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# Public consultation draft

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New South Wales

## Independent Pricing and Regulatory Tribunal Regulation 2007

under the

Independent Pricing and Regulatory Tribunal Act 1992

*[The following enacting formula will be included if the 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*.

Premier

### **Explanatory note**

The object of this Regulation is to remake, without substantial alteration, the *Independent Pricing and Regulatory Tribunal Regulation 2002*. That Regulation will be repealed on 1 September 2007 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation modifies the application of the *Commercial Arbitration Act 1984* to the arbitration of disputes (relating to a public infrastructure access regime) under Part 4A of the *Independent Pricing and Regulatory Tribunal Act 1992*. The modifications concern the right to legal representation, the private hearing of disputes and the recovery of the fees and expenses of the Independent Pricing and Regulatory Tribunal.

This Regulation also contains a savings provision.

This Regulation is made under the *Independent Pricing and Regulatory Tribunal Act 1992* including sections 24A (Arbitration of access disputes) and 29 (the general regulation-making power).

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Independent Pricing and Regulatory Tribunal Regulation 2007

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## Independent Pricing and Regulatory Tribunal Regulation 2007

under the

Independent Pricing and Regulatory Tribunal Act 1992

### 1 Name of Regulation

This Regulation is the *Independent Pricing and Regulatory Tribunal Regulation 2007*.

### 2 Commencement

This Regulation commences on 1 September 2007.

**Note.** This Regulation replaces the *Independent Pricing and Regulatory Tribunal Regulation 2002* which is repealed on 1 September 2007 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation:

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

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

(2) Notes included in this Regulation do not form part of this Regulation.

### 4 Object of Regulation

The object of this Regulation is, in accordance with section 24A (2) of the Act, to modify the application of the *Commercial Arbitration Act 1984* to the arbitration of a dispute.

### 5 Legal representation

(1) A party to a dispute may be represented in proceedings before an arbitrator or umpire by an Australian legal practitioner only by leave granted by the arbitrator or umpire.

(2) An arbitrator or umpire may grant leave only if he or she is of the opinion:

(a) that representation of the party by an Australian legal practitioner is likely to shorten the hearing of the dispute or to reduce the costs of the dispute, or

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(b) that the party would be unfairly disadvantaged if the party were not represented by an Australian legal practitioner.

(3) This clause has effect instead of section 20 (1) of the *Commercial Arbitration Act 1984*.

## **6 Private hearing of disputes**

A dispute is to be heard in private, unless the arbitrator or umpire otherwise directs.

## **7 Costs of arbitration**

For the purposes of section 34 (1) and (2) of the *Commercial Arbitration Act 1984*, and without limiting the fees and expenses of the arbitrator or umpire as referred to in section 34, the fees and expenses of the arbitrator or umpire are taken to include:

(a) all costs incurred by the arbitrator or umpire, and

(b) all costs incurred by the Tribunal,

in relation to the arbitration of a dispute, including administrative costs, costs incurred in engaging consultants and expert witnesses, and witnesses' expenses.

## **8 Saving**

Any act, matter or thing that had effect under the *Independent Pricing and Regulatory Tribunal Regulation 2002* immediately before the repeal of that Regulation is taken to have effect under this Regulation.