

Queensland



**QUEENSLAND  
COMPETITION AUTHORITY  
AMENDMENT ACT 2000**

**Act No. 15 of 2000**



# Queensland



## QUEENSLAND COMPETITION AUTHORITY AMENDMENT ACT 2000

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**MINOR OR CONSEQUENTIAL AMENDMENTS**

Queensland



**Queensland Competition Authority  
Amendment Act 2000**

**Act No. 15 of 2000**

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**An Act to amend the *Queensland Competition Authority Act 1997***

*[Assented to 26 May 2000]*

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**The Parliament of Queensland enacts—**

**Short title**

1. This Act may be cited as the *Queensland Competition Authority Amendment Act 2000*.

**Act amended**

2. This Act amends the *Queensland Competition Authority Act 1997*.

**Amendment of s 10 (Authority's functions)**

3.(1) Section 10(a), from 'declare'—

*omit, insert—*

'declare the following—

- (i) a government business activity to be a government monopoly business activity;
- (ii) a candidate water supply activity to be a monopoly water supply activity; and'

(2) Section 10(b), after 'activities'—

*insert—*

'and monopoly water supply activities'.

(2A) Section 10(e), 'to examine'—

*omit, insert—*

'under the direction, to investigate'.

(3) Section 10(g) and (h)—

*omit, insert—*

- '(fa) to mediate to resolve access disputes or water supply disputes;
- and

- (fb) if asked by the parties to access agreements or water supply agreements—to mediate to resolve disputes under the agreements; and
- (g) to conduct arbitration hearings for resolving access disputes or water supply disputes; and
- (ga) if asked by the parties to access agreements or water supply agreements—to arbitrate to resolve disputes under the agreements; and
- (h) to approve undertakings for—
  - (i) services; and
  - (ii) water supply activities carried on by water suppliers; and’.

### **Amendment of s 12 (Directions by Ministers about authority’s functions)**

#### **3A. Section 12—**

*insert—*

‘(5) Despite subsection (2), if a direction is a direction by the Ministers under section 10(e), the direction must state how the investigation is to be conducted and, for that purpose, may apply all or stated provisions of part 6 to the investigation.

‘(6) To the extent the direction applies all or stated provisions of part 6, the part or stated provisions apply to the investigation.’

### **Amendment of pt 3 div 1 (Criteria for declarations of government monopoly business activities)**

#### **4. Part 3, division 1—**

*renumber* as part 3, division 1A.

**Insertion of new pt 3 div 1**

5. Part 3, before division 1A (as renumbered by section 4)—

*insert—*

***‘Division 1—Application of part*****‘What pt 3 is about**

‘13A.(1) This part is about the declaration of government monopoly business activities, their investigation by the authority, and reports about their pricing activities.

‘(2) This part applies generally to government agencies as defined in the dictionary.

‘(3) The application of the part to an activity of a local government entity depends on whether the activity is a significant business activity as defined in the dictionary.

**‘Application of part to responsible local governments consisting of 2 or more local governments**

‘13B.(1) This section applies if the responsible local government for a local government entity consists of 2 or more local governments (the “participants”).

‘(2) If this part requires or permits something to be done by a responsible local government, the thing may be done by 1 or more of the participants for the responsible local government.

‘(3) If a provision of this part refers to a responsible local government doing something, the provision applies as if the provision referred to 1 or more of the participants for the responsible local government doing the thing for the responsible local government.

**‘Application of part to responsible local government for giving notices**

‘13C.(1) If this part requires or permits a notice to be given to a responsible local government and it consists of 2 or more local governments, the notice may be given to—

- (a) if there is a nominated local government for the responsible local government—the nominated local government; or
- (b) if the authority has requested notification of a nominated local government for the responsible local government but there is no nominated local government—any 1 of the local governments of which the responsible local government consists.

‘(2) A local government is the nominated local government for a responsible local government consisting of 2 or more local governments only if a written notice has been given to the authority in relation to the local government (the “**nominee**”) and the notice contains—

- (a) the nominee’s name and address for receiving notices; and
- (b) a signed statement by the other local governments that the nominee is authorised by them to receive notices under this part for all the local governments; and
- (c) a signed statement by the nominee agreeing to be the local government authorised to receive notices under this Act for all the local governments.

‘(3) For subsection (1)(b), the authority may request notification of a nominated local government for the responsible local government by giving a notice to each local government of which the responsible local government consists asking that a written notice be given to the authority containing—

- (a) the name, and address for receiving notices, of 1 of the local governments (also the “**nominee**”); and
- (b) a signed statement by the other local governments that the nominee is authorised by them to receive notices under this Act for all the local governments; and
- (c) a signed statement by the nominee agreeing to be the local government authorised to receive notices under this Act for all the local governments.

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**‘Application of part to local government entities and responsible local governments that are the same person**

**‘13D.(1)** This section applies if—

- (a) this part requires or permits something to be done by both a local government entity and the responsible local government for the entity; and
- (b) the local government entity is not incorporated.

**‘(2)** The thing may be done by the local government entity or the responsible local government once and—

- (a) if the thing is done by the local government entity—it is taken to have also been done by the responsible local government; or
- (b) if the thing is done by the responsible local government—it is taken to have also been done by the local government entity.

**‘Application of part to local government entities and responsible local governments that are the same person for giving notices**

**‘13E.(1)** This section applies if—

- (a) this part requires or permits a notice to be given to both a local government entity and the responsible local government for the entity; and
- (b) the local government entity is not incorporated.

**‘(2)** The notice may be given to the local government entity or the responsible local government once and—

- (a) if the notice is given to the local government entity—it is taken to have also been given to the responsible local government; or
- (b) if the notice is given to the responsible local government—it is taken to have also been given to the local government entity.’.



