



Independent Pricing and Regulatory Tribunal

Arbitration under Part 4A of the *Independent Pricing and Regulatory Tribunal Act 1992 (NSW)*

Practice Directions

May 2012



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Part A General Matters

1 Introduction

1.1 General

- (a) The following Articles 1 to 25 set out a series of practice directions (**Directions**) for Arbitrators appointed to determine disputes referred to arbitration under Part 4A of the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW) (**Act**).
- (b) A dispute may only be referred to arbitration under Part 4A of the Act where the dispute is with respect to a public infrastructure access regime that provides for arbitration under Part 4A.
- (c) An Arbitrator must determine any such dispute in accordance with:
 - (1) the applicable provisions of the Act and the *Independent Pricing and Regulatory Tribunal Regulation 2007* (NSW) (**Regulation**); and
 - (2) the *Commercial Arbitration Act 2010* (NSW) (**CAA**) subject to Part 4A of the Act, the Regulation and any agreement between the parties and the Arbitrator.
- (d) These Directions provide a recommended procedural framework for the determination of these disputes. It is expected that in most cases, the Arbitrator will conduct Arbitrations in accordance with these Directions. However, apart from Articles that reflect mandatory legislative provisions, these Directions are not binding. The Arbitrator and Parties can agree on a different procedure (provided the procedure is consistent with the Act, Regulation and CAA). Further, subject to Article 1.1(c), the Arbitrator has the discretion to adopt any procedure which it considers appropriate for the timely, efficient, cost-effective and fair resolution of the Dispute in accordance with section 19(2) of the CAA.
- (e) These Directions may be updated or changed at any time, including to reflect changes in applicable law.

2 Definitions and interpretation

2.1 Definitions

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

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

Applicant has the meaning given in Article 4.1;

Arbitration means an arbitration of a Dispute conducted under Part 4A of the Act;

Arbitrator means a person who acts as arbitrator to hear and determine a Dispute;

Arbitrator's Costs means all costs incurred by the Arbitrator in relation to the arbitration of a Dispute, including but not limited to:

- (a) the Arbitrator's fees;
- (b) incidental costs such as room hire, administrative support, 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 IPART Secretariat, and the costs of giving notice of the Dispute to Non-Parties under Part G; and
- (d) all costs incurred by IPART:
 - (1) where IPART is not acting as the Arbitrator, including but not limited to the costs of the IPART Secretariat; or
 - (2) where IPART is acting as the Arbitrator and IPART incurs costs in its administrative capacity but not as the Arbitrator;

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

CAA means the *Commercial Arbitration Act 2010* (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 relation to preparing for, and the hearing of, a Dispute;

Court has the meaning given in section 2(1) of the CAA;

Deed of Undertaking as to Confidentiality means the deed in the form set out in Appendix C;

Dispute means a dispute referred to arbitration under Part 4A of the Act;

Existing Right has the meaning given to that term in Article 20;

IPART means the Independent Pricing and Regulatory Tribunal as constituted by the Act;

IPART Secretariat means the staff employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* (NSW) to enable IPART to exercise its functions;

Non-Party means a person who is not a Party;

Notice of Consent as to Costs means the notice in the form set out in Appendix D;

Notice of Dispute means the notice in the form set out in Appendix A;

Notice of Withdrawal means the notice in the form set out in Appendix B;

Panel of Arbitrators means the panel approved by the Premier (whether or not the persons are members of IPART) who may act as arbitrators to hear and determine a Dispute;

Party means a party to a Dispute;

Potentially Impeded Third Party has the meaning set out in Article 20 of these Directions;

Pre-Hearing Conference has the meaning set out in Article 9.10(a) 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;

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

Schedule of Issues has the meaning set out in Article 9.3 of these Directions.

