



Arbitration of Disputes
Under the
Water Industry Competition Act 2006
Practice Directions

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PART A - GENERAL MATTERS

1 Introduction

1.1 General

- (a) The following Articles Nos. 1 to 27 set out a series of practice directions (“Directions”) for Arbitrators appointed to determine Disputes under sections 40 and 46 of the *Water Industry Competition Act 2006*.
- (b) These Directions provide for a recommended procedural framework when a Dispute under section 40 or 46 of the Act is referred to arbitration.
- (c) An Arbitrator must determine any Dispute in relation to Sections 40 and 46 of the *Water Industry Competition Act 2006* (NSW) in accordance with:
 - (i) the *Water Industry Competition Act 2006* (NSW) (“Act”);
 - (ii) those sections of the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW) (“IPART Act”) which the Act provides will apply to the determination of an Access Dispute under the Act, as well as the *Independent Pricing and Regulatory Tribunal Regulation 2007* (NSW);
 - (iii) the *Commercial Arbitration Act 1984* (NSW) (“CAA”); and
 - (iv) the *Water Industry Competition (Access to Infrastructure Services) Regulation 2007* (NSW).
- (d) It is expected that in most cases, the Arbitrator will also conduct the arbitration in accordance with these Directions. However, the Arbitrator is not required to do so and retains the discretion, in accordance with section 14 of the CAA to adopt, subject to the constraints noted above, any procedure which the Arbitrator considers is appropriate for the timely, efficient, cost-effective and fair resolution of the Dispute.
- (e) Where IPART acts as the Arbitrator, it will usually, but not always, follow the Practice Directions
- (f) With reference to Article 1.1(d) above, the following Articles must be followed as they are mandatory provisions of the Act and the IPART Act:
 - (i) In the case of Access Disputes:
 - (A) Article 1.1(c)(ii);
 - (B) Article 1.1(c)(iii);
 - (C) Article 5;
 - (D) Article 7;
 - (E) Article 8.2(a) and (c);
 - (F) Article 9.3(a), (c) and (d);

- (G) Article 10;
 - (H) Article 11.3(b)(iii)
 - (I) Article 13.1(d);
 - (J) Article 19(a);
 - (K) Article 22.1(a)-(c);
 - (L) Article 22.2;
 - (M) Article 23.1(a)-(b);
 - (N) Article 24; and
 - (O) Article 27.1.
- (ii) In the case of Sewer Mining Disputes:
- (A) Article 1.1(c)(iii);
 - (B) Article 8.2(a)
 - (C) Article 9.3(a);
 - (D) Article 19(a)
 - (E) Article 22.1(a)-(b);
 - (F) Article 22.2; and
 - (G) Article 23.2.
- (g) These Directions should be read in conjunction with IPART's *Guide to the Arbitration of Disputes under the Water Industry Competition Act 2006*.

2 Definitions and interpretation

2.1 Definitions

In these Directions, where the context permits and unless otherwise specified:

Access Dispute means any dispute under section 40 of the Act which has been referred to IPART for arbitration;

Access Regulation means the *Water Industry Competition (Access to Infrastructure Services) Regulation 2007* (NSW);

Act means the *Water Industry Competition Act 2006* (NSW);

Applicant means the person who has referred a Dispute to arbitration under the Act;

Arbitrator means an arbitrator or arbitrators appointed to hear and determine a Dispute;

Arbitrator's Costs means the fees and expenses of the Arbitrator incurred in the course of hearing and determining a Dispute, including but not limited to:

- (a) the Arbitrator's fees;
- (b) incidental costs such as room hire, administrative support, costs incurred in preparing transcripts of proceedings, costs incurred in engaging consultants and expert witnesses and witnesses' expenses;
- (c) all other costs which may be incurred by the Arbitrator in hearing and determining the Dispute, such as the costs of any industry or expert assistance retained by the Arbitrator, or the costs of any assistance requested by the Arbitrator from any member of or consultant to the Secretariat of IPART; and
- (d) all costs incurred by IPART

Business Day means a day on which banks are open for business in Sydney excluding a Saturday, Sunday or public holiday;