**Amendment of s 18 (Request for declaration)****6. Section 18(a)—***omit, insert—*

- ‘(a) to declare a government business activity, whether or not it is a significant business activity,<sup>1</sup> to be a government monopoly business activity; and’.

**Insertion of new ss 18A and 18B****7. After section 18—***insert—***‘Notice of requests relating to significant business activities**

**‘18A.(1)** This section applies if the authority makes a request under section 18(a) relating to a significant business activity.

**‘(2)** The authority must give written notice of the request to the following, including details of the authority’s reasons for making it—

- (a) the local government entity carrying on the activity;
- (b) the responsible local government for the entity.

**‘Requests by local government entities and responsible local governments**

**‘18B.(1)** A responsible local government for a local government entity may ask the Ministers—

- (a) to declare a government business activity that is a significant business activity to be a government monopoly business activity; and

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<sup>1</sup> For this part “significant business activity” is defined in the dictionary as a significant business activity of a local government.

- (b) if the declaration is made—to refer the government monopoly business activity to the authority under section 23.<sup>2</sup>

‘(2) The responsible local government must give the authority a copy of the request.’.

### **Amendment of s 19 (Declaration by Ministers)**

**8.(1)** Section 19(4) and (5)—

*renumber* as section 19(6) and (7).

**(2)** Section 19—

*insert*—

‘(4) Also, in deciding whether to make a declaration about a government business activity that is a significant business activity, the Ministers must consult with the local government entity carrying on the activity and the responsible local government for the entity.

‘(5) For a consultation under subsection (4), the Ministers must—

- (a) notify the responsible local government and the local government entity of the Ministers’ intention to make a declaration about the significant business activity; and
- (b) give the responsible local government and the local government entity 90 days to make submissions to the Ministers about the intended declaration.’.

### **Amendment of s 21 (Public availability of requests)**

**9.** Section 21(a)—

*omit, insert*—

- ‘(a) keep a list of requests made during the preceding 2 years—
- (i) by the authority under section 18; and

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<sup>2</sup> Section 23 (Investigations by authority—Ministerial reference)

- (ii) by responsible local governments under section 18B, of which the authority has been given a copy under section 18B(2); and’.

**Amendment of s 23 (Investigations by authority—Ministerial reference)**

**10.** Section 23—

*insert—*

‘(2A) In deciding whether to refer a government monopoly business activity that is a significant business activity to the authority under subsection (2), the Ministers must consult with the local government entity carrying on the activity and the responsible local government for the entity.’.

**Amendment of s 25 (Notice of investigation)**

**11.** Section 25(3)—

*omit, insert—*

‘(3) The notice must be given to—

- (a) the government agency carrying on the government monopoly business authority; or
- (b) if the investigation relates to a government monopoly business activity that is a significant business activity—
  - (i) the local government Minister; and
  - (ii) the responsible local government for the local government entity carrying on the activity.’.

**Amendment of s 26 (Matters to be considered by authority for investigation)**

**12.** Section 26(2)—

*omit, insert—*

‘(2) If the investigation relates to a government monopoly business

activity involving the supply of water, the authority must have regard to water pricing determinations and water supply determinations.

‘(3) Subsections (1) and (2) do not limit the matters to which the authority may have regard in conducting an investigation.’.

### **Amendment of s 30 (Authority to report to Ministers)**

**13.** Section 30—

*insert—*

‘(2) If the investigation relates to a government monopoly business activity that is a significant business activity, the authority must also report the results of the investigation to—

- (a) the local government Minister; and
- (b) the responsible local government for the local government entity carrying on the activity.’.

### **Amendment of s 34 (Public availability of reports)**

**14.** Section 34(1)—

*omit, insert—*

‘**34.(1)** A copy of a report must be made available for public inspection—

- (a) if the report relates to a government monopoly business activity that is not a significant business activity—by the Ministers within 2 days after the Ministers receive the report; or
- (b) if the report relates to a government monopoly business activity that is a significant business activity—
  - (i) by the Ministers within 2 days after the Ministers receive the report; and
  - (ii) by the local government Minister within 2 days after the Minister receives the report; and

- (iii) by the responsible local government for the local government entity carrying on the activity within 2 days after the responsible local government receives the report.’

### **Amendment of s 35 (Delaying public availability of reports)**

**15.** Section 35(3), from ‘relates’—

*omit, insert—*

‘relates—

- (a) for a report relating to a government monopoly business activity that is not a significant business activity—as if the Ministers received the report at the end of the period mentioned in subsection (1); or
- (b) for a report relating to a government monopoly business activity that is a significant business activity—as if the Ministers, the local government Minister and the responsible local government for the local government entity carrying on the activity received the report at the end of the period mentioned in subsection (1).’

### **Amendment of s 36 (Decision of Ministers about report)**

**16.(1)** Section 36(1) and (2)—

*renumber* as section 36(2) and (4).

**(2)** Section 36—

*insert—*

‘**36.(1)** This section applies to a report relating to a government monopoly business activity that is not a significant business activity.’

**(3)** Section 36(2), (as renumbered by subsection (1)), ‘1 month’—

*omit, insert—*

‘90 days’.

**(4)** Section 36—

*insert—*

‘(3) Before making a decision under subsection (2) about a government monopoly business activity involving the supply of water, the Ministers must have regard to water pricing determinations and water supply determinations.’.

(5) Section 36(4) (as renumbered by subsection (1)), ‘subsection (1)’—  
*omit, insert*—  
‘subsection (2)’.

### **Insertion of new s 36A**

17. After section 36—

*insert*—

#### **‘Decision of responsible local government about report**

**‘36A.(1)** This section applies to a report relating to a government monopoly business activity that is a significant business activity.

‘(2) Within 90 days after the responsible local government for the local government entity carrying on the activity receives the report, the responsible local government must, by resolution—

- (a) accept, with or without qualification, or reject, the recommendations about pricing practices contained in it; or
- (b) accept, with or without qualification, some of the recommendations about pricing practices contained in it and reject the other recommendations.