2.2 Interpretation

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

- (a) “person” includes:
 - (1) an individual, a body corporate, an unincorporated body or other entity and one or more of each of them;
 - (2) the person’s executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns;
- (b) headings are for convenience only and do not affect the interpretation of these Directions;
- (c) words importing the singular include the plural and vice versa;

- (d) a reference to a law or legislation (including the Act) includes regulations made under the law or legislation;
- (e) a reference to a law or regulation includes consolidations, amendments, variations, re-enactments, or replacements of any of them; and
- (f) a reference to a document (original document) is to the original document as amended or revised or, where the original document is replaced, to the replacing document, or the document that most closely approximates to original document.

3 Confidentiality

- (a) All information and documents produced by a Party to any other Party or the Arbitrator in relation to the Arbitration will be confidential, unless disclosure of part or the whole of such information or documents is:
 - (1) in the Arbitrator's opinion, required to enable the Arbitrator to give public notice of the Dispute, as required by section 24B(2) of the Act;
 - (2) in the Arbitrator's opinion, and subject to Articles 3(b) and 3(c), required to enable the Arbitrator to publish the determination of the Dispute under Article 21(b);
 - (3) required by law (including under the *Government Information (Public Access) Act 2009* (NSW) or under the Act); or
 - (4) required pursuant to the order of a competent court or tribunal.
- (b) A Party may request that certain information or documents (in whole or part):
 - (1) not be disclosed; or
 - (2) be disclosed only on certain conditions, on the basis that it contains genuinely confidential material which would significantly prejudice that Party if disclosed.
- (c) The Arbitrator will grant or refuse a request made under Article 3(b). In considering whether to grant or refuse the request, the Arbitrator will take into account:
 - (1) the nature and extent of the prejudice which the requesting Party, or any other relevant person, may suffer if the Arbitrator refuses the request;
 - (2) the importance of the information or documents to the issues in the Dispute, including whether the material has public relevance and any other public interest considerations in favour of disclosure; and
 - (3) the extent to which any public interest considerations in favour of disclosure are outweighed by confidentiality concerns.
- (d) Subject to Articles 3(a) and 3(c), each Party and the Arbitrator must maintain the confidentiality of all documents and all information (whether in written, oral, or other form) which are produced to it by any other Party during the conduct of the Arbitration.

- (e) Each Party (where a Party is a natural person) or each officer, employee or internal or external adviser of a Party taking part in or involved in the Arbitration (where a Party is not a natural person) must sign the Deed of Undertaking as to Confidentiality. Under that deed, the Party undertakes to maintain the confidentiality of such information as outlined in, and in accordance with, this Article 3.

Part B Commencement of Dispute

4 Referral of a Dispute (Act, Part 4A)

4.1 Referral of Dispute to IPART

A Party (**Applicant**) may refer a Dispute to IPART for determination by arbitration under Part 4A of the Act, in accordance with this Article 4. IPART will only accept such a referral if the Dispute is in respect of a public infrastructure access regime that provides for the application of Part 4A of the Act (within the meaning of section 24A(3) of the Act).

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 must provide copies of the Notice of Dispute to all other Parties within 5 Business Days of referring the Dispute to IPART.
- (c) Once an Applicant has filed a Notice of Dispute with the Registry, IPART may refer to and use the Notice of Dispute as a summary of the nature of the Dispute.
- (d) The Arbitrator must provide a copy of the Notice of Dispute to any person whom the Arbitrator requires to be notified of the Dispute in accordance with these Directions, the Act, the CAA, and the Regulation.

5 Withdrawal of referrals (CAA, sections 30, 31 and 32)

- (a) Where the Applicant wishes to withdraw its claim, it may indicate its intention to do so by:
 - (1) filing a Notice of Withdrawal with the Registry; and
 - (2) serving the Notice of Withdrawal on all other Parties to whom a Notice of Dispute has been provided.
- (b) After the Applicant has filed a Notice of Withdrawal with the Registry:
 - (1) subject to Article 5(b)(2) below, the Arbitrator will issue an order for the termination of the Arbitration, unless another Party objects in accordance with section 32(2)(a) of the CAA; and
 - (2) subject to any objection made by the Arbitrator under section 30(1) of the CAA, the Parties may agree to:
 - (A) a consent award given by the Arbitrator in the terms agreed by the Parties and the Arbitrator (including an order as to costs); or
 - (B) settling the issue of costs but not in the form of a consent award.