CAA means the *Commercial Arbitration Act 1984* (NSW);

Costs of an Arbitration includes both the Costs of the Parties and the Arbitrator's Costs;

Costs of the Parties means the proper legal costs and disbursements of the Parties incurred in the course of preparing for, and at a hearing of, a Dispute;

Dispute means either an Access Dispute or a Sewer Mining Dispute as the case may be;

Guide to Arbitration Disputes means IPART's guide entitled 'Guide to the Arbitration of Disputes under the *Water Industry Competition Act 2006*';

IPART means the Independent Pricing and Regulatory Tribunal;

IPART Act means the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW);

IPART Regulation means the *Independent Pricing and Regulatory Tribunal Regulation 2007* (NSW)

Notice of Dispute means the form as set out in Form 1 (in the case of an Access Dispute) or Form 2 (in the case of a Sewer Mining Dispute) of Appendix A of the Guide to Arbitration Disputes;

Notice of Withdrawal means the form as set out in Form 5 of Appendix B of the Guide to Arbitration Disputes;

Panel of Arbitrators has the meaning set out in Article 9.1 of these Directions;

Party means a party to a Dispute;

Potentially Impeded Third Party has the meaning set out in Article 21 of these Directions;

Premier means the Premier of the Government of New South Wales from time to time;

Registry means the Arbitration Registry of IPART;

Schedule of Issues has the meaning set out in Article 12.2 of these Directions;

Sewer Mining Dispute means a dispute under section 46(1) of the Act which has been referred to IPART for arbitration.

3 Confidentiality

- (a) All proceedings (including but not limited to preliminary meetings and hearings) will be conducted in private.
- (b) All documents produced by a Party to any other Party, or to the Arbitrator, will be confidential unless disclosure of such documents is:
 - (i) required by law;
 - (ii) required to be disclosed pursuant to the order of a competent court or tribunal.
- (c) Each Party must maintain the confidentiality of all documents and all information (whether presented in written, oral, or other form) which is produced to it by any other Party during the conduct of the arbitration.
- (d) Each Party (where a Party is a natural person) or each officer, employee or internal or external adviser of a Party (where a Party is not a natural person) must sign a deed in the form as set out in Appendix D of the Guide to Arbitration Disputes, whereby the Party undertakes to maintain the confidentiality of such information as outlined in this Article 3.

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PART B - COMMENCEMENT OF DISPUTE

4 Referral of a Dispute

4.1 Referral of Dispute to IPART

Any Party may apply to IPART for the Dispute to be determined by arbitration.

4.2 Notice of Dispute

- (a) An Applicant must refer a Dispute to IPART by filing a Notice of Dispute with the Registry.
- (b) The Applicant should provide copies of the Notice of Dispute to each of the Parties, within 5 Business Days of the referral of the Dispute to IPART.
- (c) Once a Notice of Dispute is filed with the Registry, IPART may refer to and use the Notice of Dispute as a summary of the nature of the Dispute.
- (d) The Notice of Dispute may be copied to any person whom the Arbitrator may require to be notified of the Dispute in accordance with these Directions, the Act, the IPART Act, the CAA, the Access Regulation and the IPART Regulation.

5 Refusal to accept referral

In relation to Access Disputes if IPART is not satisfied that the Applicant has, in good faith, attempted to resolve the Access Dispute by negotiation, then IPART may, in its absolute discretion, refuse to accept an application in relation to that Access Dispute. In accordance with clause 8 of the Access Regulation, IPART must have regard to the provisions of that clause in determining whether the Parties have attempted to resolve the Access Dispute by negotiation.

6 Withdrawal of referrals

Where the Party who referred the Dispute to Arbitration wishes to withdraw its claim it may indicate its intention to do so by:

- (i) filing a Notice of Withdrawal, with the Registry; and
- (ii) by serving the Notice of Withdrawal on all other Parties to whom a Notice of Dispute has been provided.

