(2) Within 90 days after receiving the report, the person carrying on the activity must give the authority the person's written response to the report, including details of any action the person will or may take in response to each recommendation contained in the report.

Maximum penalty—500 penalty units.

37 Referral of particular accepted recommendations to responsible Minister—monopoly business activity that is government business activity

(1) This section applies if the Minister accepts recommendations about pricing practices relating to a monopoly business activity that is a government business activity.

(2) The Minister must refer the recommendations, and any qualifications on which the recommendations are accepted, to the responsible Minister for the government agency carrying on the monopoly business activity.

37A Register of recommendations, and decisions or responses, relating to 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

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about monopoly business activities involving the supply of water; and

(b) whichever of the following applies in relation to the recommendations—

(i) if the activities are government business activities other than significant business activities—the Minister's decisions under section 36(2);

(ii) if the activities are significant business activities—the decisions of the responsible local governments under section 36A(2);

(iii) if the activities are non-government business activities—the responses of the persons carrying on the activities.

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

(a) the name of the government agency or other person carrying on the monopoly business activity;

(b) the 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—

(i) if the activity is a significant business activity—the responsible local government for the local government entity carrying on the activity; or

(ii) otherwise—the Minister.

(3) The register must also include, for each decision mentioned in subsection (1)(b), details of the following—

(a) the day the decision was made;

(b) the day the decision is to be, or was, notified under section 36(4) or 36A(4).

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Division 5 Miscellaneous

37B Authority may give advice about pricing practices

(1) The authority may, if requested by a government agency or another person carrying on a monopoly business activity, give the person advice about pricing practices relating to the activity.

(2) Advice given under this section is not binding on any person.

Part 4 Competitive neutrality

Division 1 Preliminary

38 Principle of competitive neutrality

(1) The ***principle of competitive neutrality*** is the principle that a government agency carrying on a significant business activity should not enjoy a net competitive advantage over competitors or potential competitors in a particular market solely because of the agency's public ownership, including 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.

(2) In this section—

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significant business activity see section 39(3).

39 Significant business activities

(1) The Minister may, on the recommendation of the authority, decide that a business activity carried out by a government agency other than a government owned corporation or its subsidiaries is a significant business activity.

(2) The Minister must give written notice of the decision to the government agency.

(3) A ***significant business activity*** is a business activity that—

(a) the Minister decides is a significant business activity under subsection (1); or

(b) is carried out by a government owned corporation or a subsidiary of a government owned corporation.

(4) The authority must publish a list of all significant business activities on its website.

(5) In this section—

subsidiary, of a government owned corporation, see *Government Owned Corporations Act 1993*, section 2.

Division 2 Competitive neutrality complaints

40 Meaning of *competitive neutrality complaint*

A ***competitive neutrality complaint*** is a complaint about the alleged failure of a government agency to comply with the principle of competitive neutrality.

41 Making competitive neutrality complaint

(1) A person may make a competitive neutrality complaint to the authority if the person is, or could be—

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(a) a person in competition with a government agency in a particular market; or

(b) a person adversely affected by a net competitive advantage the person alleges is enjoyed by the government agency.

(2) The complaint must—

(a) be in writing; and

(b) contain details of the alleged failure of a government agency to comply with the principle of competitive neutrality; and

(c) include sufficient details to show—

(i) the person and the government agency are, or could be, in competition in a particular market; or

(ii) how the person is, or could be, adversely affected by the net competitive advantage the person alleges is enjoyed by the government agency; and

(d) include sufficient details to show whether the person has made a genuine, but unsuccessful, attempt to resolve the subject matter of the complaint with the government agency.

42 Further information to support complaint

(1) The authority may, by written notice, require a complainant to give the authority further stated information about the competitive neutrality complaint within the reasonable period stated in the notice.

(2) The stated information must be information that the authority considers is necessary and reasonable to help the authority decide whether or not to investigate the complaint.

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Division 3 Dealing with competitive neutrality complaints

43 Guideline for dealing with complaints

(1) The Minister may approve a guideline that sets out the process for dealing with competitive neutrality complaints, including methods for determining whether a government agency carrying on a significant business activity enjoys a net competitive advantage over competitors or potential competitors in a particular market solely because of the agency's public ownership.

(2) The authority must—

(a) publish the approved guideline on its website; and

(b) subject to this part, comply with the approved guideline when dealing with a competitive neutrality complaint.

44 Requirement to investigate complaint

The authority must investigate a competitive neutrality complaint under division 4 unless the authority refuses to deal with, or to continue to deal with, the complaint under section 45.

45 Refusing complaint

(1) The authority may refuse a competitive neutrality complaint if—

(a) the authority believes the complainant is not, and could not be, in competition in a particular market with the government agency the subject of the complaint; or

(b) the authority believes the complainant has not made a genuine attempt to resolve the complaint with the government agency the subject of the complaint; or

(c) the complainant failed, without reasonable excuse, to comply with a notice, given to the complainant under

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section 42, requiring the complainant to give stated information to the authority; or

(d) the authority believes the complaint is frivolous or vexatious.

(2) Within 14 days after deciding to refuse the complaint, the authority must give the complainant a notice that states the decision and the reasons for the decision.

(3) In this section—

refuse, in relation to a competitive neutrality complaint, means refuse to deal with, or continue to deal with, the complaint.

Division 4 Investigation of competitive neutrality complaints

46 Application of division

This division applies if the authority is required to investigate, under this division, a competitive neutrality complaint made against a government agency.

47 Notice of investigation

(1) The authority must give written notice of the requirement for the investigation to—

(a) the government agency; and

(b) the responsible Minister for the government agency; and

(c) the complainant.

(2) The notice must be given a reasonable period before the authority starts the investigation.

(3) The authority may also give notice of the investigation to any other person the authority considers appropriate.

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48 Power to require certain information from government agency

(1) The authority may require the government agency, by written notice given to the agency, to—

(a) give the authority stated information relevant to the complaint within a stated period; or

(b) produce a stated document relevant to the complaint to the authority at a stated time and place.

(2) The government agency must comply with the notice unless—

(a) the stated information or document is subject to legal professional privilege, parliamentary privilege or public interest immunity; or

(b) giving the stated information or document to the authority is prohibited under an Act; or

(c) giving the stated information or document to the authority could reasonably be expected to prejudice the investigation of a contravention, or possible contravention, of a law.

(3) The government agency is not liable for a breach of a contract, confidence or duty for giving the authority a copy of the stated information, or producing the stated document to the authority, in compliance with the notice.

49 Requirement for report about investigation

(1) After the authority completes the investigation, the authority must—

(a) prepare a written report about the investigation and the results of the investigation; and

(b) give the report to the Minister.

(2) The authority may recommend in the report that the report, or part of it, not be made available to the public until the end of a stated period.

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(3) The authority must include the reasons for the recommendation in the report.

50 Minister's response to report about investigation

As soon as practicable after receiving the report about the investigation from the authority, the Minister must give the authority a response to the report.

51 Publication of report about investigation

(1) As soon as practicable after receiving the Minister's response to its report about the investigation, the authority must publish the report on its website.

(2) However, if the Minister accepted a recommendation under section 49 to delay publication of the report, or part of it, the authority must not publish the report or part on its website until the end of the period stated in the recommendation.

Division 5 General

52 Confidentiality requests

(1) This section applies if a person believes that the disclosure of information given, or to be given, to the authority under this part is likely to damage the person's commercial activities.

(2) The person may give the authority a written notice (a ***confidentiality request***) that—

(a) states the person's belief; and

(b) asks the authority not to disclose the information to an external entity without the person's consent.

(3) The authority may accept the person's confidentiality request if the authority is satisfied—

(a) the person's belief is justified; and

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(b) disclosure of the information would not be in the public interest.

(4) If the authority accepts the person's confidentiality request, the authority must not—

(a) include the information in a report about the investigation of a competitive neutrality complaint; or

(b) otherwise disclose the information to an external entity.

(5) Subsection (4) does not apply if the information is included in a report, or otherwise disclosed to an external entity, in a way that could not reasonably be expected to identify the person.

(6) In this section—

commercial activities means activities conducted on a commercial basis.

contractor, of the authority, means a person (other than a member or employee of the authority) who performs services for the authority—

(a) under a contract between the person and the authority; or

(b) under an arrangement between the authority and another person.

external entity, in relation to information, means an entity other than—

(a) the Minister; or

(b) if the information relates to a government agency—the responsible Minister for the government agency; or

(c) a member of the authority; or

(d) a member of the authority's staff, or a contractor of the authority, who would ordinarily receive the information in administering, or performing a function under, this Act; or

(e) if the information relates to a local government—the local government.

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information includes a document.

person includes a government agency.

Part 5 Access to services

Division 1 Preliminary

69E Object of pt 5

The object of this part is to promote the economically efficient operation of, use of and investment in, significant infrastructure by which services are provided, with the effect of promoting effective competition in upstream and downstream markets.

70 Meaning of *facility*

(1) ***Facility*** includes—

(a) rail transport infrastructure; and

(b) port infrastructure; and

(c) electricity, petroleum, gas or GHG stream transmission and distribution infrastructure; and

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

(2) In this section—

GHG stream see the *Greenhouse Gas Storage Act 2009*, section 12.

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—

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(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—

(i) provided, or to be provided, by means of a facility for which a decision of the Australian Competition and Consumer Commission, approving a competitive tender process under the *Competition and Consumer Act 2010* (Cwlth), section 44PA, is in force; and

(ii) that was stated under section 44PA(2) of that Act in the application for the approval.

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

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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.

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(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 to owner

(1) If this Act 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 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.

(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

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(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.

75A Application of Act to authority for purposes of giving notices to operator

(1) If this Act requires or permits a notice to be given to the operator of a facility or service by the authority and there is more than 1 operator of the facility or service, the notice may be given to—

(a) if there is a nominated operator for the facility or service—the nominated operator; or

(b) if the authority has requested notification of a nominated operator for the facility or service but there is no nominated operator—any one of the operators.

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

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

(b) a signed statement by the other operators that the nominee is authorised by them to receive notices under this Act for all the operators; and

(c) a signed statement by the nominee agreeing to be the operator authorised to receive notices under this Act for all the operators.

(3) For subsection (1)(b), the authority may request notification of a nominated operator, for a facility or service for which there is more than 1 operator, by giving a notice to each operator whose name and address is known to the authority

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asking that a written notice be given to the authority containing—

(a) the name, and address for receiving notices, of 1 operator (also the ***nominee***); and

(b) a signed statement by the other operators that the nominee is authorised by them to receive notices under this Act for all the operators; and

(c) a signed statement by the nominee agreeing to be the operator authorised to receive notices under this Act for all the operators.

Division 2 Declarations of services

Subdivision 1 Criteria for declaration recommendations and making of 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 service be declared by the Minister; and

(b) the Minister is required to be satisfied for declaring a service.