- (c) Upon withdrawal of a claim and termination of an Arbitration under this Article 5:
- (1) the Arbitrator may determine that the Arbitrator's Costs be paid by the Parties on such terms as the Arbitrator decides in accordance with section 33B of the CAA;
 - (2) if the Parties have reached agreement as to costs under Article 5(b)(2)), they should complete, and jointly file with the Registry, a Notice of Consent as to Costs within 14 days after the Notice of Withdrawal is filed. The Notice of Consent as to Costs is subject to any determination by the Arbitrator under Article 5(c)(1); and
 - (3) if the Parties have not reached agreement as to costs, a Party may apply to the Arbitrator or the Court for any order in relation to costs pursuant to section 33B of the CAA.

Part C The Arbitrator

6 Appointment of Arbitrator (CAA, sections 11-13, Act, section 24B)

6.1 Panel of Arbitrators

IPART will maintain a Panel of Arbitrators.

6.2 Appointment of Arbitrator (Act, section 24B(1))

- (a) As soon as practicable, but no later than 10 Business Days, after the Notice of Dispute has been filed under Article 4.2(a), IPART will, in accordance with section 24B(1) of the Act, either:
 - (1) determine that IPART will act as Arbitrator ; or
 - (2) appoint one or more persons from the Panel of Arbitrators to act as Arbitrator.
- (b) As soon as practicable following the determination or appointment by IPART under Article 6.2(a), the Registry will write to the Parties informing them of the name(s) of the person(s) acting as Arbitrator.

6.3 Objections to IPART's choice of arbitrator (CAA, section 12)

- (a) A Party may object to IPART's choice of an Arbitrator under Article 6.2:
 - (1) within 10 Business Days of being notified of the Arbitrator's appointment under Article 6.2(b);
 - (2) only if circumstances exist that give rise to justifiable doubts as to the Arbitrator's impartiality or independence, or if the Arbitrator does not possess the qualifications agreed to by the Parties, in accordance with section 12(3) and (5) of the CAA; and
 - (3) in accordance with the requirements of section 12 and section 13 of the CAA.
- (b) If a Party objects to IPART's choice of an Arbitrator, IPART, following consultation with the Parties, may (but is not required to):
 - (1) where IPART originally determined that it would act as Arbitrator, appoint an alternative Arbitrator; or
 - (2) where IPART originally appointed a person from the Panel of Arbitrators to act as Arbitrator, appoint an alternative person or persons from the Panel of Arbitrators to act as Arbitrator.

7 Arbitrator's decisions (CAA, sections 19 and 25)

7.1 Arbitrator's decisions

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

7.2 Failure to comply with Arbitrator's decisions (CAA, section 25)

If any Party fails or refuses without sufficient cause to:

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

the Arbitrator may, in its absolute discretion:

- (d) continue with the preliminary meeting or hearing;
- (e) determine the Dispute; or
- (f) make any order or take any action in accordance with section 25 of the CAA, including making a preemptory order under section 25(2) or taking any action under section 25(3) of the CAA.

8 Powers of the Arbitrator (Act, s24B(4))

- (a) An Arbitrator has those powers provided by section 22 and Part 4A of the Act, the Regulation, the CAA and any other powers by agreement between the Arbitrator and the Parties.

Part D Preliminary Meeting

9 Preliminary meeting

9.1 Article may be varied by agreement

The matters referred to in this Article 9 may be varied by agreement between the Arbitrator and the Parties.

9.2 Preliminary meeting

- (a) Within 12 Business Days of the Arbitrator's appointment under Article 6.2, the Arbitrator will notify the Parties in writing of the time, date and place of the first preliminary meeting.
- (b) The first preliminary meeting will occur no later than 30 Business Days after the Notice of the Dispute is filed under Article 4.2(a), unless the Arbitrator determines otherwise.
- (c) All preliminary hearings, including the Pre-Hearing Conference, may, if the Arbitrator sees fit, be conducted by teleconference or video-link.