After the Applicant files a Notice of Withdrawal:

- (i) the Parties may agree to a consent award to be given by the Arbitrator in the terms agreed by the Parties and the Arbitrator (including an order as to costs);
- (ii) the Parties may agree to settle the issue of costs but not in the form of a consent award;

- (iii) the other Parties to the Dispute may seek an award from the Arbitrator in relation to the costs of the Arbitration (assuming that the parties have not otherwise so agreed); or
- (iv) the other Parties may consent to the withdrawal but with no award or order as to costs.

Where the Parties have reached agreement as to costs then they should complete, and jointly file with the Registry a Notice of Consent as to Costs.

7 Adjourment of proceedings

- (a) This Article 7 applies only to Access Disputes.
- (b) If a Party to an Access Dispute seeks access in relation to any activity for which that Party would require, but does not yet hold, a licence under Part 2 of the Act:
 - (i) the Arbitrator may adjourn proceedings for such time as the Arbitrator considers reasonable for the purpose of enabling the access seeker to obtain such a licence; and
 - (ii) if the access seeker fails to obtain such a licence within that time, may make a determination refusing the access sought.

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PART C - THE ARBITRATOR

8 Appointment of arbitrator

This Article 8 applies to any Dispute which has been referred to IPART for determination under ss 40(1) and 46(1) of the Act.

8.1 Panel of Arbitrators

IPART will maintain a Panel of Arbitrators. The Panel of Arbitrators will be comprised of

- (a) members of a panel approved by the Premier; and
- (b) any other individual that IPART considers to be a suitably qualified person to act as Arbitrator.

8.2 Appointment of arbitrator

- (a) As soon as practicable, but no later than 20 Business Days after the filing of the Notice of Dispute, IPART will, in accordance with section 40 of the Act (if an Access Dispute) or section 46 of the Act (if a Sewer Mining Dispute), either:
 - (i) determine that it will act as Arbitrator; or
 - (ii) appoint a person or persons from the Panel of Arbitrators to act as Arbitrator,
to hear and determine the Dispute.
- (b) The Registry will write to the Parties informing them of the name(s) of the person(s) acting as Arbitrator. IPART will appoint either one person or three persons to act as the Arbitrator.
- (c) For the purpose of any Access Dispute, IPART will only appoint itself or a person or person(s) on the Premier's approved panel as an Arbitrator.

8.3 Objections to IPART's choice of arbitrator

- (a) A Party to an arbitration may object to IPART's choice of an Arbitrator.
- (b) If a Party wishes to raise an objection to IPART's choice of an Arbitrator it should make such objection to IPART within 10 Business Days of receiving notification of the Arbitrator's appointment under Article 8.2(b).
- (c) If a Party raises an objection, IPART, following consultation with the Parties, may (but is not required to):
 - (i) where it was originally proposed that IPART act as Arbitrator, appoint an alternative Arbitrator; or
 - (ii) subject to Article 8.2(c), where appointment from the Panel of Arbitrators is proposed, appoint an alternative person or persons from the Panel of Arbitrators to act as Arbitrator.

9 Arbitrator's decisions

9.1 Parties bound by Arbitrator's decisions

The Parties will at all times comply with the directions of the Arbitrator and must not do anything to delay or prevent the Dispute being heard and determined by the Arbitrator.

9.2 Failure to comply with Arbitrator's decisions

If any Party fails or refuses:

- (a) to attend a preliminary meeting;
- (b) to attend a hearing of a Dispute; or
- (c) to comply with any requirement of the Arbitrator, including any matter dealt with at a preliminary meeting,

the Arbitrator may, in his or her absolute discretion, continue with the preliminary meeting or hearing or determine the Dispute.

9.3 Time for determining the Dispute

- (a) The Arbitrator must use the Arbitrator's best endeavours to determine the Dispute within 6 months after the application for the Dispute to be determined is made to IPART.