(2) The access criteria are as follows—

(a) that access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote a material increase in competition in at least 1 market (whether or not in Australia), other than the market for the service;

(b) that the facility for the service could meet the total foreseeable demand in the market—

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(i) over the period for which the service would be declared; and

(ii) at the least cost compared to any 2 or more facilities (which could include the facility for the service);

(c) that the facility for the service is significant, having regard to its size or its importance to the Queensland economy;

(d) that access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote the public interest.

(3) For subsection (2)(b), if the facility for the service is currently at capacity, and it is reasonably possible to expand that capacity, the authority and the Minister may have regard to the facility as if it had that expanded capacity.

(4) Without limiting subsection (2)(b), the cost referred to in subsection (2)(b)(ii) includes all costs associated with having multiple users of the facility for the service, including costs that would be incurred if the service were declared.

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

(a) if the facility for the service extends outside Queensland—

(i) whether access to the service provided outside Queensland by means of the facility is regulated by another jurisdiction; and

(ii) the desirability of consistency in regulating access to the service;

(b) the effect that declaring the service would have on investment in—

(i) facilities; and

(ii) markets that depend on access to the service;

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(c) the administrative and compliance costs that would be incurred by the provider of the service if the service were declared;

(d) any other matter the authority or Minister considers relevant.

Subdivision 2 Recommendation by authority for declaration

77 Requests about declarations

(1) A person may ask the authority to recommend that a particular service be declared by the Minister.

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

(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.

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79 Making recommendation

(1) After receiving a request, the authority must recommend to the Minister 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 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 service, or part of a service, be declared, the authority also must recommend the period for which the declaration should operate.

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

79A Period for making recommendation

(1) The authority must use its best endeavours to make a recommendation under section 79 within 6 months from the day the authority receives the request.

(2) However, the 6 month period mentioned in subsection (1) does not include any of the following—

(a) if the authority conducts an investigation for making the recommendation and gives a notice under section 185 to a person requiring the person to give information or produce a document for the investigation, a day in the period—

(i) starting on the day the notice is given to the person; and

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(ii) ending on the day the person complies with the notice;

(b) if the authority publishes a document about the recommendation and invites persons to make submissions on the document to the authority within a stated period—a day in the period for making submissions stated by the authority.

(3) The authority must publish a notice on its website, while the authority is considering the making of the recommendation, stating—

(a) the day the 6 month period mentioned in subsection (1) started or will start; and

(b) the day the period will end; and

(c) for a day not included in the period under subsection (2)—the reason the day is not included in the period.

(4) If the authority fails to make the recommendation within the 6 month period mentioned in subsection (1), it must, as soon as practicable after the period ends—

(a) prepare a written notice stating—

(i) the reasons for the authority's failure; and

(ii) details about the action the authority proposes to take to make the recommendation as soon as reasonably practicable; and

(b) publish the notice on its website; and

(c) give a copy of the notice to—

(i) the applicant for the request; and

(ii) if the request was not made by the Minister—the Minister.

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80 Factors affecting making of recommendation

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

(2) The authority must recommend that a service not be declared by the Minister 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 service not be declared by the Minister 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 Minister.

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

Subdivision 3 Investigations about services

81 Power of authority to conduct investigation

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

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(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 applies to an investigation under this subdivision.

Subdivision 4 Declaration by Minister

84 Making declaration

(1) On receiving a declaration recommendation, the Minister 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 Minister 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 Minister must—

(a) notify the local government entity and the responsible local government of the Minister's 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 Minister about the intended declaration.

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

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(5) If the Minister decides not to declare the service and the declaration recommendation was made under subdivision 4A, the decision does not affect the existing declaration for the service.

85 Notice of decision

(1) The Minister must, within 90 days after the relevant day, publish in the gazette—

(a) notice of the decision to declare the service in whole or part or not to declare the service; and

(b) the reasons for the decision.

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

(a) give the designated material for the decision to the following—

(i) if a request about the declaration of the service was made by someone other than the Minister—the applicant;

(ii) the owner of the service, unless the owner made a request about the declaration of the service;

(iii) if the owner and operator of the service are different entities—the operator, unless the operator made a request about the declaration of the service; and

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

(4) In this section—

designated material, for a decision of the Minister 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—

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(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 Minister receives the declaration recommendation.

86 Factors affecting making of declaration

(1) The Minister must declare a service if the Minister is satisfied about all of the access criteria for the service.

(2) The Minister must decide not to declare a service if the Minister is not satisfied about all of the access criteria for the service.

(3) Despite subsections (1) and (2), the Minister may declare part of a service if the Minister is satisfied about all of the access criteria for the part of the service.

87 Duration of declaration

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

Subdivision 4A Review of declaration

87A Declaration recommendation to be made before expiry of declaration

(1) At least 6 months, but not more than 12 months, before the expiry date of a declaration of a service, the authority must

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recommend to the Minister that, with effect from the expiry date—

(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 publish the recommendation and the reasons for the recommendation in the way the authority considers appropriate.

(4) If the authority recommends that the service, or part of the service, be declared with effect from the expiry date, the authority must also recommend the period for which that declaration should operate.

Note—

On receiving the recommendation the Minister must, under subdivision 4, either declare all or part of the service, or decide not to declare the service.

87B Notice of review

The authority must, when it starts considering the making of a recommendation under section 87A, tell the owner of the service that the authority is considering the matter.

87C Factors affecting making of recommendation

(1) The authority must make a recommendation under section 87A(1)(a) if the authority is satisfied about all of the access criteria for the service.

(2) The authority must make a recommendation under section 87A(1)(c) if the authority is not satisfied about all of the access criteria for the service.

(3) Despite subsections (1) and (2), the authority may make a recommendation under section 87A(1)(b) if the authority is

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satisfied about all of the access criteria for the part of the service.

87D Power of authority to conduct investigation

For making a recommendation under section 87A, the authority may conduct an investigation about the service.

87E 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.

87F Procedures for investigation

Part 6 applies to an investigation under this subdivision.

Subdivision 5 Revocation of declaration

88 Recommendation to revoke

(1) The authority may recommend to the Minister that a declaration of a service or part of a service be revoked.

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(2) Without limiting subsection (1), the owner of the declared service may ask the authority to recommend revocation of the declaration of the service or part of the service.

(3) The authority may recommend revocation of a declaration of a service or part of a service only if it is satisfied that, at the time of the recommendation, section 86 would prevent the Minister from declaring the relevant service or the part of 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 applies to an investigation under this subdivision.

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92 Revocation

(1) On receiving a revocation recommendation, the Minister must—

(a) revoke the declaration of the service or the part of the service; or

(b) decide not to revoke the declaration of any part of the service.

(2) The Minister may revoke a declaration of a service or part of a service—

(a) only after receiving a revocation recommendation; and

(b) only if the Minister is satisfied that, at the time of the revocation, section 86 would prevent the Minister from declaring the relevant service or the part of the relevant service.

93 Notice of decision

(1) The Minister must publish in the gazette—

(a) notice of a decision—

(i) to revoke the declaration of a service or part of a service; or

(ii) not to revoke the declaration of any part of a service; and

(b) the reasons for the decision.

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

(a) the owner of the service; and

(b) if the owner and operator of the service are different entities—the operator of the service; and

(c) the authority.

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94 When revocation takes effect

A decision of the Minister to revoke a declaration of a service or part of a service 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 of a declaration, or the revocation of a declaration of a service or part of a service, 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 declarations in operation.

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

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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

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

(2) In negotiating access agreements, or amendments to access agreements, relating to the service, the access provider must not unfairly differentiate between access seekers in a way that has a material adverse effect on the ability of 1 or more of the access seekers to compete with other access seekers.

Note—

Provision for enforcing compliance with subsection (2) is made in division 8 (Enforcement for pt 5), particularly section 153 (Orders to enforce prohibitions on hindering access and unfair differentiation).

(3) Subsection (2) does not prevent the access provider treating access seekers differently to the extent the different treatment is—

(a) reasonably justified because of the different circumstances, relating to access to the declared service, applicable to the access provider or any of the access seekers; or

(b) expressly required or permitted by—

(i) an access code or approved access undertaking for the declared service; or

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(ii) an access determination to which the access provider is a party.

(4) However, subsection (3) does not authorise an access provider to engage in conduct for the purpose of preventing or hindering a user's access to the declared service.

Note—

See sections 104 and 125 in relation to conduct preventing or hindering a user's access to the declared service.

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;

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(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.

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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.

Note—

Provision for enforcing compliance with section 104(1) is made in division 8, particularly section 153.

(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—

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(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) Subsection (2) applies despite section 102.

(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.

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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.

(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—

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(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.

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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 object of this part; and

(b) the public interest, including the public interest in having competition in markets (whether or not in Australia); and

(c) the interests of the access provider; and

(d) 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.

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Division 5 Access disputes about declared services

Subdivision 1 Preliminary

111 Application of arbitration procedures to access disputes

(1) Subdivision 3 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.

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113 Requirements about access dispute notice

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

(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, 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.

Note—

See section 100.

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.

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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

(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;

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(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.

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115D Conduct of mediation under sdiv 2A

Part 6A 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.

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

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(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.

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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.

(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.

(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.

117A Period for making access determination

(1) The authority must use its best endeavours to make an access determination within 6 months from the day the access dispute notice for the relevant access dispute was given to the authority.

(2) However, the 6 month period mentioned in subsection (1) does not include any of the following—

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(a) if mediation of the access dispute is conducted under subdivision 2A—a day earlier than the day the dispute is referred by the mediator to the authority for arbitration;

(b) if a person is given a notice under section 205 requiring the person to give information or produce a document for the arbitration of the access dispute, a day in the period—

(i) starting on the day the notice is given to the person; and

(ii) ending on the day the person complies with the notice;

(c) if the authority invites the parties to comment, within a period stated by the authority, on a draft determination given to the parties under section 117(5)—a day in the period for making comments stated by the authority;

(d) if the parties agree to a day not being included in the 6 month period—a day agreed to by the parties.

(3) The authority must publish a notice on its website, for each access dispute being dealt with by arbitration, stating—

(a) the day the 6 month period mentioned in subsection (1) started or will start; and

(b) the day the period will end; and

(c) for a day not included in the period under subsection (2)—the reason the day is not included in the period.

(4) If the authority fails to make an access determination within the 6 month period mentioned in subsection (1), it must, as soon as practicable after the period ends—

(a) prepare a written notice stating—

(i) the reasons for the authority's failure; and

(ii) details about the action the authority proposes to take to make an access determination as soon as reasonably practicable; and

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(b) give a copy of the notice to the parties and the Minister.

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 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—

(a) an approved access undertaking, or access code, for the service; or

(b) subject to section 150K, a ruling relating to the service that is in effect under division 7A.

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

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(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 if—

(a) the requirement is consistent with a requirement imposed under an approved access undertaking for the service that was approved by the authority under section 136(4) or 142(2), and the requirements under subsection (4B) are met; or

(b) the requirements under subsection (5) are met.

(4A) An access determination mentioned in subsection (4)(a) may require the access provider to pay all or some of the costs of extending the facility if the requirement is consistent with a requirement imposed under the approved access undertaking.

