

Our reference: 14/334

PO Box K35, Haymarket Post Shop NSW 1240
Level 15, 2-24 Rawson Place, Sydney NSW 2000
T (02) 9290 8400 F (02) 9290 2061
ABN 49 202 260 878

24 June 2015

www.ipart.nsw.gov.au

Mr Rod Sims
Chairman
Australian Competition and Consumer Commission
GPO Box 520
Melbourne Victoria 3001

Contact Matthew Edgerton
T (02) 9290 8414
E Matthew_edgerton@ipart.nsw.gov.au

Dear Mr Sims *Rod*

ACCREDITATION UNDER THE WATER CHARGE (INFRASTRUCTURE) RULES

I am writing to apply for accreditation of arrangements for the Independent Pricing and Regulatory Tribunal of NSW to approve or determine regulated charges of Part 6 and Part 7 operators relating to New South Wales. This letter covers attachments that contain information relevant to the application as set out in the *Water Charge (Infrastructure) Rules 2010*.

The arrangements to be accredited are set out in the *Independent Pricing and Regulatory Tribunal Amendment (Accredited State Water Regulator) Bill 2015*, a copy of which is at Attachment A. This bill has been passed by both houses of NSW Parliament and received assent on 9 June 2015.

Attachment B addresses the criteria set out in Schedule 4 (Information to be included in an application under Part 9) of the *Water Charge (Infrastructure) Rules 2010*.

At Attachment C is evidence that the application has the support of the Head of the Department with responsibility for the Independent Pricing and Regulatory Tribunal of NSW, the Premier of NSW. This is included to comply with rule 60(2)(c) of the *Water Charge (Infrastructure) Rules 2010*.

I trust that this information is sufficient.

If you or your staff have any queries in relation to our application, please contact Matthew Edgerton, Executive Director Water Pricing, on (02) 9290 8414.

Yours sincerely



Peter J. Boxall AO
Chairman

Attachment A - Legislation

Passed by both Houses



New South Wales

Independent Pricing and Regulatory Tribunal Amendment (Accredited State Water Regulator) Bill 2015

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2015

Clerk of the Parliaments



New South Wales

Independent Pricing and Regulatory Tribunal Amendment (Accredited State Water Regulator) Bill 2015

Act No , 2015

An Act to amend the *Independent Pricing and Regulatory Tribunal Act 1992* to enable the Tribunal to approve or determine charges for the provision of certain water infrastructure services in the Murray-Darling Basin.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the Independent Pricing and Regulatory Tribunal Amendment (Accredited State Water Regulator) Act 2015.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Independent Pricing and Regulatory Tribunal Act 1992 No 39

[1] Part 3B

Insert after Part 3A:

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

24AE Definitions

In this Part:

ACCC means the Australian Competition and Consumer Commission established by section 6A of the *Competition and Consumer Act 2010* of the Commonwealth.

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

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

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

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

Commonwealth Water Charge Rules means the *Water Charge (Infrastructure) Rules 2010* of the Commonwealth.

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

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

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

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

24AF Interpretation of applied provisions

- (1) Subject to subsection (2), the *Acts Interpretation Act 1901* of the Commonwealth applies as a law of this State in relation to the applied provisions as if the applied provisions were a Commonwealth Act and each rule of the applied provisions were a section of a Commonwealth Act.
- (2) The *Acts Interpretation Act 1901* of the Commonwealth applies to the applied provisions only to the extent to which that Act applies to the Commonwealth Water Charge Rules.
- (3) The following provisions apply to the applied provisions:
 - (a) expressions used in the applied provisions have the same meaning as in the *Water Act 2007* of the Commonwealth,
 - (b) the applied provisions are to be read and construed subject to the *Water Act 2007* of the Commonwealth and so as not to exceed the rule-making power in section 92 of that Act or any other ancillary rule-making powers in that Act.