‘(3) Before making a decision under subsection (2) about a significant business activity involving the supply of water, the responsible local government must have regard to water pricing determinations and water supply determinations.

‘(4) As soon as practicable after making a decision under subsection (2), the responsible local government must—

- (a) notify the decision and the reasons for the decision by gazette notice; and

- (b) give a copy of the decision and the reasons for the decision to—
  - (i) the Ministers; and
  - (ii) the authority; and
  - (iii) the local government Minister; and
  - (iv) the local government entity carrying on the activity.’.

### **Insertion of new ss 37A and 37B**

**18.** Part 3, after section 37—

*insert—*

#### **‘Register of recommendations and decisions relating to government monopoly business activities involving the supply of water**

**‘37A.(1)** The authority must keep a register of—

- (a) the authority’s recommendations about pricing practices contained in reports of the results of investigations about government monopoly business activities involving the supply of water; and
- (b) the Ministers’ decisions under section 36(2)<sup>3</sup> relating to the recommendations.

**‘(2)** The register must include, for each recommendation, details of the following—

- (a) the name of the government agency carrying on the government monopoly business activity;
- (b) the government monopoly business activity;
- (c) the reasons for the recommendation;
- (d) the day the report, in which the recommendation is made, is to be, or was, given to the Ministers.

**‘(3)** The register must also include, for each decision, details of the following—

- (a) the day the Ministers made the decision;

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<sup>3</sup> Section 36 (Decision of Ministers about report)

- (b) the day the Ministers' decision is to be, or was, notified under section 36(4).

**'Register of recommendations and decisions relating to government monopoly business activities that are significant business activities involving the supply of water**

**'37B.(1)** The authority must keep a register of—

- (a) the authority's recommendations about pricing practices contained in the reports of the results of investigations about government monopoly business activities that are significant business activities involving the supply of water; and
- (b) the decisions of the responsible local governments under section 36A(2) relating to the recommendations.

**'(2)** The register must include, for each recommendation, details of the following—

- (a) the name of the local government entity carrying on the government monopoly business activity;
- (b) the government monopoly business activity;
- (c) the reasons for the recommendation;
- (d) the day the report, in which the recommendation is made, is to be, or was, given to the responsible local government for the local government entity.

**'(3)** The register must also include, for each decision, details of the following—

- (a) the day the responsible local government made the decision;
- (b) the day the responsible local government's decision is to be, or was, notified under section 36A(4).'



**Amendment of s 38 (Principle of competitive neutrality)**

**19.** Section 38, from ‘, solely’ to ‘market’—

*omit, insert—*

‘over competitors or potential competitors in a particular market solely because the agency’s activities are not subject to 1 or more of the following—

- (a) full Commonwealth or State taxes or tax equivalent systems;
- (b) debt guarantee fees directed towards offsetting the competitive advantages of government guarantees;
- (c) procedural or regulatory requirements of the Commonwealth, the State or a local government on conditions equivalent to the conditions to which a competitor or potential competitor may be subject, including, for example, requirements about the protection of the environment and about planning and approval processes.’.

**Amendment of s 57 (Decision of Ministers about report)**

**20.** Section 57(1), ‘1 month’—

*omit, insert—*

‘90 days.’

**Amendment of s 84 (Making declaration)**

**21.(1)** Section 84(2)—

*renumber* as section 84(4).

**(2)** Section 84—

*insert—*

‘**(2)** If the service is provided by means of a facility owned by a local government entity, the Ministers must consult with the local government entity, and the responsible local government for the entity, before doing anything under subsection (1).

‘(3) For consulting under subsection (2), the Ministers must—

- (a) notify the local government entity and the responsible local government of the Ministers’ intention to make a declaration about the service; and
- (b) give the local government entity and the responsible local government 90 days to make submissions to the Ministers about the intended declaration.’.

### **Amendment of s 85 (Notice of decision)**

**22.(1)** Section 85(3)—

*omit, insert—*

‘(3) If the Ministers do not publish as required under subsection (1) within 90 days after the relevant day, they are taken, at the end of the 90 day period—

- (a) to have decided not to declare the service; and
- (b) to have published notice of the decision.’.

**(2)** Section 85(4)—

*insert—*

‘**“relevant day”** means—

- (a) for a service provided by means of a facility owned by a local government entity—the day after the 90 day period given, under section 84(3)(b), to the local government entity to make submissions; or
- (b) otherwise—the day the Ministers receive the declaration recommendation.’.

**Amendment of s 95 (Effect of expiry or revocation of declaration)****23.** Section 95(a) and (b)—*omit, insert—*

- ‘(a) the mediation or arbitration of an access dispute for which an access dispute notice was given before the expiry or revocation; or
- (b) the operation or enforcement of an access determination made in the arbitration of an access dispute for which an access dispute notice was given before the expiry or revocation; or’.

**Amendment of s 98 (Effect of ending of operation of declaration)****24.(1)** Section 98(a), ‘a dispute notice’—*omit, insert—*

‘an access dispute notice’.

**(2)** Section 98(b)—*omit, insert—*

- ‘(b) the operation or enforcement of an access determination made in the arbitration of an access dispute for which an access dispute notice was given before the operation of the declaration ended; or’.

**Amendment of s 101 (Obligation of access provider to satisfy access seeker’s requirements)****25.** Section 101—*insert—*

‘(2) Without limiting subsection (1), and subject to any relevant access code or approved access undertaking, the access provider must give the access seeker the following—

- (a) information about the price at which the access provider provides the service, including the way in which the price is calculated;

- (b) information about the costs of providing the service, including the capital, operation and maintenance costs;
- (c) information about the value of the access provider's assets, including the way in which the value is calculated;
- (d) an estimate of the spare capacity of the service, including the way in which the spare capacity is calculated;
- (e) a diagram or map of the facility used to provide the service;
- (f) information about the operation of the facility;
- (g) information about the safety system for the facility;
- (h) if the authority makes a determination in an arbitration about access to the service under division 5, subdivision 3—information about the determination.