9.3 Schedule of Issues

- (a) The Arbitrator may prepare a schedule that sets out the agenda for the preliminary meeting and the issues that the Arbitrator proposes to deal with at a preliminary meeting (**Schedule of Issues**).
- (b) The Arbitrator will provide the Schedule of Issues to the Parties at least 5 Business Days before the date of the preliminary meeting.

9.4 Matters to be dealt with (Regulation, clause 5)

At the first preliminary meeting, the Arbitrator:

- (a) will deal with the matters set out in the Schedule of Issues;
- (b) may, as the Arbitrator sees fit, deal with other preliminary matters arising in the Dispute which need to be dealt with for the efficient and expeditious resolution of the Dispute, including:
 - (1) the scope of the Dispute;
 - (2) whether, in accordance with section 24B of the Act, any Non-Parties should be joined as Parties in the Arbitration, and if so, make provision for them to be so joined;
 - (3) whether any Non-Parties or the public generally should be informed of the Dispute, and if so, make provision for them to be so informed and make any consequential directions in relation to them;

- (4) where the Dispute involves a third party wanting, but not having, access to a service and the provider of the service, the manner in which public notice of the Dispute will be given and submissions will be invited from the public in relation to the Dispute in accordance with section 24B(2) of the Act;
- (5) consider any request for leave for legal representation. A Party may be represented by an Australian legal practitioner only if the Arbitrator grants leave. In accordance with section 5 of the Regulation, the Arbitrator will only grant leave if it 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 it were not represented by an Australian legal practitioner;
- (6) seek information from the Parties as to the expert witnesses on whom they propose to rely at the hearing of the Dispute; and
- (7) the provision of evidence and submissions by the Parties.

9.5 Further decisions to be made by the Arbitrator

- (a) The Parties may raise any other issues with the Arbitrator for consideration at the first preliminary meeting by providing the Arbitrator with notice of such issues at least 3 Business Days before the date of the preliminary meeting.
- (b) The Arbitrator may or may not deal with:
 - (1) any issues notified under Article 9.5(a); or
 - (2) any other issues raised (including requiring any security in accordance with Article 9.6),
at a preliminary meeting as it sees fit.

9.6 Security for the Arbitrator's Costs

- (a) At a preliminary meeting, the Arbitrator may require the Parties to provide security for the Arbitrator's Costs. The security may be in any form suitable to the Arbitrator, including by way of unconditional bank guarantee. Any amounts provided by way of security must be paid in equal shares by the Parties and by the date specified by the Arbitrator.
- (b) In relation to any security provided:
 - (1) the Arbitrator will, prior to drawing down on the security, provide the Parties with a tax invoice setting out how the costs have been incurred;
 - (2) the Arbitrator will inform the Parties that the Arbitrator intends to draw down on the security for the amount of the invoice; and

- (3) the Arbitrator will not draw down on the security for an amount greater than the amount of the invoice or invoices provided to the Parties.
- (c) In the event that a Party or Parties fail to provide security required under Article 9.6(a), the Arbitrator may:
- (1) suspend the Arbitration proceedings until the security has been paid; or
 - (2) where one Party (**defaulting Party**) has not paid its share of the security, proceed with the Arbitration by requesting the other Party or Parties to pay the full amount of the security. In such a case, in any award or determination of costs, the Arbitrator may make an award of costs against the defaulting Party in relation to the security that it did not pay.

9.7 Timing

The Arbitrator may set a timetable for the completion of the preparatory steps required under this Article 9, including, if necessary, fixing a date for any hearing.

9.8 Urgent hearings

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

9.9 Further preliminary meetings

The Arbitrator may convene further preliminary meetings as it sees fit.