(4B) For subsection (4)(a), the requirements are that the authority is satisfied—

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(a) the extension will be technically and economically feasible and consistent with the safe and reliable operation of the facility; and

(b) the legitimate business interests of the following entities are protected—

(i) the owner of the facility;

(ii) if the owner and operator of the facility are different entities—the operator.

(5) For subsection (4)(b), the requirements are—

(a) the access provider is the owner or operator 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

(iii) if the owner and operator of the facility are different entities—the legitimate business interests of the operator of the facility are also 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)(a) or (4)(b), 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.

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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 object of this part;

(b) the access provider's legitimate business interests and investment in the facility;

(c) the legitimate business interests of persons who have, or may acquire, rights to use the service;

(d) the public interest, including the benefit to the public in having competitive markets;

(e) the value of the service to—

(i) the access seeker; or

(ii) a class of access seekers or users;

(f) 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;

(g) 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;

(h) the quality of the service;

(i) the operational and technical requirements necessary for the safe and reliable operation of the facility;

(j) the economically efficient operation of the facility;

(k) the effect of excluding existing assets for pricing purposes;

(l) the pricing principles mentioned in section 168A.

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

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121 Conduct of arbitration

Part 7 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.

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.

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Note—

Provision for enforcing compliance with section 125(1) is made in section 153.

(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

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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

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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;

(f) if the access determination has been amended under subdivision 4—

(i) details of the amendment; and

(ii) the date the authority decided to amend the access determination; and

(iii) the date the amendment is to take, or took, effect; and

(iv) if the authority amended the access determination under section 127D—the authority's reasons for amending the access determination;

(g) if the access determination has been revoked under subdivision 4—

(i) the date the authority decided to revoke the access determination; and

(ii) the date the revocation is to take, or took, effect; and

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(iii) if the authority revoked the access determination under section 127D—the authority's reasons for revoking the access 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.

Subdivision 4 Amendment and revocation of access determinations

127A Application for amendment or revocation of access determination

(1) A party to an access determination may apply to the authority for the amendment or revocation of the access determination, if the party reasonably believes—

(a) there has been a material change of circumstances since the access determination was made; and

(b) the material change of circumstances justifies the amendment or revocation of the access determination.

(2) An application under subsection (1) must be in writing and state the following—

(a) the name and address of the party making the application;

(b) the name and address of the other parties to the access determination;

(c) details of the material change of circumstances the party reasonably believes has happened and the reasons why the party believes it justifies the amendment or revocation of the access determination.

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127B Notice by authority of application for amendment or revocation

On receiving an application under section 127A, the authority must give a copy of the application to the other parties to the access determination.

127C Amendment or revocation with agreement of parties

(1) The authority may amend or revoke the access determination if—

(a) an application for the amendment or revocation has been made under section 127A; and

(b) all other parties to the access determination agree with the amendment or revocation; and

(c) the authority is reasonably satisfied—

(i) there has been a material change of circumstances since the access determination was made; and

(ii) the material change of circumstances justifies the amendment or revocation; and

(d) either—

(i) for an amendment—the requirements under section 119 are satisfied and the authority has had regard to the matters mentioned in section 120; or

(ii) for a revocation—the authority has had regard to the matters mentioned in section 120.

(2) For subsection (1)(d), the relevant sections apply as if a reference to the making of an access determination were a reference to the making of an amendment to, or the revocation of, the access determination.

(3) The authority must give written notice of the making of the amendment or revocation to all parties to the access determination.

(4) The notice must state the day the amendment or revocation takes effect.

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127D Arbitration of dispute about amendment or revocation of access determination

(1) This section applies if—

(a) a party to an access determination has made an application under section 127A; and

(b) another party (the ***disputing party***) to the access determination does not agree with the amendment or revocation of the access determination applied for.

(2) The disputing party may give written notice to the authority that an access dispute exists.

(3) On receiving a notice under subsection (2), the authority must give written notice of the access dispute to all other parties to the access determination.

(4) Subject to subsection (6), the authority must make a written determination (a ***subdivision 4 determination***) in an arbitration on the amendment or revocation of the access determination.

(5) Without limiting subsection (7), the authority may make a subdivision 4 determination that amends or revokes the access determination only if the authority is reasonably satisfied—

(a) there has been a material change of circumstances since the access determination was made; and

(b) the material change of circumstances justifies the amendment or revocation.

(6) At any time before the authority makes a subdivision 4 determination—

(a) the party who made the application under section 127A may withdraw it; or

(b) the disputing party may give the authority written notice stating that the disputing party withdraws the notice given under subsection (2) and agrees with the amendment or revocation applied for.

(7) Sections 117(5) to (7), 117A to 123 apply to the arbitration of the access dispute by the authority as if—

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(a) a subdivision 4 determination were an access determination; and

(b) a notice given under subsection (2) were an access dispute notice.

(8) For subsection (7), section 122 applies as if the following were substituted for paragraph (c)—

'(c) no material change of circumstances has happened since the access determination was made.'.

Division 6 Access codes for declared services

128 Making codes

(1) The Minister may make codes for this Act for declared services.

(2) Before making a code, the Minister—

(a) must publish the proposed code and invite persons to make submissions on it to the Minister within the reasonable time stated by the Minister; and

(b) must ask the authority to give the Minister information and advice about the code or its contents the authority considers appropriate; and

(c) may ask the authority to give the Minister information and advice about a stated matter relating to the code or its contents.

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

(a) any submissions about the proposed code received by the Minister within the time stated by the Minister for subsection (2)(a); and

(b) any information or advice given to the Minister by the authority.

(4) The Minister may make a code only if the Minister considers it appropriate to do so having regard to—

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(a) the matters mentioned in section 138(2)(a) to (g); and

(b) any other matters the Minister considers relevant.

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 or operator of a declared service to separate the owner's, or operator's, operations relating to the service from other operations of the owner or operator 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.

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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 or operator to give draft access undertaking

(1) The authority may, by written notice (an ***initial undertaking notice***) given to an owner or operator of a declared service, require the owner or operator 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 or operator 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).

133A Criteria for choosing entity to give draft access undertaking

(1) This section applies if the owner and operator of a declared service are different entities.

(2) In deciding which of the entities to give an initial undertaking notice to, the authority may have regard to the following—

(a) the terms of any contract about the service to which the entities are parties;

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(b) the extent to which each entity is able to provide access to the service;

(c) the extent to which each entity is able to give effect to an access undertaking for the service;

(d) any written representations made to it by the entities.

133B Requirement to give information or document

(1) The authority may by written notice given to an entity mentioned in section 133A(1) require the entity to give the authority, within a reasonable time of at least 14 days stated in the notice, information or a document the authority reasonably requires to have proper regard to the criteria mentioned in section 133A(2).

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

Maximum penalty—500 penalty units or 6 months imprisonment.

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.

(2) If the authority refuses to approve the draft access undertaking, it must give the owner or operator a written notice (a ***secondary undertaking notice***) stating the reasons for the refusal and asking the owner or operator to—

(a) amend the draft access undertaking in the way the authority considers appropriate; and

(b) give the authority a copy of the amended draft access undertaking within—

(i) 60 days of receiving the notice; or

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(ii) if the period is extended under subsection (2A)—the extended period.

(2A) The authority may, during the period mentioned in subsection (2)(b)(i), extend the period within which the amended draft access undertaking must be given to the authority by giving the owner or operator a written notice stating the day the extended period ends.

(2B) The day stated in a notice under subsection (2A) must be no later than 90 days after the owner or operator received the secondary undertaking notice.

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

135 Preparation and approval of draft access undertaking by authority

If an owner or operator 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 or operator.

136 Submission and approval of voluntary draft access undertaking

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

(2) An owner or operator 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 or operator 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.

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(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.

136A Compulsory amendment of draft access undertaking for declared service given voluntarily

(1) This section applies if—

(a) a following person (the ***relevant person***) gives a draft access undertaking for a declared service to the authority under section 136—

(i) the owner or operator of the declared service;

(ii) a person who expects to be the owner or operator of the declared service; and

(b) the authority refuses to approve the draft access undertaking mentioned in paragraph (a); and

(c) the authority has previously refused to approve a draft access undertaking given to it under section 136 by the relevant person.

(2) The notice given to the relevant person under section 136(5) may include a request for the relevant person to—

(a) amend the draft access undertaking mentioned in subsection (1)(a) in the way the authority considers appropriate; and

(b) give the authority a copy of the amended draft access undertaking within—

(i) 60 days of receiving the notice; or

(ii) if the period is extended under subsection (3)—the extended period.

(3) The authority may, during the period mentioned in subsection (2)(b)(i), extend the period within which the

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amended draft access undertaking must be given to the authority by giving the relevant person a written notice stating the day the extended period ends.

(4) The day stated in a notice under subsection (3) must be no later than 90 days after the relevant person received the notice given under section 136(5).

(5) If the relevant person complies with a request under subsection (2), the authority may approve the draft access undertaking.

(6) If the relevant person does not comply with a request under subsection (2), the authority may prepare, and approve, a draft access undertaking for the service in relation to the relevant person.

137 Contents of access undertakings

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

(1A) An access undertaking for a service owned or operated by a related access provider must include provisions for—

(a) identifying, preventing and remedying conduct of the related access provider that unfairly differentiates in a material way between—

(i) in negotiating access agreements, or amendments to access agreements, relating to the service—access seekers; or

(ii) in providing access to the service—users; and

(b) preventing the related access provider recovering, through the price of access to the service, costs that are not reasonably attributable to the provision of the service.

(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;

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(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 or operator 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 or operator and a user in relation to the service or separate parts of the service;

(ea) arrangements to be made by the owner or operator to separate the owner's, or operator's, operations concerning the service from other operations of the owner or operator concerning another commercial activity;

(f) the provision of the service to users otherwise than by the owner or operator 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.

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(3) In this section—

material way, in relation to unfair differentiation between access seekers or users, means a way that has a material adverse effect on the ability of 1 or more of the access seekers or users to compete with other access seekers or users.

138 Factors affecting approval of draft access undertaking

(1) This section applies to a draft access undertaking given to, or prepared by, the authority under this subdivision.

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

(a) the object of this part;

(b) the legitimate business interests of the owner or operator of the service;

(c) if the owner and operator of the service are different entities—the legitimate business interests of the operator of the service are protected;

(d) the public interest, including the public interest in having competition in markets (whether or not in Australia);

(e) 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;

(f) the effect of excluding existing assets for pricing purposes;

(g) the pricing principles mentioned in section 168A;

(h) 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

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(b) it is satisfied the undertaking is not inconsistent with a ruling relating to the service that is in effect under division 7A; and

(c) it has published the undertaking and invited persons to make submissions on it to the authority within the time stated by the authority; and

(d) it has considered any submissions received by it within the time.

(4) Subsection (3)(b) applies subject to section 150K.

(5) The authority may not refuse to approve a draft access undertaking only because the authority considers a minor and inconsequential amendment should be made to a particular part of the undertaking.

(6) In this section—

minor and inconsequential amendment, in relation to part of a draft access undertaking, means an amendment that, if made, would have no real effect or consequence in relation to that part of the undertaking and the undertaking as a whole.

