



New South Wales

Independent Pricing and Regulatory Tribunal Regulation 2022

under the

Independent Pricing and Regulatory Tribunal Act 1992

[*The following enacting formula will be included if this Regulation is made—*]
Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Independent Pricing and Regulatory Tribunal Act 1992*.

Minister for Customer Service and Digital Government

Explanatory note

The object of this Regulation is to repeal and remake, without significant amendments, the *Independent Pricing and Regulatory Tribunal Regulation 2017*, which would otherwise be repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation modifies the application of the *Commercial Arbitration Act 2010* to the arbitration of disputes relating to public infrastructure access regimes, under the *Independent Pricing and Regulatory Tribunal Act 1992*, Part 4A.

The modifications relate to the following matters—

- (a) the right to legal representation,
- (b) the private hearing of disputes,
- (c) the recovery of the costs of arbitration,
- (d) appeals to the Supreme Court on questions of law.

The provisions of this Regulation also apply to the arbitration of disputes under the *Water Industry Competition Act 2006*, section 40 and the *Water Industry Competition (Access to Infrastructure Services) Regulation 2007*, section 11.

public consultation draft

Independent Pricing and Regulatory Tribunal Regulation 2022 [NSW]
Contents

Contents

| | Page |
|-------------------------------|------|
| 1 Name of Regulation | 3 |
| 2 Commencement | 3 |
| 3 Definitions | 3 |
| 4 Object of Regulation | 3 |
| 5 Legal representation | 3 |
| 6 Private hearing of disputes | 3 |
| 7 Costs of arbitration | 4 |
| 8 Appeals against awards | 4 |
| 9 Repeal and savings | 4 |

Independent Pricing and Regulatory Tribunal Regulation 2022

under the

Independent Pricing and Regulatory Tribunal Act 1992

1 Name of Regulation

This Regulation is the *Independent Pricing and Regulatory Tribunal Regulation 2022*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Note— This Regulation repeals and replaces the *Independent Pricing and Regulatory Tribunal Regulation 2017*, which would otherwise be repealed by the *Subordinate Legislation Act 1989*, section 10(2).

3 Definitions

In this Regulation—

dispute means a dispute referred to in the Act, section 24A.

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

Note— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

4 Object of Regulation

The object of this Regulation is to modify, for the purposes of the Act, section 24A, the application of the *Commercial Arbitration Act 2010* to the arbitration of a dispute.

5 Legal representation

- (1) A party to a dispute may be represented by an Australian legal practitioner in proceedings before an arbitrator only if leave is granted by the arbitrator.
- (2) An arbitrator may grant leave only if, in the arbitrator's opinion—
 - (a) representation of the party by an Australian legal practitioner—
 - (i) is likely to shorten the hearing of the dispute, or
 - (ii) is likely to reduce the costs of the dispute, or
 - (iii) will assist the arbitrator in the conduct of the arbitration, or
 - (b) the party will be unfairly disadvantaged if the party is not represented by an Australian legal practitioner.
- (3) This section has effect instead of the *Commercial Arbitration Act 2010*, section 24A.

6 Private hearing of disputes

Despite the *Commercial Arbitration Act 2010*, sections 27E–27I, a dispute must be heard in private unless the arbitrator otherwise directs.

7 Costs of arbitration

- (1) For the purposes of the *Commercial Arbitration Act 2010*, section 33B, the fees and expenses of the arbitrator or arbitrators are taken to include all costs in relation to the arbitration of a dispute incurred by—
 - (a) the arbitrator or arbitrators, and
 - (b) the Tribunal.
- (2) For the purposes of subsection (1), costs in relation to the arbitration of a dispute include the following—
 - (a) any administrative costs,
 - (b) costs incurred in engaging consultants and expert witnesses,
 - (c) witnesses' expenses.
- (3) Subsections (1) and (2) do not limit the fees or expenses of the arbitrator or arbitrators.

8 Appeals against awards

- (1) A party to a dispute may, with the leave of the Supreme Court, appeal to the Supreme Court on a question of law arising out of an award.
- (2) Subsection (1) has effect instead of the *Commercial Arbitration Act 2010*, section 34A(1) and (2).

9 Repeal and savings

- (1) The *Independent Pricing and Regulatory Tribunal Regulation 2017* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Independent Pricing and Regulatory Tribunal Regulation 2017*, had effect under that Regulation continues to have effect under this Regulation.