9.10 Pre-Hearing Conference

- (a) At least 3 Business Days before the date of any hearing of a Dispute, the Arbitrator and the Parties will meet to discuss the manner in which the hearing will be conducted (**Pre-Hearing Conference**).
- (b) At the Pre-Hearing Conference or shortly thereafter, the Arbitrator will make directions as to the manner in which any hearing will be conducted, including directions as to the order in which Parties will be heard, subject to section 18 of the CAA.

9.11 Conduct of preliminary meetings

- (a) All preliminary meetings (including the Pre-Hearing Conference) will be held in private unless the Arbitrator directs otherwise.
- (b) The Arbitrator may give written directions as to certain persons who may be present at a preliminary hearing, but in doing so must have regard to the wishes of the Parties, the need for commercial confidentiality and the requirements of Article 3.

9.12 Hearing date contingent on satisfactory completion of preliminary steps

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

9.13 Transcript of proceedings

- (a) A full transcript may be taken of any preliminary meeting if ordered by the Arbitrator or if agreed between the Arbitrator and the Parties.
- (b) The cost of such a transcript will form part of the Cost of the Parties and will be borne equally by the Parties. The cost of the transcript will not form part of the Arbitrator's Costs.
- (c) The Arbitrator may:
 - (1) retain a copy of any transcript taken of a preliminary hearing; and
 - (2) subject to Article 3, publish a copy of the transcript.

Part E Arbitral Proceedings

10 Position Statements

The Arbitrator may require each Party to prepare a document (or set of 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;
- (c) the contentions of that Party; and
- (d) the relief sought by that Party,

within a timeframe stipulated by the Arbitrator.

11 Hearings

11.1 Conduct of hearings

- (a) 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 and the requirements of section 18 of the CAA).
- (b) The Arbitrator will not be bound by the rules of evidence in the hearing of a Dispute.
- (c) The Arbitrator will determine the merits of a Dispute in accordance with the requirements of section 24B(3) of the Act and according to law.
- (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 at a hearing of a Dispute, but in doing so must have regard to the wishes of the Parties, the need for commercial confidentiality and the requirements of Article 3.
- (f) The Arbitrator may request assistance from the Court in taking evidence in accordance with section 27(1) of the CAA.

11.2 Status of written evidence

If a witness (including an expert witness) has given evidence in the form of written statements, then at the hearing of a Dispute:

- (a) the witness will not be allowed to give oral evidence further to their written statements unless the Arbitrator directs otherwise; and
- (b) the witness 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).

11.3 Transcript

- (a) A full transcript of the proceedings at the hearing must be taken.
- (b) The cost of such a transcript will form part of the Cost of the Parties and will be borne equally by the Parties. The cost of the transcript will not form part of the Arbitrator's Costs.
- (c) The Arbitrator may:
 - (1) retain a copy of any transcript taken of a preliminary hearing; and
 - (2) subject to Article 3, publish a copy of the transcript.

12 Written submissions

An Arbitrator may:

- (a) require that the Parties prepare written submissions in relation to the hearing of a Dispute; and
- (b) give directions as to the timeframe for providing those submissions to the Arbitrator and other Parties.

13 Written statements

13.1 Evidence to be in writing

- (a) The Parties must provide their evidence (including expert evidence) in the form of written statements, unless the Arbitrator directs otherwise.
- (b) Written statements of witnesses (including expert witnesses) should be sworn or affirmed.

13.2 Filing and service of written statements

- (a) The Arbitrator will set a timetable for the filing and service of written statements.
- (b) A Party must:
 - (1) file all written statements with the Registry; and
 - (2) serve all written statements on all other Parties,

in accordance with the timetable set under Article 9.6 and no less than 20 Business Days before the date of any hearing, unless the Arbitrator directs otherwise.

13.3 Evidence to comply with the Directions

The Arbitrator may not accept evidence which does not comply with:

- (a) these Directions;
- (b) the Arbitrator's procedural orders; or

- (c) the requirements of the Act, Regulation or the CAA.