‘(3) Despite subsection (2), if the authority reasonably considers the disclosure of information under subsection (2) may be likely to damage the commercial activities of the access provider, an access seeker or an access user, the authority may—

- (a) allow the information to be categorised or aggregated so the disclosure is not unduly damaging; or
- (b) authorise the access provider not to give the access seeker 1 or more of the matters mentioned in subsection (2).

‘(4) Despite subsection (2), the authority may allow the matters mentioned in subsection (2)(a) to (c) to be given in the form of a reference tariff.

‘(5) The access provider or access seeker may ask the authority for advice or directions about a matter mentioned in this section.

‘(6) The access provider and the access seeker must not, without the consent of the giver of the information, disclose to another person information given under this section.

‘(7) In this section—

“**referencetariff**”, for a service, means a price, or formula for calculating a price, that has been approved by the authority to set the basis for negotiation of the price for access to the service under an access agreement.’.

### **Amendment of s 109 (Decision on application)**

26. Section 109(2)(c), ‘relates.’—

*omit, insert—*

‘relates, including whether adequate provision has been made for compensation if the persons’ rights are adversely affected.’.

### **Amendment of s 113 (Requirements about dispute notice)**

27.(1) Section 113, heading, before ‘dispute’—

*insert—*

‘**access**’.

(2) Section 113(1), ‘(a “**dispute notice**”)’—

*omit, insert—*

‘(an “**access dispute notice**”)’.

(3) Section 113(2), ‘A dispute’—

*omit, insert—*

‘An access dispute’.

(4) Section 113(2)(c)—

*omit, insert—*

‘(c) state whether the dispute is to be dealt with by mediation or arbitration; and

- (d) state the steps the party giving the notice has taken, or tried to take, to satisfy its obligations about carrying out negotiations for an access agreement in good faith,<sup>4</sup> including, if the dispute is to be dealt with by arbitration, whether or not an attempt has been made to resolve the dispute by mediation under subdivision 2A.’.

### **Amendment of s 115 (Withdrawal of dispute notice)**

**28.(1)** Section 115, heading, before ‘dispute’—

*insert—*

‘**access**’.

**(2)** Section 115(1), ‘A dispute’—

*omit, insert—*

‘An access dispute’.

**(3)** Section 115(2)—

*omit, insert—*

‘**(2)** An access provider or access seeker may withdraw an access dispute notice—

- (a) if the dispute is to be dealt with by mediation—at any time before a mediated resolution of the dispute is achieved; or
- (b) if the dispute is to be dealt with by arbitration—at any time before the authority makes its determination.’.

**(4)** Section 115(3) and (4), ‘the dispute notice’—

*omit, insert—*

‘the access dispute notice’.

**(5)** Section 115(5), ‘a dispute notice’—

*omit, insert—*

‘an access dispute notice’.

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<sup>4</sup> See section 100 (Obligations of parties to negotiations)

**Insertion of new s 115A and pt 5, div 5, subdiv 2A**

**29.** Part 5, division 5, subdivision 2, after section 115—

*insert—*

**‘Authority may refer access dispute to mediation**

**‘115A.(1)** This section applies if—

- (a) the authority has received an access dispute notice stating—
  - (i) the dispute is to be dealt with by arbitration; and
  - (ii) there has been no attempt to resolve the dispute by mediation; and
- (b) the authority considers a mediated resolution of the dispute can be achieved.

**‘(2)** The authority must give the following persons a written notice asking them to attend a conference to attempt to resolve the dispute by mediation (a **“mediation conference”**)—

- (a) the access seeker stated in the access dispute notice as being the access seeker involved in the access dispute with the access provider;
- (b) the access provider stated in the access dispute notice as being the access provider involved in the access dispute with the access seeker.

***‘Subdivision 2A—Mediation of access disputes*****‘Parties to mediation of access disputes**

**‘115B.(1)** If section 115A applies, the parties to the mediation of an access dispute are the persons to whom a notice under the section is given by the authority.

**‘(2)** If section 115A does not apply, the parties to the mediation of an access dispute are—

- (a) the access provider or access seeker who gives the access dispute notice for the access dispute; and

- (b) if the access dispute notice is given by an access provider—the access seeker stated in the notice as being the access seeker involved in the access dispute with the access provider; and
- (c) if the access dispute notice is given by an access seeker—the access provider stated in the notice as being the access provider involved in the access dispute with the access seeker.

#### **‘Other persons may take part in mediation conference**

**‘115C.(1)** A mediator may allow a person who applies to take part in a mediation conference to take part in the conference if—

- (a) the mediator is satisfied the person has a sufficient interest in the resolution of the access dispute; and
- (b) the parties to the mediation consent.

**‘(2)** However, the person does not become a party to the dispute.

#### **‘Conduct of mediation under subdiv 2A**

**‘115D.** Part 6A<sup>5</sup> applies to a mediation under this subdivision.

#### **‘Mediation agreements**

**‘115E.(1)** This section applies if the parties to the mediation of an access dispute reach an agreement on the resolution (a **“mediated resolution”**) of the dispute.

**‘(2)** The agreement must be put into writing and signed by or for the parties (the **“mediation agreement”**).

**‘(3)** The mediator must give a copy of the mediation agreement to the authority as soon as practicable after it is signed.

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<sup>5</sup> Part 6A (Conduct of mediation)



**‘Reference of access dispute—by mediator**

**‘115F.(1)** This section applies if—

- (a) any of the following apply—
  - (i) the mediator considers the parties to a mediation can not reach a mediated resolution of the access dispute the subject of the mediation;
  - (ii) a party to the mediation does not attend the mediation conference for the mediation;
  - (iii) the access dispute is not resolved within 4 months after the access dispute notice for the dispute was given to the authority; and
- (b) the access dispute notice has not been withdrawn.