138A Terms of particular approved access undertakings

An approved access undertaking for a service may require or permit the owner or operator of the service to do the following, in the circumstances stated in the undertaking—

(a) treat access seekers differently in negotiating access agreements, or amendments to access agreements, relating to the service; or

(b) treat users differently in providing access to the service.

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Subdivision 2 Preparation and approval of draft amending access undertakings

139 Requirement of responsible person to give draft amending access undertaking

(1) The authority may, by written notice (an ***initial amendment notice***) given to the responsible person who gave 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.

(2) If the authority refuses to approve the draft access undertaking, it must give the responsible person a written notice (a ***secondary amendment notice***) stating the reasons for the refusal and asking the person to—

(a) amend the draft access undertaking in the way the authority considers appropriate; and

(b) give the authority a copy of the amended draft access undertaking within—

(i) 30 days of receiving the notice; or

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(ii) if the period is extended under subsection (2A)—the extended period.

(2A) The authority may, during the period mentioned in subsection (2)(b)(i), extend the period within which the amended draft access undertaking must be given to the authority by giving the responsible person a written notice stating the day the extended period ends.

(2B) The day stated in a notice under subsection (2A) must be no later than 60 days after the responsible person received the secondary amendment notice.

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

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 who gave 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

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(b) the way in which the authority considers it is appropriate to amend the draft access undertaking.

(4) In this section—

responsible person who gave an approved access undertaking includes a person who gave the access undertaking because the person expects to be the owner or operator 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).

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

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Subdivision 3 Investigations about draft access undertakings

144 Application of sdiv 3

This subdivision applies to a draft access undertaking given to, or prepared by, the authority under subdivision 1 or 2.

145 Power of authority to conduct investigation

The authority may conduct an investigation for preparing or approving a draft access undertaking mentioned in section 144.

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 or operator of the service, or the responsible person; 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 applies to an investigation under this subdivision.

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Subdivision 4 Other matters

147A Period for approving draft access undertaking

(1) This section applies to a draft access undertaking, whether or not amending an approved access undertaking, given to the authority by an owner or operator of a declared service or a responsible person—

(a) in response to an initial undertaking notice or initial amendment notice; or

(b) without receiving an initial undertaking notice or initial amendment notice.

(2) The authority must use its best endeavours to decide whether to approve, or refuse to approve, the draft access undertaking within 6 months from—

(a) if the authority decides, within 2 weeks from the day the undertaking was given to the authority, to conduct an investigation for making the decision—the last day of the time for making submissions stated in an investigation notice for the investigation under section 146(2)(c); or

(b) otherwise—the day that is 2 weeks from the day the undertaking was given to the authority.

(3) However, the 6 month period mentioned in subsection (2) does not include any of the following days—

(a) if the authority conducts an investigation for making the decision and gives a notice under section 185 to a person requiring the person to give information or produce a document for the investigation—a day in the period—

(i) starting on the day the notice is given to the person; and

(ii) ending on the day the person complies with the notice;

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(b) if the authority publishes the draft access undertaking, or another document about the undertaking, and invites persons to make submissions on the undertaking or document to the authority within a stated period—a day in the period for making submissions stated by the authority;

(c) if the owner or operator of the service, or the responsible person, agrees to a day not being included in the 6 month period—a day agreed to by the person.

(4) The authority must publish a notice on its website, while the authority is considering a draft access undertaking, stating—

(a) the day the 6 month period mentioned in subsection (2) started or will start; and

(b) the day the period will end; and

(c) for a day not included in the period under subsection (3)—the reason the day is not included in the period.

(5) If the authority fails to decide whether to approve, or refuse to approve, the draft access undertaking within the 6 month period mentioned in subsection (2), it must, as soon as practicable after the period ends—

(a) prepare a written notice stating—

(i) the reasons for the authority's failure; and

(ii) details about the action the authority proposes to take to decide whether to approve, or refuse to approve, the draft access undertaking as soon as reasonably practicable; and

(b) publish the notice on its website; and

(c) give a copy of the notice to—

(i) the owner or operator of the service, or the responsible person; and

(ii) the Minister.

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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.

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.

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150AA Requirement to give information about compliance with approved access undertaking

(1) The authority may take action under this section to find out whether a responsible person is complying with section 150A in relation to an approved access undertaking.

(2) The authority may, by written notice given to the responsible person, require the responsible person to give the authority, within the time (not less than 14 days) stated in the notice, stated information about the responsible person's compliance with the approved access undertaking.

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

Maximum penalty—500 penalty units or 6 months imprisonment.

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

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

Division 7A Rulings

Subdivision 1 Preliminary

150B Purpose of div 7A

The purpose of this division is to enable the authority to make a decision, on an application made by a prescribed person, about how the authority intends to treat a matter relating to access to a service for the purpose of—

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(a) if the service is or becomes a declared service—making access determinations relating to the service; and

(b) deciding whether to approve draft access undertakings relating to the service.

150C Definitions for div 7A

In this division—

application see section 150D(2).

draft access undertaking includes a draft access undertaking amending an approved access undertaking.

prescribed person means—

(a) an owner or operator of a service that is a declared service; or

(b) an owner or operator of a service that is not a declared service; or

(c) a person who expects to be the owner or operator of a service, whether or not the service is a declared service.

relevant assumption, for a ruling, means an assumption stated under section 150F(6)(d) in the ruling notice given for the ruling.

relevant circumstances, for a ruling, means the circumstances stated under section 150F(6)(c) in the ruling notice given for the ruling.

ruling means a ruling made by the authority under this division about a matter relating to access to a service.

ruling notice see section 150F(5).

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Subdivision 2 Applying for and making rulings

150D Application for a ruling

(1) A prescribed person may, by written notice, ask the authority to make a stated ruling relating to a relevant service for the person.

(2) A notice given under subsection (1) is an ***application*** for the ruling stated in it.

(3) The prescribed person may, by written notice given to the authority, withdraw the application before the authority gives the person—

(a) a ruling notice for the ruling; or

(b) notice of the authority's decision not to make the ruling.

(4) In this section—

relevant service, for a prescribed person, means a service in relation to which the person is a prescribed person.

150E Authority must decide whether to make ruling

If the authority receives an application for a ruling, it must—

(a) decide whether to make the ruling stated in the application; and

(b) if it decides not to make the ruling—give written notice of its decision and the reasons for the decision to the prescribed person who applied for the ruling.

150F Requirements for making ruling

(1) If the authority receives an application for a ruling, the authority may, if the authority considers it appropriate, make the ruling stated in the application.

(2) However, the authority may make the ruling only if the authority is satisfied—

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(a) it would not be prevented under section 119 from making an access determination consistent with the ruling; and

(b) it would not be prevented under section 138(3)(a) from approving a draft access undertaking consistent with the ruling.

(3) In making the ruling, the authority must—

(a) comply with natural justice; and

(b) have regard to the criteria stated in section 120(1) and 138(2).

(4) In making the ruling, the authority may make assumptions about future events or matters.

(5) The authority makes the ruling by giving written notice (a ***ruling notice***) to the prescribed person who applied for the ruling.

(6) For subsection (5), a ruling notice must state each of the following—

(a) the service to which the ruling relates;

(b) the ruling and the reasons for it;

(c) the circumstances relating to the service—

(i) existing at the time the ruling is made; and

(ii) considered by the authority to be material to the ruling;

(d) if the ruling is made on the basis of assumptions about future events or matters considered by the authority to be material to the ruling—the assumptions made by the authority;

(e) the period for which the ruling has effect.

150G Period for which ruling has effect

(1) A ruling has effect for the period stated under section 150F(6)(e) in the ruling notice given for the ruling.

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(2) A ruling relating to a service does not stop having effect only because—

(a) when the ruling was made, the service was not a declared service; and

(b) the service is later declared.

Subdivision 3 Investigations about rulings

150H Authority may investigate

For making a ruling, or deciding whether to make a ruling, the authority may conduct an investigation.

150I Notice of investigation

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

(a) the prescribed person who applied for the ruling; and

(b) any other person the authority considers appropriate.

(2) The notice must state the following—

(a) the authority's intention to conduct the investigation;

(b) the subject matter of the investigation;

(c) an invitation for the person to whom the notice is given to make written submissions to the authority on the subject matter within the time stated in the notice;

(d) the authority's address.

150J Procedures for investigation

Part 6 applies to an investigation under this division.

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Subdivision 4 Other matters

150K When a ruling does not apply

(1) This section states the circumstances in which a ruling does not apply for the purpose of—

(a) the making by the authority of an access determination relating to the relevant service; or

(b) the making of a decision by the authority about whether to approve a draft access undertaking relating to the relevant service.

(2) The circumstances are—

(a) information used by the authority to make the ruling was false or misleading in a material particular; or

(b) the circumstances relating to the service existing when the authority makes the determination or decision mentioned in subsection (1) are materially different to the relevant circumstances for the ruling; or

(c) if there is a relevant assumption for the ruling—the event or matter to which the assumption relates has not happened as assumed.

(3) This section applies despite section 150G.

150L Costs of making a ruling

(1) In making a ruling, the authority may make any order it considers appropriate about the payment, by the prescribed person who applied for the ruling, of the costs, or part of the costs, incurred by the authority in making the ruling.

(2) The costs ordered to be paid by the prescribed person may be recovered by the authority as a debt owing to the authority by the person.

(3) A reference in this section to making a ruling includes a reference to deciding whether to make a ruling.

(4) This section applies despite section 150D(3).

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150M Register of rulings

(1) The authority must keep a register of rulings that are in effect.

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

(a) the service to which the ruling relates;

(b) the period for which the ruling has effect;

(c) the ruling and the authority's reasons for it;

(d) the relevant circumstances for the ruling;

(e) any relevant assumptions for the ruling;

(f) the person who applied for the ruling.

(3) The details in the register of the authority's reasons for a ruling must not include details that are likely to damage the commercial activities of the person who applied for the ruling.

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

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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 prohibitions on hindering access and unfair differentiation

(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 100(2), 104, 125 or 168C.

(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

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(ii) if the conduct involves failing to do something—requiring the obstructor to do the thing;

(b) an order directing the obstructor to compensate a person for loss or damage suffered by the person because of the contravention;

(c) another order the court considers appropriate.

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

(4) The grounds on which the court may decide not to make an order under this section include the ground that division 5 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.

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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

(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 a responsible person for the undertaking has breached a term of the undertaking; and

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(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 access provider of a declared service if—

(a) the access provider has not prepared a cost allocation manual within 60 days of being asked to do so by the authority; or

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(b) if the access provider 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 access provider 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 access provider 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 access provider of the declared service.

161 When manual binds access provider

The cost allocation manual is binding on the access provider of the declared service to whom it relates from—

(a) the day after a copy of the manual is received by the access provider; or

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

162 Access provider must keep books and records under manual

The access provider of a declared service must—

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(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 Access provider to keep separate accounting records

(1) The access provider 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 access provider.