13.4 Agreed statement of facts and issues

The Arbitrator may:

- (a) direct that the Parties prepare an agreed statement of facts and issues; and
- (b) give directions as to the timeframe for providing the statement to the Arbitrator.

14 Expert evidence

14.1 Expert witnesses

- (a) Subject to the Arbitrator's directions, 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) Expert witnesses 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. Where the Arbitrator does appoint or consult with such an expert then the Arbitrator must notify the Parties of the name of the expert.

14.2 Number of expert witnesses

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

14.3 Dispute as to qualification of expert witness

- (a) A Party may dispute the capacity or qualification of a person called on as an expert witness by giving notice in writing to the Arbitrator and all other Parties of its intention to do so no less than 5 Business Days before the hearing of the Dispute.
- (b) The Arbitrator will hear submissions on any dispute raised by a Party, 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.

14.4 Disagreement between expert witnesses

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

Arbitrator may require the expert witnesses to provide a joint report on these matters following their conferral.

15 Documentary evidence

15.1 Parties must disclose documentary evidence to be relied on

- (a) Each Party must disclose to the Arbitrator and all other Parties all of the documents on which the Party intends to rely at the hearing of the Dispute at the time that it provides its evidence and submissions.
- (b) If the Arbitrator permits, a Party may disclose further documents on which it intends to rely at the hearing of a Dispute not less than 10 Business Days before the hearing.

15.2 Copies of documents to be provided to Arbitrator

Unless an Arbitrator otherwise requires, each Party must prepare and provide to the Arbitrator and all other Parties 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.

16 Subpoenas

- (a) Where a Party requires documents to be produced by a third party or requires a person to attend for examination before the Arbitrator, it may, with the Arbitrator's permission, apply to the Court in accordance with section 27A of the CAA for the issue of a subpoena requiring:
 - (1) the third party to produce documents to the Arbitrator; or
 - (2) the person to attend for examination before the Arbitrator,

(as the case may be). The Party must notify the Arbitrator of any subpoena issued by the Court pursuant to its application.
- (b) Where a person refuses or fails to:
 - (1) attend before the Arbitrator for examination; or
 - (2) produce a document,

as required under subpoena issued pursuant to Article 16(a), the Arbitrator or a Party may apply for appropriate relief to the Court in accordance with section 27B of the CAA.

17 Document exchange by electronic means

- (a) All exchanges of documents between the Parties, or between the Parties and the Arbitrator, in the course of an Arbitration can occur electronically, whether by facsimile, e-mail or exchange of electronic storage devices (such as CDs or USBs).
- (b) However, Parties must also file hard copies of the Notice of Dispute and the Notice of Withdrawal in accordance with Articles 4 and 5 respectively.

Part G Third Parties

18 Notice of the Dispute to Non-Parties (Act, section 24B(2))

- (a) Where notice of a Dispute is required by law to be given to a Non-Party or to the public generally, 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.
- (b) The form of the notice of the Dispute given under Article 18(a) may include a copy of, or an extract from, the Notice of Dispute.
- (c) In giving notice under Article 18(a), the Arbitrator will not reveal any documents, evidence, statements, submissions or other material produced by the Parties as part of the Dispute, unless disclosure is required under Article 3 or is otherwise agreed between the Parties.

19 Interests of Non-Parties

Where the Arbitrator is required by law to take the interests of a Non-Party into account in determining a Dispute, the Arbitrator may:

- (a) require that the person be notified of the Dispute in accordance with Article 18; and
- (b) direct that the person be invited to provide evidence or submissions to the Arbitrator on the issues arising in the Dispute on or before a date set by the Arbitrator.

20 Potentially Impeded Third Parties

If the Arbitrator forms the view that it may make a determination in a Dispute that may impede the existing right (**Existing Right**) of a Non-Party (**Potentially Impeded Third Party**), the Arbitrator may:

- (a) invite the Potentially Impeded Third Party to become a Party solely for the purpose of hearing and determining the issue of whether the Existing Right should be impeded in the manner contemplated;
- (b) hear evidence and submissions from all Parties (including the Potentially Impeded Third Party) on this issue;
- (c) make any necessary directions as it considers necessary so as to put the Potentially Impeded Third Party in a position to present an informed case on this issue; and
- (d) determine this issue in determining the Dispute.