- (c) if a provision of the applied provisions would, but for paragraph (b), be construed as being in excess of any rule-making power referred to in that paragraph, it is taken to have effect to the extent to which it does not exceed that rule-making power.
 - (4) The *Interpretation Act 1987* of New South Wales does not apply in relation to the applied provisions.
- 24AG Application of Commonwealth provisions**

In respect of Basin water resources, the Commonwealth provisions, as in force from time to time, apply as a law of this State.
- 24AH Functions of Tribunal**

The Tribunal has all the functions conferred on a Regulator under the applied provisions.
- 24AI Operation of applied provisions**

Without limiting section 24AG, the applied provisions have effect only while the arrangements referred to in section 24AJ (a) are accredited arrangements.
- 24AJ Application for accreditation**

The Tribunal may:

 - (a) apply to the ACCC for section 24AH (to the extent to which it provides for the approval or determination by the Tribunal of regulated charges of Part 6 operators and Part 7 operators relating to Basin water resources in accordance with the applied provisions) to be accredited as accredited arrangements, and
 - (b) do anything else necessary to enable those arrangements to be so accredited.
- 24AK Tribunal not subject to Ministerial control in exercise of functions**

Despite any provision of this Act or any other law to the contrary, the Tribunal is not subject to the control or direction of any Minister in the exercise of its functions under the applied provisions.
- 24AL Notification of approval, revocation or cessation of accreditation**
 - (1) If the ACCC approves an application for accreditation of the arrangements referred to in section 24AJ (a) as accredited arrangements, the Tribunal must publish notice of that approval within 7 days after that approval.
 - (2) A notice under subsection (1) must:
 - (a) be published in the Gazette and on the Tribunal's website, and
 - (b) include a copy of the ACCC's decision to approve the application and the date on which the accreditation takes effect.
 - (3) If the ACCC revokes the accreditation of the arrangements referred to in section 24AJ (a) as accredited arrangements, the Tribunal must publish notice of that revocation within 7 days after that revocation.
 - (4) A notice under subsection (3) must:
 - (a) be published in the Gazette and on the Tribunal's website, and
 - (b) include a copy of the ACCC's decision to revoke the accreditation and the date on which the revocation takes effect.

- (5) If accreditation of the arrangements referred to in section 24AJ (a) as accredited arrangements ceases to have effect, the Tribunal must publish notice of that fact within 7 days after the date on which that accreditation ceases to have effect.
- (6) A notice under subsection (5) must:
 - (a) be published in the Gazette and on the Tribunal's website, and
 - (b) include the date on which the accreditation ceases to have effect.

Note. Part 9 of the Commonwealth Water Charge Rules provides for the approval of an application for accreditation of arrangements and the revocation of the accreditation. In accordance with that Part, the ACCC is required to publish notice of the approval or revocation on its website.

[2] Schedule 1 Government agencies for which Tribunal has standing reference

Insert "(but excluding any services provided by Water NSW in respect of which fees and charges may be approved or determined in accordance with Part 6 or 7 of the *Water Charge (Infrastructure) Rules 2010* of the Commonwealth or the applied provisions, within the meaning of Part 3B)" after "Water NSW".

Attachment B – Schedule 4 Information

4(1) The name and address of the applicant

Independent Pricing and Regulatory Tribunal of NSW

PO Box K35

Haymarket Post Shop NSW 1240.

Contact:

Matthew Edgerton, Executive Director, Water Pricing

Tel: (02) 9290 8414

Email: matthew_edgerton@ipart.nsw.gov.au

4(2) The title of the State Act under which the applicant is established or appointed.

Independent Pricing and Regulatory Tribunal Act 1992 (NSW)

4(3) The title of the State Act under which the applied provisions are applied as a law of the State

Independent Pricing and Regulatory Tribunal Act 1992 (NSW) as amended by the Independent Pricing and Regulatory Tribunal Amendment (Accredited State Water Regulator) Bill 2015

4(4) The public purpose for which the applicant is established or appointed.

1. According to the second reading speech of the Bill establishing IPART, IPART's principal aim is to ensure that the interests of citizens of New South Wales, both as consumers and taxpayers, are protected and are seen to be properly protected. As part of this principal aim, IPART is to determine the maximum price for monopoly services supplied by nominated government agencies and to report on the pricing policies of those agencies.