Maximum penalty—500 penalty units or 6 months imprisonment.

(2) Subsection (1) does not apply to the access provider 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 access provider 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, the authority may direct that the accounting records for the declared service be published by the access provider if the authority considers publication—

(a) is in the public interest; and

(b) would not be likely to damage the access provider's commercial activities.

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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.

168A Pricing principles

The pricing principles in relation to the price of access to a service are that the price should—

(a) generate expected revenue for the service that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved; and

(b) allow for multi-part pricing and price discrimination when it aids efficiency; and

(c) not allow a related access provider to set terms and conditions that discriminate in favour of the downstream operations of the access provider or a related body corporate of the access provider, except to the extent the cost of providing access to other operators is higher; and

(d) provide incentives to reduce costs or otherwise improve productivity.

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Note—

The authority must have regard to the pricing principles when it makes an access determination or decides whether to approve a draft access undertaking. See sections 120 and 138.

168B Information to be considered by authority in making decisions

(1) This section applies to the making of any of the following decisions by the authority—

(a) a decision to make a recommendation to the Minister under section 79, 87A or 88;

(b) an access determination;

(c) a decision to approve, or refuse to approve, a draft access undertaking under section 134, 136, 140 or 142;

(d) a decision about whether to make a ruling under division 7A.

(2) Subsection (3) applies if a person makes a submission, or gives information, (***late information***) to the authority after the period for making the submission or giving the information stated by the authority.

(3) The authority may make the decision without taking late information into account if doing so is reasonable in all of the circumstances.

(4) For subsection (3), in deciding whether it is reasonable in all of the circumstances, the following factors must be taken into account—

(a) whether the late information was available, or ought reasonably to have been available, to the person during the period mentioned in subsection (2);

(b) the length, complexity and relevance of the late information;

(c) how much time has elapsed since the period mentioned in subsection (2) ended;

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(d) how advanced the authority's decision making process is when the late information is received.

(5) Subsection (6) applies if—

(a) the authority has required a person to give information, or produce a document, to it for the purpose of making the decision; and

(b) the person fails to comply with the requirement.

(6) The authority may make the decision on the basis of the information available to it at the time.

168C Prohibition on particular treatment of users by access providers

(1) In providing access to a declared service, an access provider must not unfairly differentiate between users of the service in a way that has a material adverse effect on the ability of 1 or more of the users to compete with other users.

Note—

Provision for enforcing compliance with subsection (1) is made in division 8 (Enforcement for pt 5), particularly section 153 (Orders to enforce prohibitions on hindering access and unfair differentiation).

(2) An access provider does not contravene subsection (1) to the extent the different treatment is expressly required or permitted by—

(a) an access code or approved access undertaking for the service; or

(b) an access agreement to which the provider is a party; or

(c) an access determination to which the provider is a party.

(3) However, subsection (2) does not authorise an access provider to do anything under an access agreement or access determination to which the provider is a party if the provider is prevented from doing the thing under section 104 or 125.

(4) This section applies despite section 102.

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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 of water

Division 1 Preliminary

170A Application of part to partnerships and joint ventures

(1) This section applies if a water supplier (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.

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(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 part 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

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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.

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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 Minister 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 Minister.

170D Revision of, and advice about, criteria

(1) The authority must, if requested by the Minister, 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 Minister about the current criteria.

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

170E Consultation about criteria

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

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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 Minister to be a monopoly water supply activity.

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

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(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 Minister 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 Minister, the authority must give a copy of the request to the Minister with the recommendation.

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(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 Minister with the recommendation.

170J Factors affecting making of recommendation

(1) The authority must recommend a candidate water supply activity be declared by the Minister 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 Minister 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 Minister 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 Minister.

(5) Despite subsections (1) and (2), the authority may recommend that part of a candidate water supply activity be declared by the Minister 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.

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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 applies to an investigation under this subdivision.

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Subdivision 4 Declaration by Minister

170N Making declarations

(1) After receiving a declaration recommendation, the Minister 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 Minister declares 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 Minister 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 Minister must—

(a) unless the request about the declaration of the activity was made by the Minister—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.

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(3) If the Minister does not publish as required under subsection (1) within 90 days after receiving the declaration recommendation, the Minister is 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 Minister 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 Minister must declare a candidate water supply activity to be a monopoly water supply activity if the Minister is satisfied about all of the water supply criteria for the activity.

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

(3) Despite subsections (1) and (2), the Minister may declare part of a candidate water supply activity to be a monopoly water supply activity if the Minister is 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

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(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 Minister that a declaration of a monopoly water supply activity be revoked.

(2) Without limiting subsection (1), the water supplier carrying on the monopoly water supply activity may ask the authority to recommend revocation.

(3) The authority may recommend revocation only if it is satisfied that, at the time of the recommendation, section 170P would prevent the Minister 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

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(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 applies to an investigation under this subdivision.

170V Revocation

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

(2) The Minister may revoke the declaration—

(a) only after receiving a revocation recommendation; and

(b) only if the Minister is satisfied that, at the time of the revocation, section 170P would prevent the Minister from declaring the relevant water supply activity to be a monopoly water supply activity.

170W Notice of decision

(1) The Minister 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 Minister 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.

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170X When revocation takes effect

A decision of the Minister 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.

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 the operation or enforcement of a water pricing determination that was made 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 Water pricing determinations

170ZA Definitions for sdiv 7

In this subdivision—

determination means a determination in writing.

notice means written notice.

water pricing determination see section 170ZB(1).

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water pricing period see section 170ZB(2).

water pricing proposal see section 170ZC(1).

170ZB Authority must make water price determinations

(1) The authority must make a determination or determinations (each a ***water pricing determination***) for the monopoly water supply activity of a water supplier.

(2) Each water pricing determination must relate to a particular period (a ***water pricing period***) for which the water supplier carries on the monopoly water supply activity, being the period—

(a) starting on the day (a ***starting day***) the determination takes effect under section 170ZJ; and

(b) ending on a day stated in the determination.

(3) For subsection (2)(a), a water pricing determination other than the first determination must provide for the day after the expiry of the existing determination to be the day the determination takes effect under section 170ZJ.

(4) A water pricing determination must—

(a) comply with section 170ZH; and

(b) require the water supplier to adopt the pricing practices stated in the determination in carrying on the monopoly water supply activity; and

(c) state a day by which the authority will give the water supplier a notice under section 170ZC for the next water pricing period.

Note—

See also subsection (7) and section 170ZC(4) for relevant time limitations.

(5) The water pricing determination may impose requirements for any matter relating to the pricing practices that the authority considers appropriate.

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(6) Without limiting subsections (4) and (5), the water pricing determination may state the price, or the maximum allowed revenue, at or for which the water supplier must carry on the activity.

(7) A water pricing determination made for a particular monopoly water supply activity at any time after the first water pricing determination is made for the activity must be made at least 1 month before the end of the existing determination.

170ZC Notice of intention to make a water pricing determination

(1) Before making a water pricing determination for a monopoly water supply activity, the authority must give a notice to the water supplier—

(a) advising the water supplier that it intends to make a water pricing determination for the activity for the water pricing period stated in the notice; and

(b) inviting the water supplier to give the authority a proposal (a ***water pricing proposal***) for the activity for the period.

(2) The notice may require the water pricing proposal to be prepared in a form stated in the notice, including, for example, in the form of a draft water pricing determination.

(3) The notice may require the water supplier to include in the water pricing proposal any information the authority considers will help it to make the water pricing determination.

(4) The notice must require the water pricing proposal to be given to the authority—

(a) within a period ending on a day stated in the notice that is not less than 180 days after the notice is given; or

(b) if the authority extends, or further extends, the period by notice given to the water supplier in the period or extended period—within the period as extended.

(5) The authority may, as mentioned in subsection (4)(b), by notice given to the water supplier, extend or further extend the

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period within which the water pricing proposal must be given to the authority.

(6) Subsections (4) and (5) do not limit section 170ZT.

Note—

Under section 170ZT, the authority may require information to be given to the authority within a reasonable period of at least 14 days.

170ZD When notice must be given

(1) A notice under section 170ZC must be given by the authority to a water supplier for a monopoly water supply activity—

(a) for the first water pricing determination made for the activity—within 90 days after the monopoly water supply activity is declared; and

(b) for a later water pricing determination—before the day stated in the existing water pricing determination as mentioned in section 170ZB(4)(c).

(2) However, a requirement that purports to be made by the authority under section 170ZC is not invalid only because the notice is given later than required by subsection (1).

170ZE Draft water pricing determination

(1) The authority, after considering—

(a) any water pricing proposal given to it by the water supplier; and

(b) the restrictions imposed by section 170ZH; and

(c) the matters mentioned in section 170ZI;

must prepare a draft water pricing determination for the monopoly water supply activity for a water pricing period.

(2) The authority must give the draft determination to the water supplier and invite the water supplier to make submissions on the draft in the way and within the period the authority considers appropriate.

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(3) The authority may also consult on the draft determination in any other way and with any other entity the authority considers appropriate.

170ZF Water pricing determination

(1) After considering any submissions received by it under section 170ZE, the authority must make a water pricing determination for the monopoly water supply activity for the water pricing period for which the draft water pricing determination is made.

(2) The authority must give in the water pricing determination its reasons for making the determination.

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) if the activity is a declared service—an access determination relating to the service; or

(b) if the activity is a service, whether or not a declared service—an approved access undertaking for the service; or

(c) a water pricing determination code for the activity.

(2) A water pricing determination has no effect to the extent 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;

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(c) the protection of consumers from abuses of monopoly power;

(d) decisions by the Minister and local governments under part 3 about pricing practices of 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 determination relates;

(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;

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(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.

(3) In considering a matter mentioned in subsection (1), the authority may also have regard to the matter as it may continue in existence, arise, or be relevant over a period that is longer than the water pricing period for which the water pricing determination is being made.

(4) Subsection (5) applies if the authority makes a water pricing determination that may have the effect of a price increase for customers that is higher than the rate of inflation.

(5) The authority must, in making the water pricing determination, consider the need to implement in the determination a price path for the introduction of the price increase to moderate its impact on customers.

(6) If the authority decides not to implement a price path when subsection (5) applies, the authority must give its reasons for not doing so.

(7) In implementing a price path, the authority must have regard to the legitimate business interests of the water supplier carrying on the monopoly water supply activity.

(8) A price path mentioned in subsection (5) may indicate how it will continue beyond the water pricing period to which the water pricing determination relates, subject to any later water pricing determination.

170ZJ When water pricing determination has effect

(1) 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.

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(2) A water pricing determination expires at the end of the water pricing period for which it is made.

170ZK Enforcement of water pricing determination

A water pricing determination may be enforced in the way provided under division 6.

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) For each amendment of a determination, the register must include details of the following—

(a) the amendment;

(b) the day the amendment was approved;

(c) the day the amendment is to take, or took, effect;

(d) the authority's reasons for approving the amendment.

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

170ZN Ending of authority's jurisdiction to determine pricing

(1) The authority's jurisdiction to make a water pricing determination about a monopoly water supply activity ends if the activity stops being a monopoly water supply activity.