Part H Determinations

21 Determinations by the Arbitrator

- (a) As soon as practicable after completing the hearing of a Dispute, the Arbitrator will provide to the Parties a written determination of the Dispute, which sets out reasons for the Arbitrator's decision.
- (b) The Arbitrator will ordinarily publish the written determination of the Dispute as soon as practicable after completing the hearing of the Dispute. 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.
- (c) The Arbitrator may provide to the Parties and publish a draft determination of the Dispute before it makes a final determination of the Dispute.
- (d) If IPART is not acting as the Arbitrator, the Arbitrator must give IPART notice of the making of the determination of the Dispute and a copy of the determination.

22 Factors to be considered in making a determination (Act, section 24C)

In determining a Dispute, the Arbitrator:

- (a) may deal with any matter relating to access, including matters that were not the basis for notification of the Dispute, subject to the requirements of section 18 of the CAA; and
- (b) will not require a service provider to do, or not to do, anything that would cause it to breach its obligations under any existing access determination or under any law.

23 Costs of an Arbitration (CAA , section 33; Regulation, clause 7)

23.1 Arbitrator may request submissions as to costs

- (a) After the Arbitrator has determined a Dispute, the Arbitrator may request submissions from the Parties in relation to the payment of the Costs of an Arbitration.
- (b) Subject to section 33B of the CAA, in making a direction as to the payment of the Costs of an Arbitration, the Arbitrator may have regard to, amongst other things:
 - (1) the conduct of the Parties during the arbitration of the Dispute;
 - (2) the nature and timing of any offer of compromise of the Dispute which may have been made by a Party;
 - (3) the nature of the determination made by the Arbitrator; and
 - (4) any other matter which the Arbitrator considers relevant to the issue of who should bear the costs of the Arbitration.

23.2 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 it considers appropriate, in accordance with section 33B of the CAA.

24 Settlement of the Dispute (CAA, section 30)

24.1 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.

24.2 Settlement of all aspects of Dispute

If all of the issues in a Dispute are settled between all Parties, the Arbitrator:

- (a) must be notified immediately;
- (b) may make an award or determination on agreed terms in accordance with section 30 of the CAA; and
- (c) may determine that the Arbitrator's Costs be paid by the Parties on such terms as the Arbitrator decides in accordance with section 33B of the CAA.

25 Termination of the Arbitration (CAA, sections 25, 32 and 33B, Act, section 24E)

25.1 Arbitrator may terminate Arbitration

The Arbitrator may, at any time after its appointment, terminate the Arbitration on any of the grounds set out in section 24E of the Act or in accordance with section 25 and section 32 of the CAA.

25.2 Costs

If the Arbitrator terminates an Arbitration, the Arbitrator may nevertheless make a determination as to the Costs of an Arbitration as the Arbitrator considers appropriate in accordance with section 33B of the CAA.



Appendices

A Notice of Dispute

Independent Pricing and Regulatory Tribunal Arbitration Registry

No. of 20

Notice of Access Dispute

Between:

1. [Party 1] of [Address] (**Applicant**); and
2. [Party 2] of [Address] (**Respondent**)

Existence of a Dispute

A dispute exists between the Applicant and the Respondent with respect to access to a public infrastructure access regime between the parties set out above.

The Applicant by this notice refers the dispute to the Independent Pricing and Regulatory Tribunal (**IPART**) for resolution by arbitration.

Details of the Dispute

The dispute concerns the following issues between the parties:

1. [Insert brief statement of the issues in dispute]
- 2.

Dispute Resolution Procedures

The dispute resolution procedures which the parties are required to follow to resolve the dispute are set out in the following documents:

[Insert references to the relevant Access Agreement, Regime and/or Act]

The dispute resolution procedures set out in those documents [have/have not] been followed by the parties.