**‘(2)** The mediator must, by written notice given to the authority, refer the dispute to the authority for arbitration.

**‘Reference of access dispute—by party**

**‘115G.** A party to the mediation of an access dispute may, by a further access dispute notice, refer the dispute to the authority for arbitration if—

- (a) a signed mediation agreement exists for the dispute; and
- (b) the party claims that another party to the mediation agreement has not complied with the agreement within the time stated for it or, if no time is stated, within 90 days after the agreement is signed.’.

**Replacement of ss 116 and 117**

**30.** Sections 116 and 117—

*omit, insert—*

**‘Parties to arbitration of access disputes**

**‘116.(1)** If the access dispute notice for an access dispute states the dispute is to be dealt with by arbitration, the parties to the arbitration of the dispute are—

- (a) the access provider or access seeker who gives the access dispute notice for the access dispute; and
- (b) if the access dispute notice is given by an access provider—the access seeker stated in the notice as being the access seeker involved in the access dispute with the access provider; and
- (c) if the access dispute notice is given by an access seeker—the access provider stated in the notice as being the access provider involved in the access dispute with the access seeker; and
- (d) any other person who applies to the authority in writing to be made a party and is accepted by the authority as having a sufficient interest.

‘(2) If an access dispute is referred to the authority for arbitration by a mediator under section 115F, the parties to the arbitration of the dispute are—

- (a) the parties to the mediation to which the dispute relates; and
- (b) any other person who applies to the authority in writing to be made a party and is accepted by the authority as having a sufficient interest.

### ‘Access determination by authority

‘117.(1) The authority must make a written determination (an “**access determination**”) in an arbitration on access to the declared service by the access seeker.

‘(2) However, the authority is not required to make an access determination if it ends the arbitration under section 122.<sup>6</sup>

‘(3) The determination may deal with any matter relating to access to the service by the access seeker, including matters that were not the basis for the access dispute notice for the access dispute.

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<sup>6</sup> Section 122 (Resolution of access dispute by authority without arbitration or determination)

‘(4) The authority is not required to make an access determination that requires the access provider to provide access to the service by the access seeker.

‘(5) Before making an access determination, the authority must give a draft determination to the parties.

‘(6) Subject to subsection (5), the authority is not required to consult with any entity before making an access determination.

‘(7) When making an access determination, the authority must give the parties its reasons for making the determination.

‘(8) The fact that a party to an arbitration did not engage in negotiations for an access agreement in good faith does not affect—

- (a) an arbitration; or
- (b) the making of an access determination, or an access determination made, in the arbitration.’

**Amendment of s 120 (Matters to be considered by authority in making determination)**

**31.(1)** Section 120, heading, before ‘determination’—

*insert—*

‘access’.

**(2)** Section 120(1), ‘a determination’—

*omit, insert—*

‘an access determination’.

**(3)** Section 120(2), after ‘matters’—

*insert—*

‘relating to the matters mentioned in subsection (1)’.

**Amendment of s 127 (Register of determinations)**

**32.(1)** Section 127, before ‘determinations’—

*insert—*

‘access’.

**(2)** Section 127(2), after ‘each’—

*insert—*

‘access’.

**(3)** Section 127(2)—

*insert—*

‘(e) the authority’s reasons for the determination.’.

**(4)** Section 127—

*insert—*

‘**(3)** The details in the register of the authority’s reasons for an access determination must not include details that are likely to damage the commercial activities of the parties to the determination.’.

**Amendment of s 128 (Making codes)**

**33.** Section 128(2)(a), before ‘time’—

*insert—*

‘reasonable’.

**Amendment of s 137 (Contents of undertakings)**

**34.(1)** Section 137, heading, before ‘undertakings’—

*insert—*

‘**access**’.

**(2)** Section 137(1) and (2), after ‘An’—

*insert—*

‘access’.

(3) Section 137(2)(ba)—

*omit, insert—*

- ‘(ba) information to be given to the authority or another person;
- (bb) an obligation on the owner to comply with decisions of the authority or another person about disputes about matters stated in the undertaking;
- (bc) information to be given to the authority about compliance with the undertaking and performance indicators stated in the undertaking;’.

**Amendment of s 138 (Factors affecting approval of draft undertaking)**

35.(1) Section 138, after ‘draft’—

*insert—*

‘access’.

(2) Section 138(1)—

*insert—*

- ‘(d) a draft access undertaking given to the authority by the owner of a service that is not a declared service, whether or not the draft undertaking is later amended in response to an initial or secondary undertaking notice.’.

(3) Section 138(2)(c), ‘service;’—

*omit, insert—*

‘service, including whether adequate provision has been made for compensation if the rights of users of the service are adversely affected;’.

**Insertion of new s 150A**

**36.** Part 5, division 7, subdivision 4, after section 150—

*insert—*

**‘Obligation of responsible person to comply with approved access undertaking**

**‘150A.** A responsible person must comply with an approved access undertaking given by, or applicable to, the responsible person.’.

**Amendment of s 163 (Responsible operator to keep separate accounting records)**

**37.(1)** Section 163(1), after ‘must keep’—

*insert—*

‘, in a form approved by the authority,’.

**(2)** Section 163—

*insert—*

**‘(4)** Despite section 239,<sup>7</sup> the authority may direct that the accounting records for the declared service be published by the responsible operator if the authority considers publication—

- (a) is in the public interest; and
- (b) would not be likely to damage the responsible operator’s commercial activities.’.