(2) If subsection (1) applies, the authority may not make a water pricing determination even if it has given a notice to a water supplier under section 170ZC.

170ZO Application for amendment of water pricing determination

(1) A water supplier for a monopoly water supply activity for which the authority has made a water pricing determination may apply to the authority for the amendment of the determination, if the supplier reasonably believes—

(a) there has been a material change of circumstances since the determination was made; and

(b) the material change of circumstances justifies the amendment of the determination.

(2) An application under subsection (1) must be in writing and state—

(a) details of the material change of circumstances; and

(b) the reasons the supplier believes the material change of circumstances justifies the amendment of the determination.

(3) The water supplier may withdraw the application at any time.

170ZP Refusal to amend

(1) The authority may refuse to consider or further consider an application under section 170ZO to amend a water pricing

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determination if it considers the application is vexatious or frivolous.

(2) The authority may refuse the application if it considers there has not been—

(a) a material change of circumstances; or

(b) a material change of circumstances that justifies an amendment of the water pricing determination.

170ZQ Approval of application

(1) The authority may approve the application if the authority is satisfied—

(a) there has been a material change of circumstances since the water pricing determination was made; and

(b) the material change of circumstances justifies the amendment; and

(c) the amendment does not contravene section 170ZH; and

(d) the authority has complied with section 170ZI.

(2) For subsection (1), a reference in section 170ZH or 170ZI to the making of a water pricing determination applies as if it were a reference to the making of an amendment of a water pricing determination.

(3) The authority must give notice of the making of the amendment to the water supplier.

(4) The notice must state the day the amendment takes effect.

170ZR Amendment on authority's own initiative

(1) This section applies for the purpose of the amendment by the authority on its own initiative of a water pricing determination made for a monopoly water supply activity.

(2) The authority may amend the determination by notice given to the water supplier for the activity to correct—

(a) a clerical mistake; or

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(b) an error arising from an accidental slip or omission; or

(c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the determination; or

(d) a defect in form.

170ZS Investigation for sdiv 7

(1) For making a water pricing determination or deciding whether to amend a water pricing determination, the authority may conduct an investigation.

(2) Before starting the investigation, the authority must give reasonable notice of the investigation to—

(a) the relevant water supplier; and

(b) any other person the authority considers appropriate.

(3) The notice must state the following—

(a) the authority's intention to conduct the investigation;

(b) the subject matter of the investigation;

(c) an invitation for the person to whom the notice is given to make written submissions to the authority on the subject matter within the time stated in the notice;

(d) the authority's address.

(4) Part 6 applies to the investigation.

170ZT Requirement to give information

(1) This section applies for the making or amendment of a water pricing determination.

(2) In a notice under section 170ZC or other notice, the authority may require a water supplier to give the authority, within a reasonable time of at least 14 days stated in the notice, information the authority reasonably requires to ensure it—

(a) does not contravene section 170ZH; and

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(b) complies with 170ZI.

(3) The notice must state that this section applies to the requirement.

(4) The water supplier must comply with the requirement within the time stated in the notice, unless the water supplier has a reasonable excuse.

Maximum penalty—500 penalty units or 6 months imprisonment.

(5) This section does not limit section 170ZC.

(6) In this section—

information includes a document.

170ZU Information to be considered by authority in making decisions

(1) This section applies to a decision by the authority about making a draft water pricing determination, a water pricing determination or an amendment to a water pricing determination.

(2) Subsection (3) applies if a person gives information (***late information***) to the authority after the period for giving the information stated by the authority.

(3) The authority may make the decision without taking late information into account if doing so is reasonable in all of the circumstances.

(4) For subsection (3), in deciding whether it is reasonable in all of the circumstances, the following factors must be taken into account—

(a) whether the late information was available, or ought reasonably to have been available, to the person during the period mentioned in subsection (2);

(b) the length, complexity and relevance of the late information;

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(c) how much time has elapsed since the period mentioned in subsection (2) ended;

(d) how advanced the authority's decision-making process is when the late information is received.

(5) Subsection (6) applies if—

(a) the authority has required a person to give information, or produce a document, to it for the purpose of making the decision; and

(b) the person fails to comply with the requirement.

(6) The authority may make the decision on the basis of the information available to it at the time.

(7) In this section—

information includes a document, submission or other matter.

Division 3 Codes for water pricing determinations

170ZV Making codes

(1) The Minister may make codes for this Act stating requirements for the making of a water pricing determination for a monopoly water supply activity.

(2) Before making a code, the Minister—

(a) must publish the proposed code and invite persons to make submissions on it to the Minister within the reasonable time stated by the Minister; and

(b) must ask the authority to give the Minister information and advice about the code or its contents the authority considers appropriate; and

(c) may ask the authority to give the Minister information and advice about a stated matter relating to the code or its contents.

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

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(a) any submissions about the proposed code received by the Minister within the time stated by the Minister for subsection (2)(a); and

(b) any information or advice given to the Minister by the authority; and

(c) any other matters the Minister considers relevant.

170ZW Code is subordinate legislation

A code is subordinate legislation.

170ZX Purpose and contents of codes

(1) The purpose of a code is to set out rules that apply for all or particular types of monopoly water supply activities.

(2) For subsection (1), a code may provide for any issue about a monopoly water supply activity.

(3) Without limiting subsections (1) and (2), a code may provide for the following—

(a) the process for making or amending a water pricing determination, whether the process has to be complied with by a water supplier or the authority;

(b) water pricing principles and practices.

Division 6 Enforcement for pt 5A

Subdivision 1 Court orders

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

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(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 pricing determinations

(1) This section applies if, on application by any person, the court is satisfied that a water supplier (the ***contravening person***) is engaging, or proposing 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

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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.

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170ZZZK Discharge or variation of injunction or order

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

Subdivision 2 Information requirement

170ZZZL Requirement to give information about compliance with particular provisions

(1) The authority may take action under this section to find out whether a water supplier (the ***person***) is complying with section 170ZL in relation to a water pricing determination.

(2) The authority may, by written notice given to the person, require the person to give the authority, within the time, not less than 14 days, stated in the notice, stated information about the person's compliance with the water pricing determination.

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

Maximum penalty—500 penalty units or 6 months imprisonment.

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

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

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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 2A;

(b) an investigation for part 3, division 3;

(c) an investigation for part 5, division 2, subdivision 3;

(d) an investigation for part 5, division 2, subdivision 4A;

(e) an investigation for part 5, division 2, subdivision 5;

(f) an investigation for part 5, division 7, subdivision 3;

(g) an investigation for part 5, division 7A;

(h) an investigation for part 5A, division 2, subdivision 3;

(i) an investigation for part 5A, division 2, subdivision 5;

(j) an investigation for part 5A, division 2, subdivision 7.

Division 2 General conduct of investigations

172 Public seminars etc.

The authority may conduct public consultation, including 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

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(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.

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.

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176 Notice of hearings

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

(2) The authority must publish the notice on its website.

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

(a) for an investigation under part 3—the government agency or other person carrying on the monopoly business activity to which the investigation relates; and

(b) for an investigation under part 5—the owner or operator of the service to which the investigation relates, or to which the access undertaking the subject of the investigation relates; and

(c) for an investigation under part 5A—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

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(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

(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 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.

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Division 4 Witnesses at hearings

181 Notice to witness

For a hearing, the authority 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

(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

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(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 authority 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.

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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 Minister; or

(b) if the investigation involves a government agency—the responsible Minister for the government agency; or

(c) a member; or

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(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; or

(f) the regulator under the *Electricity Act 1994*, to facilitate the performance of the regulator's function mentioned in section 63(1)(c) of that Act; or

(g) the regulator under the *Gas Supply Act 2003*, to facilitate the performance of the regulator's function of monitoring compliance with the conditions of authorities under that Act; or

(i) the regulator under the *Water Supply (Safety and Reliability) Act 2008*, to facilitate the performance of the regulator's function mentioned in section 11(1)(c) of that Act; or

(j) the energy and water ombudsman, to facilitate the performance of the ombudsman's functions under the *Energy and Water Ombudsman Act 2006*.

(4) This section applies despite sections 177, 184(1)(b) and 185.

(5) In this section—

commercial activities means activities conducted on a commercial basis.

person includes a government agency.

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Part 6A Conduct of mediation

Division 1 Preliminary

187A Application of part

This part applies to the mediation of an access dispute for part 5, division 5, subdivision 2A.

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(3), 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.

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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

(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.

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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

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(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

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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 for an application under the *Water Supply (Safety and Reliability) Act 2008*, section 524(2).

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.

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.

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(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).

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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.

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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.

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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.

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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.

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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;

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(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

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(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

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(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).

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, 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 Sector Act 2022*.

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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 Minister; 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.

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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.

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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.

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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.

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(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 Minister.

(5) Unless the Minister otherwise directs, 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

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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 an industrial instrument under the *Industrial Relations Act 2016*.

(3) The *Public Sector Act 2022* does not apply for the appointment of the authority's employees.

(4) In this section—

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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.

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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.

Division 3A Registers

227A Keeping registers

(1) The authority may keep a register in the way it considers appropriate.

(2) However, if the register is a register of distribution network codes under the *Electricity Act 1994* or the *Gas Supply Act 2003*, the authority must keep the register in a way that ensures each code included in the register is published on its website.

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—

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(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 Corruption Act 2001*; and

(b) a prescribed entity for the *Public Sector Act 2022*, section 25, definition *prescribed entity*, paragraph (c); and

(c) a statutory body under the *Financial Accountability Act 2009*; 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.

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(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—

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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 Disclosure of Cabinet information

(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

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question relates to, exempt matter is evidence of the matter stated.

(3) Subsection (4) applies if, in good faith, a person produces a document, answers a question or gives a statement relating to exempt matter for the purpose of enabling the authority to perform a function mentioned in section 10(g) (a ***relevant disclosure***).

(4) The relevant disclosure by the person does not, of itself, constitute—

(a) a contravention of the Criminal Code, section 85; or

(b) a disciplinary ground under the *Public Sector Act 2022*, section 91(1)(b) or (g)(i); or

(c) corrupt conduct under the *Crime and Corruption Act 2001*, section 15.

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—

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(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.

235A Proceedings for offences

Proceedings for an offence against this Act may be taken in a summary way under the *Justices Act 1886*.

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

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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—commercial activities

(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

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(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; or

(d) the regulator under the *Electricity Act 1994*, to facilitate the performance of the regulator's function mentioned in section 63(1)(c) of that Act; or

(e) the regulator under the *Gas Supply Act 2003*, to facilitate the performance of the regulator's function of monitoring compliance with the conditions of authorities under that Act; or

(g) the regulator under the *Water Supply (Safety and Reliability) Act 2008*, to facilitate the performance of the regulator's function mentioned in section 11(1)(c) of that Act; or

(h) the energy and water ombudsman, to facilitate the performance of the ombudsman's functions under the *Energy and Water Ombudsman Act 2006*.