In relation to Access Disputes:

- (b) The duration of any adjournments under Article 7 will not form part of the 6 month duration provided for in paragraph 9.3(a).
- (c) As soon as practicable after accepting an application for an Access Dispute, IPART must notify the Parties and the Minister of:
 - (i) the date on which the application was accepted; and
 - (ii) the date by which the Arbitrator must endeavour to determine the Dispute pursuant to s 40(8) of the Act.
- (d) If at any time it appears to the Arbitrator that it will not be practicable for the Access Dispute to be determined by the date notified in cl 9.3(c)(ii) above (or such other date as has been notified by IPART), the Arbitrator must give written notice to the Parties and to the Minister of the date by which the Arbitrator expects the Access Dispute to be determined.

9.4 Quorum for decision-making by IPART

If IPART has determined that it will act as Arbitrator, then at least two Tribunal members must be present when a decision is made concerning the Arbitration.

10 Powers of the Arbitrator

- (a) This Article 10 applies only to Access Disputes.
- (b) The Arbitrator of a Dispute under this Article 10 has those powers which IPART has under section 22 of the IPART Act.

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PART D - PRELIMINARY MEETING

11 Preliminary meeting

11.1 Preliminary Meeting

- (a) The Arbitrator will write to the Parties within 10 Business Days of the Arbitrator's appointment informing them of the time, date and place of the first preliminary meeting.
- (b) The preliminary meeting must occur no later than 20 Business Days from the notification of the Dispute under Article 4.2(b) unless the Arbitrator determines otherwise.
- (c) All preliminary hearings, including the Pre-Hearing Conference (as referred to in paragraph 11.7(b) below), may, if the Arbitrator sees fit, be conducted by teleconference or video-link.

11.2 Schedule of Issues

The Arbitrator will prepare a schedule of issues which sets out the issues that the Arbitrator proposes to deal with at the preliminary meeting (the "**Schedule of Issues**"). The Arbitrator will provide the Schedule of Issues to the Parties at least 3 Business Days before the date of the preliminary meeting.

11.3 Matters to be dealt with

At the preliminary meeting the Arbitrator:

- (a) will deal with the matters set out in the Schedule of Issues;
- (b) will deal with, as the Arbitrator sees fit, other preliminary matters arising in the Dispute which need to be dealt with for the efficient and expeditious resolution of the Dispute, in particular:
 - (i) whether any other persons should be joined as Parties in the arbitration, and make provision for them to be so joined;
 - (ii) whether any particular persons, or the public generally, should be informed of the Dispute, make provision for them to be so informed, and make any consequential directions in relation to them;
 - (iii) consider any request for leave for legal representation. A Party may be represented by an Australian legal practitioner only if the Arbitrator grants leave. The Arbitrator will only grant leave if the Arbitrator is of the opinion that:
 - (A) such legal representation is likely to shorten the hearing of the Dispute or to reduce the costs of the Dispute; or
 - (B) the Party would be unfairly disadvantaged if the Party were not represented by an Australian legal practitioner.

- (iv) seek information from the Parties as to the expert witnesses on whom they propose to rely at the hearing of the Dispute.

11.4 Further decisions to be made by the Arbitrator

The Parties may raise any other issues with the Arbitrator for consideration at the first preliminary meeting. The Arbitrator may or may not deal with such issues at the time of the preliminary meeting.

11.5 Timing

The Arbitrator will set a timetable for the completion of the preparatory steps required under this Article 11 including, if necessary, fixing a date for any hearing.

11.6 Urgent hearings

If a Dispute requires an urgent resolution, the Arbitrator may determine a timetable to facilitate an expedited hearing of the Dispute.

11.7 Further preliminary meetings

- (a) The Arbitrator may convene further preliminary meetings
- (b) At least 3 Business Days before the date of any hearing the Arbitrator and the Parties will meet to discuss the manner in which the Hearing will be conducted (the “**Pre-Hearing Conference**”). At the Pre-Hearing Conference or shortly thereafter, the Arbitrator will make directions as to the manner in which any hearing will be conducted.

11.8 Hearing date contingent on satisfactory completion of preliminary steps

The Arbitrator may refuse to set a hearing date until all of the matters dealt with at the preliminary meetings have been completed by the Parties.

11.9 Transcript of proceedings

A full transcript may be taken of all proceedings at a preliminary meeting if ordered by the Arbitrator or if agreed between the Arbitrator and the Parties.