**Omission of pt 5, division 10 (Registers)**

**38.** Part 5, division 10—

*omit.*

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<sup>7</sup> Section 239 (Confidential information)

**Insertion of new pt 5A**

39. After section 170—

*insert—*

**‘PART 5A—PRICING AND SUPPLY OF WATER*****‘Division 1—Preliminary*****‘Application of part to partnerships and joint ventures**

‘170A.(1) This section applies if a water supplier or water seeker (a “**water body**”) is a partnership or joint venture consisting of 2 or more entities (the “**participants**”).

‘(2) If this part requires or permits something to be done by a water body, the thing may be done by 1 or more of the participants for the water body.

‘(3) If a provision of this part refers to a water body doing something, the provision applies as if the provision referred to 1 or more of the participants for the water body doing the thing for the water body.

‘(4) Subsection (5) applies if—

- (a) a provision of this part requires a water body to do something, or prohibits a water body from doing something; and
- (b) a contravention of the provision is an offence.

‘(5) The provision mentioned in subsection (4) applies as if a reference to the water body were a reference to any person responsible for the day-to-day management and control of the water body.

‘(6) Subsection (7) applies if—

- (a) a provision of this part requires a water body to do something, or prohibits a water body from doing something; and
- (b) a contravention of the provision is not an offence.

‘(7) The provision mentioned in subsection (6) applies as if a reference to the water body were a reference to each participant for the water body and to any other person responsible for the day-to-day management and control of the water body.

#### ‘Application of Act to authority for purposes of giving notices

‘**170B.(1)** Subsection (2) applies if this part requires or permits a notice to be given to a water supplier and the water supplier consists of 2 or more entities.

‘(2) The notice may be given to—

- (a) if there is a nominated entity for the water supplier—the nominated entity; or
- (b) if the authority has requested notification of a nominated entity for the water supplier but there is no nominated entity—any 1 of the entities of which the water supplier consists.

‘(3) An entity is the nominated entity for a water supplier consisting of 2 or more entities only if a written notice has been given to the authority in relation to the water supplier (the “**nominee**”) and the notice contains—

- (a) the nominee’s name and address for receiving notices; and
- (b) a signed statement by the other entities of which the water supplier consists that the nominee is authorised by them to receive notices under this Act for all the entities of which the water supplier consists; and
- (c) a signed statement by the nominee agreeing to be the entity authorised to receive notices under this Act for all the entities of which the water supplier consists.

‘(4) For subsection (2)(b), the authority may request notification of a nominated entity, for a water supplier consisting of 2 or more entities, by giving a notice to each entity of which the water supplier consists asking that a written notice be given to the authority containing—

- (a) the name, and address for receiving notices, of 1 of the entities of which the water supplier consists (also the “**nominee**”); and



- 
- (b) a signed statement by the other entities comprising the water supplier that the nominee is authorised by them to receive notices under this Act for all the entities of which the water supplier consists; and
  - (c) a signed statement by the nominee agreeing to be the entity authorised to receive notices under this Act for all the entities of which the water supplier consists.

*‘Division 2—Declarations and investigations of monopoly water supply activities*

*‘Subdivision 1—Criteria for declaration recommendations and declarations of monopoly water supply activities*

**‘Development of criteria**

**‘170C.** Within 6 months after the commencement of this subdivision, the authority must—

- (a) develop criteria (the “**water supply criteria**”) for use by the Ministers for deciding whether to declare a candidate water supply activity to be a monopoly water supply activity; and
- (b) give written notice of the criteria to the Ministers.

**‘Revision of, and advice about, criteria**

**‘170D.(1)** The authority must, if requested by the Ministers, and may, on its own initiative—

- (a) revise the water supply criteria, including the criteria as previously revised under this section; and
- (b) give information or advice to the Ministers about the current criteria.

**‘(2)** The authority must give written notice of any revised criteria to the Ministers.

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**‘Consultation about criteria**

**‘170E.** In developing or revising criteria for this subdivision, the authority may consult with anyone it considers appropriate.

**‘Publication of criteria**

**‘170F.** The authority must publish the criteria and any revised criteria developed under this subdivision in the gazette and in any other way it considers appropriate.

***‘Subdivision 2—Recommendation by authority for declaration of monopoly water supply activities***

**‘Requests about declarations of monopoly water supply activities**

**‘170G.(1)** A person may ask the authority to recommend that a particular candidate water supply activity be declared by the Ministers to be a monopoly water supply activity.

**‘(2)** The Ministers may ask the authority to consider whether a particular candidate water supply activity should be declared by the Ministers to be a monopoly water supply activity.

**‘(3)** A request under subsection (1) or (2) must be in the form approved by the authority.

**‘(4)** Before the authority makes a recommendation about a request, the person or Ministers may—

- (a) withdraw the request; or
- (b) with the written agreement of the authority—amend the request.

**‘(5)** If a request is withdrawn, the request is taken, for this part, never to have been made.

**‘Notice of request**

**‘170H.(1)** This section applies if a request under section 170G is made about a candidate water supply activity, other than by the water supplier carrying on the activity.

**‘(2)** The authority must—

- (a) tell the water supplier carrying on the activity that the authority has received the request; and
- (b) if the request is later withdrawn or amended—immediately tell the water supplier of the withdrawal or give details of the amendment to the water supplier.

**‘Making recommendation**

**‘170I.(1)** After receiving a request under section 170G, the authority must recommend to the Ministers that—

- (a) the candidate water supply activity be declared to be a monopoly water supply activity; or
- (b) part of the activity, that is itself a water supply activity, be declared to be a monopoly water supply activity; or
- (c) the activity not be declared to be a monopoly water supply activity.

**‘(2)** Before making the recommendation, the authority may consult with any person it considers appropriate.

**‘(3)** The authority must—

- (a) make the recommendation within a reasonable time after receiving the request; and
- (b) publish the recommendation and the reasons for the recommendation in the way the authority considers appropriate.

**‘(4)** If the authority makes a recommendation that a candidate water supply activity, or part of a candidate water supply activity, be declared to be a monopoly water supply activity, the authority must also recommend the period for which the declaration should operate.