(3) If, under subsection (2)(h), the authority discloses information to the energy and water ombudsman, it must tell the energy and water ombudsman that the information—

(a) is confidential information to which this section applies; and

(b) has been disclosed under subsection (2)(h).

(4) 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—

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(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.

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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 Accountability Act 2009*—

(a) details of each request made by the authority under section 18; and

(b) comments about the implementation of, and any failure to implement, recommendations mentioned in section 36.

243 Delegation

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

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244 Tabling reports

(1) This section applies to a report received by the Minister and mentioned in section 34.

(2) If the Minister must make the report, or a part of the report, available for public inspection, the Minister 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 Minister.

(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 Minister must ensure the recommendation, and the authority's reasons for the recommendation, are tabled in the Legislative Assembly within 14 sitting days after the report is received by the Minister.

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.

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Part 12 Transitional and savings provisions

Division 1 Transitional and savings provisions for Motor Accident Insurance and Other Legislation Amendment Act 2010

248 Definition for division

In this division—

expiry day means the day that is 10 years from the day this section commences.

249 Exclusion of service from pt 5

(1) Despite section 72, part 5 does not apply to the service mentioned in subsection (2).

(2) The service is the use of rail transport infrastructure for providing transportation by rail between Queensland and another State if—

(a) the infrastructure is standard gauge track; and

(b) the transportation is effected by using standard gauge rolling stock.

(3) Subsection (1) stops applying at the end of the expiry day.

250 Saving of declarations of particular services

(1) Each of the following services is taken to be a service declared by the Ministers under part 5, division 2—

(a) the use of a coal system for providing transportation by rail;

(b) the use of rail transport infrastructure for providing transportation by rail if the infrastructure is used for

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operating a railway for which Queensland Rail Limited, or a successor, assign or subsidiary of Queensland Rail Limited, is the railway manager;

(c) the handling of coal at Dalrymple Bay Coal Terminal by the terminal operator.

Note—

The services mentioned in subsection (1) were, immediately before the commencement of this division, declared under a regulation made under repealed section 97.

(2) Subsection (1) stops having effect in relation to a service, or part of a service—

(a) at the end of the expiry day; or

(b) if the declaration of the service or part of the service is revoked under part 5, division 2, subdivision 5—when the revocation takes effect.

Notes—

1 See section 95 in relation to the effect of the declaration ending.

2 Subsection (1) ceasing to have effect in relation to a service does not prevent the Ministers declaring the service under part 5, division 2 with effect after the expiry day.

(3) For this section, ***coal system*** means rail transport infrastructure that is—

(a) part of any of the following—

(i) the Blackwater system, being the railway connecting Gregory, Rolleston and Minerva to Gladstone, including the part of the North Coast Line between Parana and Rocklands, as shown on the diagram in schedule 1;

(ii) the Goonyella system, being the railway connecting Gregory, North Goonyella and Blair Athol mine to the Port of Hay Point, as shown on the diagram in schedule 1;

(iii) the Moura system, being the railway connecting Moura mine to Gladstone, as shown on the diagram in schedule 1;

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(iv) the Newlands system, being the railway connecting Newlands to the Port of Abbot Point, including the part of the North Coast Line between Durroburra and Kaili, as shown on the diagram in schedule 1; or

(b) directly or indirectly connected to a system mentioned in paragraph (a) and owned or leased by the owner or lessee, or a related body corporate of the owner or lessee, of the system.

(4) Also, a ***coal system*** includes an extension of the coal system that—

(a) is built on or after 30 July 2010; and

(b) does not directly connect the coal system to a coal basin to which the coal system was not directly connected on 30 July 2010; and

(c) is owned or leased by—

(i) the owner or lessee of the coal system; or

(ii) a related body corporate of the owner or lessee of the coal system.

Note—

The declaration of the service mentioned in subsection (1)(a) under the *Queensland Competition Authority Regulation 2007*, repealed section 2B, commenced on 30 July 2010.

(5) In this section—

Dalrymple Bay Coal Terminal means the port infrastructure located at the port of Hay Point owned by Ports Corporation of Queensland or the State, or a successor or assign of Ports Corporation of Queensland or the State, and known as Dalrymple Bay Coal Terminal and includes the following which form part of the terminal—

(a) loading and unloading equipment;

(b) stacking, reclaiming, conveying and other handling equipment;

(c) wharfs and piers;

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(d) deepwater berths;

(e) ship loaders.

handling of coal includes unloading, storing, reclaiming and loading.

North Coast Line means the railway running the length of the coast of Queensland from Brisbane to Cairns.

Queensland Rail Limited means Queensland Rail Limited ACN 132 181 090.

railway manager see the *Transport Infrastructure Act 1994*, schedule 6.

terminal operator means—

(a) the owner or lessee of Dalrymple Bay Coal Terminal; or

(b) a person operating Dalrymple Bay Coal Terminal for the owner or lessee.

Division 2 Transitional provision for Revenue and Other Legislation Amendment Act 2011

252 References to, and acts etc. by, Ministers

(1) In a document brought into existence before the commencement of this section, a reference to the Ministers under the pre-amended Act may be taken, if the context permits, to be a reference to the Ministers under the amended Act.

(2) A direction, referral, declaration, revocation, decision or other act by the Ministers under the pre-amended Act may be taken, if the context permits, to be a direction, referral, declaration, revocation, decision or other act by the Ministers under the amended Act.

(3) This section does not limit the *Acts Interpretation Act 1954*, section 20.

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(4) In this section—

amended Act means this Act as amended by the *Revenue and Other Legislation Amendment Act 2011*.

pre-amended Act means this Act as in force before the commencement of this section.

Division 3 Declaratory provision for Fairer Water Prices for SEQ Amendment Act 2011

253 Revocation of declaration

(1) This section applies to the declaration, under repealed section 170QA, of particular activities to be a monopoly water supply activity.

(2) The declaration is revoked at the start of 1 July 2011 and has no force or effect.

(3) Subsection (2) applies despite the *Acts Interpretation Act 1954*, section 20.

Division 4 Transitional provision for Treasury and Trade and Other Legislation Amendment Act 2013

254 References to, and acts etc. by, Ministers

(1) In a document brought into existence before the commencement of this section, a reference to the Ministers under the pre-amended Act may be taken, if the context permits, to be a reference to the Minister under the amended Act.

(2) A direction, referral, declaration, revocation, decision or other act by the Ministers under the pre-amended Act may be taken, if the context permits, to be a direction, referral, declaration,

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revocation, decision or other act by the Minister under the amended Act.

(3) In this section—

amended Act means this Act as amended by the *Treasury and Trade and Other Legislation Amendment Act 2013*.

pre-amended Act means this Act as in force before the commencement of this section.

Division 5 Transitional provision for Queensland Competition Authority Amendment Act 2018

255 Preparation and approval of particular draft, or draft amending, access undertakings

This Act, as in force immediately before the commencement, continues to apply to the preparation and approval of the following started, but not completed, before the commencement—

(a) a draft access undertaking under part 5, division 7, subdivision 1;

(b) a draft amending access undertaking under part 5, division 7, subdivision 2.

Division 6 Transitional provisions for the Queensland Future Fund (Titles Registry) Act 2021

256 Definitions for division

(1) In this division—

repealed Act means the repealed *Queensland Productivity Commission Act 2015*.

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(2) Words defined under the repealed Act and used in this division have the same meanings as they had under the repealed Act.

257 Existing competitive neutrality complaints and investigations

(1) This section applies if, immediately before the commencement—

(a) a competitive neutrality complaint made to the commission under the repealed Act had not been resolved or withdrawn; and

(b) the commission had not completed all actions in relation to the complaint that the commission was required to take under the repealed Act, part 5.

(2) This Act applies in relation to the competitive neutrality complaint as if the complaint were made to the authority under section 41.

259 Queensland Productivity Commission and its board

On the commencement—

(a) the Queensland Productivity Commission and its board are abolished; and

(b) the principal commissioner goes out of office.

260 State is successor in law of commission

(1) The State is the successor in law of the commission.

(2) Subsection (1) is not limited by another provision of this division.

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261 Assets and liabilities

On the commencement, the assets and liabilities of the commission immediately before the commencement become assets and liabilities of the State held in the department.

262 Contracts, agreements, undertakings, other arrangements and instruments

(1) This section applies to a contract, agreement, undertaking or other arrangement to which the commission was a party, or an instrument that applied to the commission, immediately before the commencement.

(2) On the commencement, the State becomes a party to the contract, agreement, undertaking or arrangement, or the instrument starts to apply to the State, in place of the commission.

(3) This section applies subject to section 265.

263 Proceedings not yet started

(1) This section applies if, immediately before the commencement, a proceeding could have been started by or against the commission within a particular period.

(2) The proceeding may be started by or against the State, in place of the commission, within the period.

264 Current proceedings

(1) This section applies to a proceeding that, immediately before the commencement, had not ended and to which the commission was a party.

(2) The State becomes a party to the proceeding in place of the commission.

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265 Matters relating to employment

(1) This section applies to each person who was employed as a member of the commission's staff immediately before the commencement, other than a person employed as an executive manager or on a casual basis.

(2) On the commencement—

(a) the person becomes an employee of the department; and

(b) the person stops being an employee of the commission; and

(c) the commission's liability for recreation, sick or long service leave accrued but not taken by the person before the commencement is transferred to the State held in the department; and

(d) the commission's records, to the extent they relate to the person's employment, become records of the State held in the department.

(3) Without limiting subsection (2)(a)—

(a) the chief executive is taken to have employed the person as a fixed term temporary employee in the department under the *Public Sector Act 2022*, section 150; and

(b) the person's contract of employment with the commission is taken to be a contract of employment between the person and the chief executive and applies with any necessary changes to give effect to the contract.

(4) The change of the person's employer under subsection (2) does not—

(a) affect the person's total remuneration; or

(b) interrupt the person's continuity of service, except that the person is not entitled to claim the benefit of a right or entitlement more than once in relation to the same period of service; or

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(c) prejudice the person's existing or accruing rights to superannuation, or recreation, sick, long service or other leave; or

(d) constitute a termination of employment by the commission, retrenchment or redundancy; or

(e) entitle the person to a payment or other benefit merely because the person is no longer employed by the commission; or

(f) require any payment to be made in relation to the person's accrued rights to recreation, sick, long service or other leave irrespective of any arrangements between the commission and the person.

(5) In this section—

executive manager means a senior executive employee with responsibility for managing the commission, subject only to the direction of the board.

266 Act applies despite other laws and instruments

A thing may be done under this division despite any other law or instrument.

267 Effect on legal relationships

(1) Anything done under this division—

(a) does not make the commission or the State liable for a civil wrong or a contravention of a law or for a breach of contract, confidence or duty; and

(b) does not make the commission or the State in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment, novation or transfer of a right or liability or the disclosure of information; and

(c) does not fulfil a condition that—

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(i) terminates, or allows a person to terminate, an instrument or obligation; or

(ii) modifies, or allows a person to modify, the operation or effect of an instrument or obligation; or

(iii) allows a person to avoid or enforce an obligation or liability contained in an instrument; or

(iv) requires a person to perform an obligation contained in an instrument; or

(v) requires any money to be paid before its stated maturity; and

(d) does not release a surety or other obligee, wholly or partly, from an obligation.