Acknowledgment of publication of this notice of dispute

The Applicant acknowledges that the Arbitrator hearing and determining this dispute may be required to give notice of this dispute to one or more persons,

or to the public generally. If so, the Applicant consents to the Arbitrator publishing a copy of the whole or any part of this Notice of Dispute to any such person or to the public.

Persons to whom notice of the dispute may be required to be given

The following persons or groups of persons, other than the parties, may be required to be given notice of the dispute:

1. *[Insert list of persons]*

(Delete if inapplicable) Section 24B(2) of the Act may apply to the dispute. Public notice of the dispute may be required to be given.

DATED:

.....

Signed by, or for and on behalf of, the Applicant

B Notice of Withdrawal

Independent Pricing and Regulatory Tribunal Arbitration Registry

No. of 20

Notice of Access Dispute

Between:

1. [Party 1] of [Address] (**Applicant**); and
2. [Party 2] of [Address] (**Respondent**)

The Applicant provides notice that it intends to withdraw its application for a dispute to be determined by arbitration.

DATED:

.....

Signed by, or for and on behalf of, the Applicant

C Deed of Undertaking as to Confidentiality

Independent Pricing and Regulatory Tribunal Arbitration Registry

No. of 20

Notice of Access Dispute

Between:

1. [Party 1] of [Address] (**Applicant**); and
2. [Party 2] of [Address] (**Respondent**)

I, [Insert name], of [Insert address], undertake to [Insert names of other parties] and to the Independent Pricing and Regulatory Tribunal (**IPART**) [*and/or the Arbitrator (as the case may be)*] that:

1. Subject to the terms of this undertaking and any order of IPART [*or the Arbitrator*], I will keep confidential at all times all information provided by [Insert names of other parties].
2. I will only use the confidential information which is provided to me by [Insert names of other parties] for the purposes of this arbitration.
3. Subject to paragraph 4 below, I will not disclose any of the confidential information of any other Party to this arbitration to any other person without the prior written consent of the Party to whom that confidential information belongs, or without first obtaining a written direction requiring such disclosure from IPART [*or the Arbitrator*].
4. Except as required by any law, within a reasonable time after the finalisation of this arbitration (by withdrawal of the referral, settlement, termination or provision of final determination) I will destroy or deliver to each Party all confidential information and any documents or things (or parts thereof) recording or containing any confidential information of that Party, which information, document or thing (or part thereof) is in my possession, custody or control.
5. This undertaking imposes no obligation upon me in respect of information:
 - a. which is in the public domain;

- b. which has been obtained by me otherwise than from a Party to this arbitration, in the course of this arbitration, provided that the information has not been obtained by me by reason of, or in any circumstances involving, any breach of a confidentiality undertaking in this arbitration or a breach of any other obligation of confidence owed to a Party (whether at law, in equity, under statute or otherwise) or by any other unlawful means.
6. In addition, I may disclose the confidential information which is provided to me to:
- a. IPART [*or the Arbitrator*];
 - b. any employer, internal or external legal adviser, or independent expert currently employed or retained by me for the purposes of the conduct of the arbitration provided that the person to whom disclosure is proposed to be made has signed an undertaking in the same form of this undertaking; and
 - c. any person to whom I am required to disclose the information by any law.

Executed as a Deed.

Signed, sealed and delivered by [*Insert name*] in the presence of a witness:

Signature of witness

Signature

Name of witness (block letters)

Name of Signatory (block letters)

D Notice of Consent as to Costs

Independent Pricing and Regulatory Tribunal Arbitration Registry

No. of 20

Notice of Access Dispute

Between:

1. [Party 1] of [Address] (**Applicant**); and
2. [Party 2] of [Address] (**Respondent**)

The Parties have agreed that the costs of the arbitration will be dealt with on an agreed basis in the following way:

1. [insert list]

DATED:

.....

Signed by, or for and on behalf of, the Applicant

DATED:

.....

Signed by, or for and on behalf of, the Respondent