‘(5) Unless the request is made by the Ministers, the authority must give a copy of the request to the Ministers with the recommendation.

‘(6) If the applicant for the request is not the water supplier carrying on the activity, the authority must give the water supplier’s name to the Ministers with the recommendation.

### **‘Factors affecting making of recommendation**

‘170J.(1) The authority must recommend a candidate water supply activity be declared by the Ministers to be a monopoly water supply activity if the authority is satisfied about all of the water supply criteria in relation to the candidate water supply activity.

‘(2) The authority must recommend that a candidate water supply activity not be declared by the Ministers to be a monopoly water supply activity if the authority is not satisfied about all of the water supply criteria in relation to the candidate water supply activity.

‘(3) Despite subsection (1), the authority may recommend that a candidate water supply activity not be declared by the Ministers to be a monopoly water supply activity if the authority considers the request was not made in good faith or is frivolous.

‘(4) Subsection (3) does not apply to a request made by the Ministers.

‘(5) Despite subsections (1) and (2), the authority may recommend that part of a candidate water supply activity be declared by the Ministers to be a monopoly water supply activity if the authority is satisfied about all of the water supply criteria for the part of the activity.

### **‘Subdivision 3—Investigations about candidate water supply activities**

#### **‘Power of authority to conduct investigation**

‘170K. For making a recommendation under subdivision 2, the authority may conduct an investigation about the candidate water supply activity.

---

**‘Notice of investigation**

**‘170L.(1)** Before starting an investigation under this subdivision, the authority must give reasonable notice of the investigation to—

- (a) the water supplier carrying on the candidate water supply activity; and
- (b) any other person the authority considers appropriate.

**‘(2)** The notice must—

- (a) state the authority’s intention to conduct the investigation; and
- (b) state the name of the water supplier carrying on the activity; and
- (c) state the subject matter of the investigation; and
- (d) invite the person to whom the notice is given to make written submissions to the authority on the subject matter within a reasonable time stated in the notice; and
- (e) state the authority’s address.

**‘Procedures for investigation**

**‘170M.** Part 6<sup>8</sup> applies to an investigation under this subdivision.

*‘Subdivision 4—Declaration by Ministers*

**‘Making declarations**

**‘170N.(1)** After receiving a declaration recommendation, the Ministers must do 1 of the following—

- (a) declare the candidate water supply activity to be a monopoly water supply activity;
- (b) declare part of the activity, that is itself a water supply activity, to be a monopoly water supply activity;

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<sup>8</sup> Part 6 (Investigations by authority)

- (c) decide not to declare the activity to be a monopoly water supply activity.

‘(2) If the Ministers declare the activity, or part of the activity, to be a monopoly water supply activity, the declaration must state the expiry date of the declaration.

### ‘**Notice of decision**

‘**1700.(1)** The Ministers must publish in the gazette—

- (a) notice of the decision to declare the candidate water supply activity in whole or in part, or not to declare the activity, to be a monopoly water supply activity; and
- (b) the reasons for the decision.

‘(2) Also, as soon as practicable after making the decision, the Ministers must—

- (a) unless the request about the declaration of the activity was made by the Ministers—give the designated material for the decision to the applicant; and
- (b) if the applicant for the request about the declaration of the activity is not the water supplier carrying on the activity—give the designated material for the decision to the water supplier carrying on the activity; and
- (c) give to the authority a written notice stating the decision and the reasons for the decision.

‘(3) If the Ministers do not publish as required under subsection (1) within 90 days after receiving the declaration recommendation, they are taken, at the end of the 90 day period—

- (a) to have decided not to declare the activity to be a monopoly water supply activity; and
- (b) to have published notice of the decision.

‘(4) In this section—

“**designated material**”, for a decision of the Ministers to declare, or not to declare, a candidate water supply activity to be a monopoly water supply activity, means—

- (a) a copy of the declaration recommendation; and
- (b) a written notice stating the decision and the reasons for the decision.

### ‘Factors affecting making of declaration

‘**170P.(1)** The Ministers must declare a candidate water supply activity to be a monopoly water supply activity if they are satisfied about all of the water supply criteria for the activity.

‘(2) The Ministers must decide not to declare a candidate water supply activity to be a monopoly water supply activity if they are not satisfied about all of the water supply criteria for the activity.

‘(3) Despite subsections (1) and (2), the Ministers may declare part of a candidate water supply activity to be a monopoly water supply activity if they are satisfied about all of the water supply criteria for the part of the activity.

### ‘Duration of declaration

‘**170Q.(1)** A declaration of a monopoly water supply activity starts to operate on—

- (a) the day notice of the decision to declare the activity is published in the gazette; or
- (b) if a later day of operation is stated in the notice—the later day.

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‘(2) A declaration of a monopoly water supply activity continues in operation until its expiry date, unless it is earlier revoked.

***‘Subdivision 5—Revocation of declaration***

**‘Recommendation to revoke**

‘170R.(1) The authority may recommend to the Ministers that a declaration of a monopoly water supply activity be revoked.

‘(2) The authority may recommend revocation only if it is satisfied that, at the time of the recommendation, section 170P<sup>9</sup> would prevent the Ministers from declaring the relevant water supply activity to be a monopoly water supply activity.

**‘Power of authority to conduct investigation**

‘170S. For making a revocation recommendation, the authority may conduct an investigation about the declared monopoly water supply activity.

**‘Notice of investigation**

‘170T.(1) Before starting an investigation under this subdivision, the authority must give reasonable notice of the investigation to—

- (a) the water supplier carrying on the monopoly water supply activity; and
- (b) any other person the authority considers appropriate.

‘(2) The notice must—

- (a) state the authority’s intention to conduct the investigation; and
- (b) state the subject matter of the investigation; and

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<sup>9</sup> Section 170P (Factors affecting making of declaration)



- (c) invite the person to whom the notice is given to make a written submission to the authority on the subject matter within a reasonable time stated in the notice; and
- (d) state the authority's address.