PART E - ARBITRAL PROCEEDINGS

12 Position Statements

12.1 Position Statement

The Arbitrator will require, within a timeframe stipulated by the Arbitrator, that each Party prepare a document (or documents), called a Position Statement which sets out a clear statement of:

- (a) the nature of the Dispute;
- (b) the issues which that Party considers are likely to arise; and
- (c) the contentions of that Party.

13 Hearings

13.1 Conduct of hearings

- (a) The Arbitrator will not be bound by the rules of evidence.
- (b) The Arbitrator will determine the merits of a Dispute according to law.
- (c) The Arbitrator may conduct hearings in any manner the Arbitrator thinks fit (taking into account the need for fair, efficient and timely resolution of the Dispute).
- (d) Hearings will be held in private unless the Arbitrator directs otherwise.
- (e) The Arbitrator may give written directions as to certain persons who may be present, but in doing so must have regard to the wishes of the Parties, the need for commercial confidentiality and the requirements of Article 3.

13.2 Order of submissions

The Arbitrator may make any directions as to the order in which Parties are heard.

13.3 Status of written evidence

If written statements of witnesses have been ordered by the Arbitrator and prepared by the Parties, then at the hearing of a Dispute:

- (a) witnesses will not be allowed to give oral evidence further to their written statements unless the Arbitrator directs otherwise;
- (b) witnesses may be examined by any other Party, subject to any direction of the Arbitrator as to the conduct, subject-matter or direction of that examination (including the time allotted to such examination).

13.4 Transcript

A full transcript of the proceedings at the hearing must be taken. The cost of the transcript will be borne equally by the Parties and will not form part of the Arbitrator's Costs.

14 Written submissions

An Arbitrator may require that the Parties prepare written submissions in relation to the hearing of a Dispute.

15 Written statements

15.1 Evidence to be in writing

- (a) The Parties must provide their evidence in the form of written statements unless the Arbitrator directs otherwise.
- (b) Written statements of witnesses should be sworn or affirmed by the witness giving the statement.
- (c) All written statements should be filed with the Registry and served on the Arbitrator and the other Parties.

15.2 Time for filing of written statements

- (a) The Arbitrator will set a time for the filing and service of written statements.
- (b) A Party is not permitted to file any further written evidence within 5 Business Days of the date of any hearing unless the Arbitrator directs otherwise.

15.3 Evidence to comply with the Directions

Evidence which does not comply with the requirements set out in these Directions, or the procedural orders of the Arbitrator, may not be accepted by the Arbitrator at the hearing of the Dispute.

15.4 Agreed statement of facts

- (a) The Arbitrator may direct that that the Parties, agree and prepare an agreed statement of facts which set out facts, matters or issues which are not in dispute.

16 Expert evidence

16.1 Expert witnesses

- (a) Subject to the direction of the Arbitrator, a Party may rely upon evidence from an expert witness and may call an expert witness to give evidence at the hearing of a Dispute.
- (b) An expert witness may include economists, accountants, persons experienced in an industry or trade, academics and, in some cases where legal issues are in dispute, lawyers.
- (c) The Arbitrator (including IPART, when acting in that capacity) is entitled to appoint or otherwise consult with an expert to assist in its deliberations.

16.2 Number of expert witnesses

The Arbitrator may make such directions as the Arbitrator sees fit as to the number of expert witnesses permitted.

16.3 Expert evidence to be in writing

The evidence of an expert witness should be set out in a written statement, which should be filed and served in accordance with Article 15.

16.4 Expert evidence must comply with the Directions

Any evidence of an expert witness which does not comply with the requirements set out in these Directions, or the procedural orders of the Arbitrator, may not be accepted at the hearing of the Dispute.

16.5 Dispute as to qualification of expert witness

- (a) A Party may dispute the capacity or qualification of a person as an expert witness by giving notice in writing to the Arbitrator as well as to all other Parties. The Arbitrator will hear submissions on the issue and may exclude the person as an expert witness (or not give any weight to that person's evidence) if the Arbitrator considers that such a course is warranted.
- (b) A Party will not be permitted to dispute the capacity or qualification of a person to give an expert opinion, unless that Party has given written notice of its intention to do so, to the other Party or Parties and to the Arbitrator no less than 5 Business Days before the hearing of the Dispute.

