



Dr Peter Boxall AO
Chairman
Independent Pricing and Regulatory Tribunal
PO Box Q290
QVB POST OFFICE NSW 1230

17 JUL 2013

Dear Dr Boxall

Pursuant to section 12A of the *Independent Pricing and Regulatory Tribunal Act 1992*, I am referring the following matter to the Tribunal for investigation and report: requirements for early termination charges to be imposed on retailers under the National Energy Retail Rules (NSW).

Please find further details in the attached terms of reference to the Tribunal.

The terms of reference ask the Tribunal to specify a cap for early termination fees in fixed term contracts in NSW. A regulation to apply the cap, the *National Energy Retail Law (Adoption) Amendment (Early Termination Charges and Site Specific Conditions) Regulation 2013*, was made on 28 June 2013 and will commence in early 2014.

In setting the cap, the Tribunal must consider the retailer's reasonable costs of giving effect to the early termination of a market retail contract or fixed benefit period under a market retail contract, and any other matters the Tribunal considers relevant.

However, the cap must not include inducement costs (which the retailer is able to recover separately under the Regulation) or costs based on lost supply and lost profits.

In setting the cap, the Tribunal must consider any potential impacts on consumer prices and on competition in relevant retail markets.

The Tribunal must consult with stakeholders and publicly release a report by 15 December 2013. The terms of reference also ask the Tribunal to review its findings every two years after the initial report.

Yours sincerely



Barry O'Farrell MP
Premier

TERMS OF REFERENCE

Investigation and report on requirements in relation to early termination charges to be imposed on retailers under the National Energy Retail Rules (NSW)



I, Barry O'Farrell, Premier of New South Wales, under section 12A of the *Independent Pricing and Regulatory Tribunal Act 1992 (Act)*, refer the following matter to the Independent Pricing and Regulatory Tribunal (**Tribunal**) for investigation and report:

1. The Tribunal is to specify an amount or amounts for small customers for the purposes of rules 49AA(2) and 49AA(3) of the National Energy Retail Rules (as modified by the *National Energy Retail Law (Adoption) Regulation 2013 (National Energy Retail Rules (NSW))*) and which apply in NSW in accordance with the *National Energy Retail Law (Adoption) Act 2012 (NSW)*.
2. The Tribunal may specify a different amount for the early termination of:
 - (a) a fixed term market retail contract for the sale of electricity;
 - (b) a fixed term dual fuel contract in relation to the sale of electricity; and/or
 - (c) a fixed benefit period of:
 - (i) a market retail contract for the sale of electricity; and/or
 - (ii) a dual fuel contract in relation to the sale of electricity.
3. In deciding the relevant amount or amounts to be specified, the Tribunal must take into account the following matters:
 - (a) the amount or amounts must reflect a retailer's reasonable costs of giving effect to the early termination of a market retail contract or fixed benefit period under a market retail contract (as the case may be);
 - (b) the amount or amounts must not include an estimate of costs based on lost supply and lost profits; and
 - (c) the amount or amounts must not include an estimate of inducement costs (as defined in rule 49AA(4) of the National Energy Retail Rules (NSW)).
4. In deciding the amount or amounts to be specified for the purposes of rules 49AA(2) and 49AA(3), the Tribunal must consider any potential impacts on consumer prices and on competition in the relevant retail markets.
5. The Tribunal may take into account any other matters the Tribunal considers relevant, including possible regulatory impacts.
6. The Tribunal must consult with stakeholders and publicly release a report no later than 20 December 2013 which sets out:
 - (a) details of the Tribunal's investigation; and

- (b) the amount or amounts specified for the purpose of rules 49AA(2) and 49AA(3) of the National Energy Retail Rules (NSW) and the basis for its decision.
- 7. The Tribunal must review the amount or amounts specified for the purposes of rules 49AA(2) and 49AA(3) of the National Energy Retail Rules (NSW) within two years of:
 - (a) its initial decision under paragraph 1; and
 - (b) a subsequent review conducted under this paragraph.
- 8. The Tribunal must carry out any review under paragraph 7 in accordance with paragraphs 2 to 5.