(2) If, apart from this section, the advice, consent or approval of a person would be necessary to do something under this division, the advice is taken to have been obtained or the consent or approval is taken to have been given unconditionally.

(3) If giving notice to a person would be necessary to do something under this division, the notice is taken to have been given.

(4) A reference in this section to the State includes a reference to an employee or agent of the State.

268 References to the commission

In an Act or document, a reference to the commission is, if the context permits, taken to be a reference to the State.

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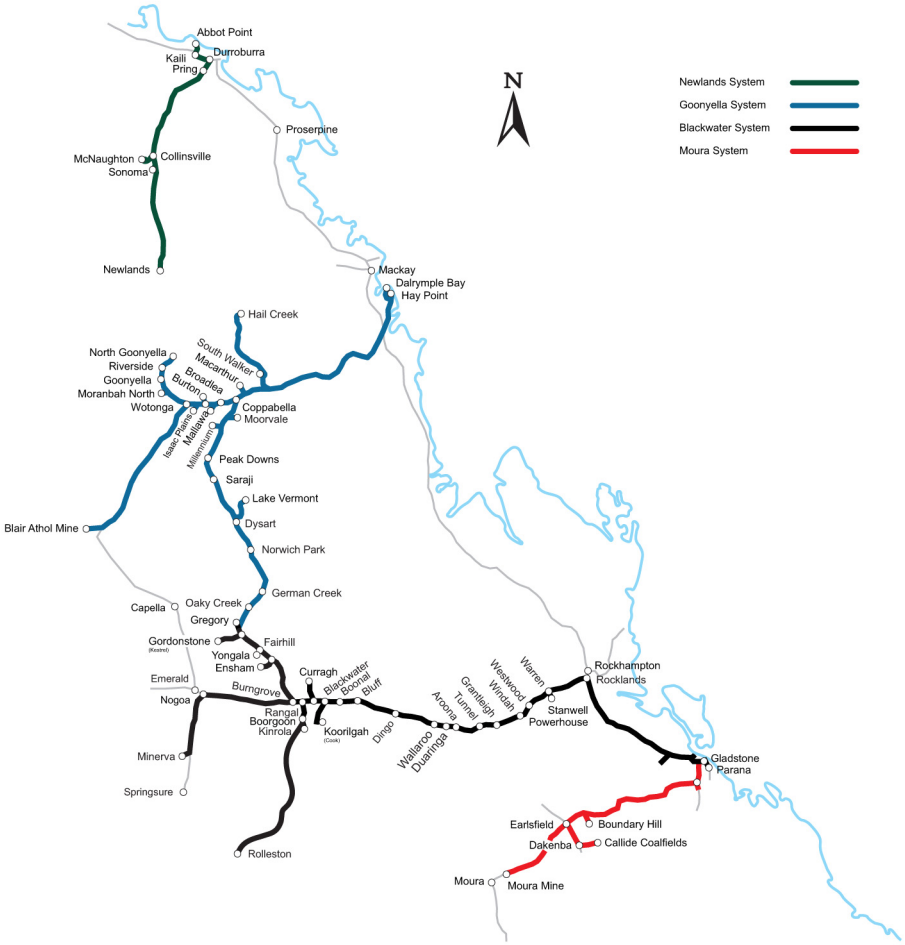
Schedule 1 Central Queensland coal network rail infrastructure

section 250



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Schedule 2 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 (whether it is entered into before or after the service is declared).

access code means a code mentioned in part 5, division 6.

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 or operator 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.

applicant, for a request made to the authority under section 77 or 170G, means the person who made the request.

application, for part 5, division 7A, see section 150C.

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.

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approved undertaking means an undertaking approved by the authority, and includes the 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 water supply activity means a water supply activity that is—

(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.

competitive neutrality complaint see section 40.

complainant, for a competitive neutrality complaint, means the person who made the complaint to the authority.

court means the Supreme Court.

declaration means—

(a) for part 5—a declaration of a service made by the Minister under part 5, division 2; or

(b) for part 5A—a declaration of a monopoly water supply activity.

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 Minister under part 5A, division 2.

declaration recommendation means—

(a) for part 5—a recommendation made by the authority under section 79 or 87A; or

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

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declared service means a service for which a declaration is in operation.

deputy chairperson means the deputy chairperson of the authority.

determination for part 5A, division 2, subdivision 7, see section 170ZA.

director see the Corporations Act, section 9.

dispute notice means an access dispute notice.

draft access undertaking, for part 5, division 7A, see section 150C.

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.

extension, of a facility, includes an enhancement, expansion, augmentation, duplication or replacement of all or part of the facility.

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.

government means—

(a) for part 3—

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(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—

(a) means—

(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; and

(b) includes—

(i) for parts 3 and 5A—a local government entity; and

(ii) for part 4—a subsidiary, within the meaning of the *Government Owned Corporations Act 1993*, section 2, of 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.

initial amendment notice, for part 5, see section 139.

initial undertaking notice see section 133.

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investigation means an investigation conducted under this Act.

investigation notice means—

(a) for an investigation under part 3, division 2A—a notice of the investigation given under section 21F; or

(b) for an investigation under part 3, division 3—a notice of the investigation given under section 25; or

(d) for an investigation under part 5, division 2, subdivision 3—a notice of the investigation given under section 82; or

(e) for an investigation under part 5, division 2, subdivision 4A—a notice of investigation given under section 87E; or

(f) for an investigation under part 5, division 2, subdivision 5—a notice of the investigation given under section 90; or

(g) for an investigation under part 5, division 7, subdivision 3—a notice of the investigation given under section 146; or

(h) for an investigation under part 5, division 7A—a notice of the investigation given under section 150I; or

(i) for an investigation under part 5A, division 2, subdivision 3—a notice of the investigation given under section 170L; or

(j) for an investigation under part 5A, division 2, subdivision 5—a notice of the investigation given under section 170T; or

(k) for an investigation under part 5A, division 2, subdivision 7—a notice of the investigation given under section 170ZS.

Local Government Act means the *Local Government Act 2009*.

local government entity means—

(a) a local government or part of a local government; or

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(b) a local government owned corporation.

local government Minister means the Minister administering the Local Government Act.

local government owned corporation means a local government owned corporation under the Local Government Act.

market see section 71.

mediated resolution, of an access dispute, see section 115E(1).

mediation agreement, for part 5, division 5, subdivision 2A, see section 115E(2).

mediation conference, for the mediation of an access dispute for part 5, division 5, subdivision 2A, see section 115A(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.

monopoly business activity means a government business activity or non-government business activity declared to be a monopoly business activity under a regulation or by the Minister.

monopoly water supply activity means a candidate water supply activity declared by the Minister, under section 170N, to be a monopoly water supply activity.

non-government business activity means a business activity—

(a) carried on by a person other than a government agency; and

(b) involving services provided by means of a facility.

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notice for part 5A, division 2, subdivision 7, see section 170ZA.

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.

part 3 Ministerial declaration see section 21D(1).

party means—

(a) for the mediation of an access dispute—a party to the mediation under section 115B; or

(b) for the arbitration of an access dispute—a party to the arbitration under section 116; or

(c) for an access determination—a party to the arbitration in which the authority made the access determination; or

(d) for the arbitration of an application for arbitration under the *Water Supply (Safety and Reliability) Act 2008*, section 524(2)—a party to the arbitration.

port infrastructure see *Transport Infrastructure Act 1994*, schedule 6.

prescribed person, for part 5, division 7A, see section 150C.

price includes any rate, fee, levy and charge and any other valuable consideration (however described).

price monitoring investigation see section 22.

pricing practice, for a monopoly business activity or a monopoly water supply activity—

(a) means—

(i) the level and structure of prices for the activity; or

(ii) anything that affects the level and structure of prices for the activity, including, for example, the service quality, costs of production and levels of performance relating to the activity; and

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(b) includes, for a monopoly water supply activity, anything that may be included in a water pricing determination under section 170ZB(5) or (6).

principle of competitive neutrality see section 38(1).

rail transport infrastructure see *Transport Infrastructure Act 1994*, schedule 6.

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 decisions or responses, relating to monopoly business activities involving the supply of water;

(b) the register of declarations under part 5;

(c) the register of access determinations;

(d) the register of approved access undertakings;

(e) the register of rulings under part 5, division 7A;

(f) a register that the authority is required to keep under the *Electricity Act 1994*, section 254B or the *Gas Supply Act 2003*, section 310A;

(g) the register of declarations of monopoly water supply activities;

(h) the register of water pricing determinations.

related access provider, in relation to a service, means an access provider that—

(a) owns or operates the service; and

(b) provides, or proposes to provide, access to the service to itself or a related body corporate of the access provider.

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; or

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(b) another entity that is a subsidiary of the other body corporate under the *Government Owned Corporations Act 1993*, section 2.

relevant assumption, for part 5, division 7A, see section 150C.

relevant circumstances, for part 5, division 7A, see section 150C.

relevant declaration criteria, for part 3, means the current criteria for deciding whether to declare a government business activity, or a non-government business activity, to be a monopoly business activity, given by the authority to the Minister under part 3, division 1A.

Note—

The criteria are given by the authority to the Minister under section 14 for a government business activity or section 14A for a non-government business activity.

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—

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(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 to be responsible for the government agency by the Minister administering this Act.

responsible person, for an approved access undertaking, means the person to whom the undertaking applies as an owner or operator of the relevant service.

revocation recommendation means—

(a) for part 3—a recommendation made by the authority under section 21D; or

(b) for part 5—a recommendation made by the authority under section 88; or

(c) for part 5A—a recommendation made by the authority under section 170R.

ruling, for part 5, division 7A, see section 150C.

ruling notice, for part 5, division 7A, see section 150C.

secondary amendment notice, for part 5, see section 140(2).

secondary undertaking notice see section 134.

service (other than for part 5) 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.

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service, for part 5, see section 72.

significant business activity, for part 3, means a significant business entity of a local government under the Local Government Act.

user, for a service, means a person who has access to the service under an access agreement or access determination.

water pricing determination see section 170ZB(1).

water pricing determination code means a code mentioned in part 5A, division 3.

water pricing period for part 5A, division 2, subdivision 7, see section 170ZA.

water pricing proposal for part 5A, division 2, subdivision 7, see section 170ZA.

water supplier means an entity, other than the State or a government agency, that—

(a) carries on, or negotiates to carry on, a water supply activity; and

(b) is not owned, whether legally or beneficially and whether entirely or in part, by the State or a government agency.

water supply activity means the provision of 1 or both of the following—

(a) water services, including the following—

(i) water storage;

(ii) the transmission of water;

(iii) the reticulation of water;

(iv) water treatment or recycling;

(b) wastewater services, including the following—

(i) wastewater treatment;

(ii) the collection and transmission of wastewater through infrastructure;

(iii) the disposal of wastewater.

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water supply criteria see section 170C.

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