2. IPART has such functions as are conferred on it by or under the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW) or any other Act or law. Our functions under the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW) include:
 - a. determining maximum prices for government monopoly services supplied by government agencies specified in Schedule 1 of the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW) (**Schedule 1 Agencies**) under section 11 of that Act;
 - b. conducting investigations and making reports on matters referred to by the Minister under section 12 of *Independent Pricing and Regulatory Tribunal Act 1992* (NSW); and
 - c. monitoring and reporting to the Minister on the compliance by the Schedule 1 Agencies with relevant IPART pricing determinations under section 24AA of the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW).
3. IPART provides an integrated system of economic regulation and licence regulation in NSW that covers pricing for water, public transport, local government, gas industry and licensing of water, electricity and gas. Our core functions are to:
 - i) Set or recommend maximum prices for monopoly services in NSW (including water and public transport).
 - ii) Regulate maximum gas prices that regulated energy retailers can charge to residential and small business customers.
 - iii) Administer licensing or authorisation of water, electricity and gas businesses, and monitor compliance with licence conditions.
 - iv) Advise the NSW Government or its agencies on issues such as pricing, efficiency, industry structure and competition.
 - v) Regulate private sector access to water and wastewater to encourage competition and re-use.
 - vi) Maintain a local government cost index, determine the maximum percentage increase in local government general revenue (rate peg), determine special rate variations and review Councils' development contributions plans.
 - vii) Review the regulatory burden in priority industries to reduce red tape.
 - viii) Administer the Energy Savings Scheme and associated register of energy savings certificates.
 - ix) Undertake market monitoring of relevant sectors in the electricity market.
 - x) Register agreements for access to public infrastructure assets and arbitrate disputes about agreements for access to public infrastructure.
 - xi) Investigate complaints about competitive neutrality referred to us by the Government.

4(5) A statement as to whether the criteria set out in Schedule 5 are satisfied.

The criteria and a statement setting out how they are satisfied are below.

Schedule 5 Criteria for accreditation of arrangements

5(1) There must be a law of the State:

- (a) under which the applied provisions are a law of the State; and**
- (b) that includes provision to the effect that the applied provisions operate in the State only during such period or periods as an accreditation of arrangements under Part 9 has effect.**

The "applied provisions" are a law of the State pursuant to sections 24AG and 24AI of the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW).

Section 24AI will not apply unless IPART obtains accreditation for arrangements under Part 9 of the *Water Charge (Infrastructure) Rules 2010* (Cth). Therefore, the applied provisions will operate in NSW only during such period or periods as an accreditation of arrangements under Part 9 of the Rules has effect.

5(2) The functions of the State Agency must include the functions conferred on a Regulator under the applied provisions.

The functions of IPART include the functions conferred on a Regulator under the "applied provisions" as set out in section 24AH of the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW):

Functions of Tribunal

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

5(3) The State Agency must not be subject to the direction or control of a Minister of the State in carrying out its functions under the applied provisions.

Section 24AK of the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW) will apply when IPART is carrying out its functions under the applied provisions. Section 24AK provides that:

Tribunal not subject to Ministerial control in exercise of functions

Despite any provisions of this Act or any other law to the contrary, the Tribunal is not subject to the control or direction of any Minister in the exercise of its functions under the applied provisions.

There is not a provision under any of the Acts relevant to IPART's powers and functions to approve or determine Basin water charges that would make IPART subject to the direction or control of a Minister in carrying out its functions under the "applied provisions".

5(4) The State Agency must not be, or have a relevant interest in a Part 6 operator or a Part 7 operator .

IPART is not a Part 6 or Part 7 operator as it does not provide water infrastructure services. IPART does not have a "relevant interest" in such an operator.

4(6) The arrangements for which the applicant seeks accreditation, being arrangements for approving or determining regulated charges of Part 6 operators and Part 7 operators under the applied provisions.

The arrangements for which IPART is applying for accreditation are those prescribed in Part 3B of the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW).

Attachment C - Letter of Support



Premier of New South Wales

Reference: A1195276

Mr Hugo Harmstorf
Chief Executive Officer
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop
NSW 1240

10 JUN 2015

Dear Mr Harmstorf ^{Hugo}

I write, as the Minister responsible for the Independent Pricing and Regulatory Tribunal (IPART), to formally support IPART's application for accreditation from the Australian Competition and Consumer Commission as a state regulator under the *Water Charge (Infrastructure) Rules 2010*.

I understand that IPART accreditation will deliver efficiencies for the state by providing a single pricing regulator for Water NSW. IPART has a proven track record in regulating water prices in the NSW Coastal Valleys and is well placed to set prices for the Murray-Darling Basin on behalf of the Australian Competition and Consumer Commission.

Yours sincerely



MIKE BAIRD MP
Premier