16.6 Disagreement between expert witnesses

The Arbitrator may require the expert witnesses to confer with a view to defining the issues and identifying any areas of disagreement between the Parties. The Arbitrator may require the expert witnesses to provide a joint report.

17 Documentary evidence

17.1 Parties must disclose documentary evidence to be relied on

- (a) Each Party must disclose, at the time of providing its evidence and submissions, to the Arbitrator and all other Parties all of the documents on which the Party intends to rely at the hearing of the Dispute.
- (b) With the agreement of the Arbitrator, a Party may disclose further documents, on which it intends to rely, to the Parties, but this disclosure must occur no less than 10 Business Days before the hearing.
- (c) Where a Party requires documents to be produced from a third party then it may, in accordance with the Commercial Arbitration Act (NSW) 1984, apply to the Supreme Court for a subpoena to be issued. The subpoena should require the third party to produce the documents to the Arbitrator. The Arbitrator must be notified of the issuing of such a subpoena at the time when a party files its subpoena.

17.2 Copies of documents to be provided to Arbitrator

Unless an Arbitrator otherwise requires, each Party must prepare and provide to the Arbitrator and the other Party, a bundle of the documents on which it proposes to rely at the hearing of the Dispute, not less than 5 Business Days before the hearing.

18 Document exchange by electronic means

All exchanges of documents between the Parties, or between the Parties and the Arbitrator, in the course of arbitration proceedings are permitted to occur by electronic means, namely, by facsimile or by e-mail, other than the Notice of Dispute and the Notice of Withdrawal.

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PART G - THIRD PARTIES

19 Notice of the Dispute to Other Persons

Where notice of a Dispute is:

- (a) required, by the terms of a legislative provision (including but not limited to section 40(3) and 46(3) of the Act) or otherwise; or
- (b) considered by the Arbitrator to be required as a matter of law,

to be given to any person other than the Parties, or to the public, the Arbitrator will direct that the notice be given, and will settle the form of the notice and the mode of giving the notice, as soon as possible. The form of the notice may include a copy of, or an extract from, the Notice of Dispute.

The Arbitrator will not reveal any documents, evidence, statements, submissions or other material produced by the Parties as part of the Dispute.

20 Submissions from Persons not Parties to a Dispute

- (a) Where the Arbitrator is required, as a matter of law, to take the interests of a person who is not a Party into account in determining a Dispute, the Arbitrator may require that the person be notified of the Dispute.
 - (b) The Arbitrator may also direct that such a person be invited to provide to the Arbitrator a written submission on the issues arising in the Dispute, on or before a date set by the Arbitrator.
-

21 Potentially Impeded Third Parties

21.1 Potentially Impeded Third Parties may be invited to become Parties

If the Arbitrator forms the view that the Arbitrator may make a determination in a Dispute that may impede the existing right of a person who is not a Party (a “**Potentially Impeded Third Party**”), the Arbitrator may invite the Potentially Impeded Third Party to become a Party for the purpose (and only that purpose) of hearing and determining the issue of whether the existing right of the Potentially Impeded Third Party should be impeded in the manner contemplated.

The issue set out above will be an issue on which evidence and submissions may be heard by the Arbitrator from all Parties (including the Potentially Impeded Third Party) and which should be determined by the Arbitrator in determining the Dispute between the Parties.

21.2 Consequential directions

The Arbitrator may make whatever consequential directions as he or she considers necessary so as to put the Potentially Impeded Third Party in a position to present an informed case on the issue identified in Article 21.1.

PART H - DETERMINATIONS

22 Determination by the Arbitrator

22.1 The Arbitrator will make a determination

- (a) As soon as practicable after the completion of the hearing, the Arbitrator will make available to the Parties, copies of the proposed determination.
- (b) The Arbitrator must set a meeting date not later than 10 Business Days after the draft determination is provided to the Parties, unless the Arbitrator determines otherwise. At this meeting, each Party shall have an opportunity to make submissions to the Arbitrator in relation to the proposed determination.
- (c) An Arbitrator will, as soon as practicable after the completion of the hearing in Article 22.1(b), provide to the Parties a final written determination of the Dispute, signed by the Arbitrator, setting out reasons for the Arbitrator's decision.
- (d) In urgent cases, an Arbitrator may make a determination orally or in short written form shortly after the hearing of a Dispute, but will then publish a full written determination within 20 Business Days thereafter.

22.2 Publication

On making a determination, the Arbitrator must give notice of the making of the determination (including a summary of the determination) to IPART unless IPART is acting as the Arbitrator.

23 Factors to be considered in making a determination

23.1 Access Disputes

- (a) In considering the terms of the proposed determination in relation to an Access Dispute, the Arbitrator must have regard to the following matters:
 - (i) the matters set out in clause 6(4)(i), (j) and (l) of the *Competition Principles Agreement*;
 - (ii) any matters prescribed by the Access Regulation, including but not limited to clause 10 of the Access Regulation; and
 - (iii) any other matters that the Arbitrator considers relevant.
- (b) In making a determination on an Access Dispute:
 - (i) the Arbitrator will give effect to any access undertaking to which the service concerned is subject; and
 - (ii) the Arbitrator will not include in the determination any provision that requires a service provider to do, or not to do, anything that would put a service provider in breach of its obligations under any existing access determination or under any law.

23.2 Sewer Mining Disputes

In considering the terms of the proposed determination in a Sewer Mining Dispute, the Arbitrator will give effect to the service provider's policy with respect to the granting of permission to draw from the contents of its sewerage infrastructure.

24 Parties required to give effect to the determination

The Parties to an arbitration must give effect to the arbitration determination and must not engage in conduct for the purpose of preventing or hindering the implementation of, and compliance with, the determination.

25 Costs of an Arbitration

25.1 Arbitrator may request submissions as to costs

- (a) After a determination of a Dispute is made by an Arbitrator, the Arbitrator may request submissions from the Parties in relation to the payment of the Costs of an Arbitration.
- (b) The Arbitrator must take into account the factors set out in section 34 of the CAA.
- (c) In making a direction as to the payment of the Costs of an Arbitration, the Arbitrator may have regard to, amongst other things:
 - (i) the conduct of the Parties during the arbitration of the Dispute;
 - (ii) the nature and timing of any offer of compromise of the Dispute which may have been made by a Party;
 - (iii) the nature of the determination made by the Arbitrator; and
 - (iv) any other matter which the Arbitrator considers relevant to the issue of who should bear the costs of the Arbitration.

25.2 Arbitrator may make direction as to costs

The Arbitrator may make any determination as to the payment of the Costs of an Arbitration by the Parties, or any one or more of the Parties, as he or she considers appropriate.

26 Settlement of the Dispute

26.1 Partial settlement of Dispute

- (a) If any of the Parties have settled any issues in the Dispute between themselves, one of those Parties must notify the Arbitrator as soon as possible after settlement has been agreed.
- (b) The Arbitrator will continue to hear and determine the Dispute in relation to the issues that have not been settled.

26.2 Settlement of all aspects of Dispute

- (a) If all of the issues in a Dispute are settled between all Parties, the Arbitrator must be notified immediately.
- (b) Once notified, the Arbitrator may determine that the Arbitrator's Costs be paid by the Parties on such terms as the Arbitrator decides in accordance with Article 25.

27 Termination of the Arbitration

27.1 Arbitrator may terminate Arbitration

- (a) If the Dispute is an Access Dispute, an Arbitrator may at any time after appointment terminate the arbitration of an Access Dispute on any of the grounds set out in section 24E of the IPART Act.
- (b) For the avoidance of doubt, this section does not apply to a Sewer Mining Dispute.

27.2 Costs

If the Arbitrator terminates the arbitration of an Access Dispute, the Arbitrator may nevertheless make a determination as to the Costs of an Arbitration as the Arbitrator considers appropriate.

REVOKED