### **'Procedures for investigation**

**'170U.** Part 6<sup>10</sup> applies to an investigation under this subdivision.

### **'Revocation**

**'170V.(1)** On receiving a revocation recommendation, the Ministers must either revoke the declaration of the monopoly water supply activity or decide not to revoke the declaration.

**'(2)** The Ministers may revoke the declaration—

- (a) only after receiving a revocation recommendation; and
- (b) only if they are satisfied that, at the time of the revocation, section 170P<sup>11</sup> would prevent the Ministers from declaring the relevant water supply activity to be a monopoly water supply activity.

### **'Notice of decision**

**'170W.(1)** The Ministers must publish in the gazette—

- (a) notice of a decision to revoke, or not to revoke, a declaration of a monopoly water supply activity; and
- (b) the reasons for the decision.

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<sup>10</sup> Part 6 (Investigations by authority)

<sup>11</sup> Section 170P (Factors affecting making of declaration)

‘(2) Also, as soon as practicable after making the decision, the Ministers must give a written notice stating the decision and the reasons for the decision to—

- (a) the water supplier carrying on the activity; and
- (b) the authority.

**‘When revocation takes effect**

‘**170X.** A decision of the Ministers to revoke a declaration of a monopoly water supply activity takes effect on—

- (a) the day notice of the decision is published in the gazette; or
- (b) if a later day of effect is stated in the notice—the later day.

*‘Subdivision 6—Other matters about monopoly water supply declarations*

**‘Effect of expiry or revocation of declaration**

‘**170Y.** The expiry or revocation of a declaration of a monopoly water supply activity does not affect—

- (a) the mediation or arbitration of a water supply dispute for which a water supply dispute notice was given before the expiry or revocation; or
- (b) the operation or enforcement of a water supply determination made in the arbitration of a water supply dispute for which a water supply dispute notice was given before the expiry or revocation; or
- (c) the operation or enforcement of a water pricing determination that was made before the expiry or revocation; or
- (d) the operation of a water supply agreement, or a right acquired or a liability incurred under a water supply agreement, that was entered into before the expiry or revocation.

**‘Register of declarations**

‘**170Z.(1)** The authority must keep a register of declarations of monopoly water supply activities in operation.

‘**(2)** The register must include, for each declaration, details the authority considers appropriate.

***‘Subdivision 7—Investigations about monopoly water supply activities and making water pricing determinations*****‘Investigations by authority**

‘**170ZA.(1)** The Ministers may refer a monopoly water supply activity to the authority for either or both of the following investigations—

- (a) an investigation about the pricing practices relating to the activity;
- (b) investigations for monitoring the pricing practices relating to the activity.

‘**(2)** The authority must conduct the investigations.

‘**(3)** The Ministers may, by written notice given to the authority, withdraw or amend the reference at any time before receiving the authority’s report of the results of the investigation.

‘**(4)** A notice under subsection (3) must state the reasons for the withdrawal or amendment of the reference.

**‘Directions of Ministers for Ministerial reference**

‘**170ZB.(1)** In referring a monopoly water supply activity to the authority for an investigation, the Ministers may direct the authority to do any or all of the following—

- (a) to make a draft report available to the public, or a stated entity, during the investigation;
- (b) to consider stated matters when conducting the investigation;
- (c) to give a report of the results of the investigation to the Ministers within a stated period.

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‘(2) The authority must comply with a direction.

### ‘Notice of investigation

‘**170ZC.(1)** Before starting an investigation under this subdivision, the authority must give reasonable notice of the investigation.

‘(2) The notice must be published in a newspaper circulating throughout the State.

‘(3) Also, the notice must be given to the water supplier carrying on the monopoly water supply activity.

‘(4) The notice must—

- (a) state the authority’s intention to conduct the investigation; and
- (b) state the subject matter of the investigation; and
- (c) invite interested persons to make written submissions to the authority on the subject matter within a reasonable time stated in the notice; and
- (d) state the authority’s address.

### ‘Procedures for investigations

‘**170ZD.** Part 6<sup>12</sup> applies to an investigation under this subdivision.

### ‘Ending of authority’s jurisdiction for investigation

‘**170ZE.** The authority’s jurisdiction to continue an investigation about a monopoly water supply activity ends if—

- (a) the activity stops being a monopoly water supply activity; or
- (b) the reference of the activity to the authority by the Ministers is withdrawn.

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<sup>12</sup> Part 6 (Investigations by authority)

**‘Water pricing determination by authority**

**‘170ZF.(1)** The authority must make a written determination (a “**water pricing determination**”) in an investigation about a monopoly water supply activity.

**‘(2)** However, the authority is not required to make a water pricing determination in an investigation if its jurisdiction to continue the investigation ends under section 170ZE.

**‘(3)** The determination must—

- (a) deal with the pricing practices relating to the activity; and
- (b) give the reasons for making the determination; and
- (c) if the Ministers give the authority a direction for the investigation—include details of the direction; and
- (d) deal with any matter relating to the pricing practices that the authority considers appropriate.

**‘(4)** Before making a water pricing determination, the authority must give a draft determination to the water supplier carrying on the activity.

**‘(5)** Subject to subsection (4), the authority is not required to consult with any entity before making a water pricing determination.

**‘(6)** When making a water pricing determination, the authority must give the water supplier carrying on the activity its reasons for making the determination.

**‘Water pricing determinations may state how to calculate price**

**‘170ZG.** Without limiting section 170ZF(3), a water pricing determination may state how to calculate the price at which the water supplier must carry on the monopoly water supply activity.

**‘Restrictions affecting making of water pricing determination**

**‘170ZH.(1)** The authority must not make a water pricing determination for a monopoly water supply activity that is inconsistent with—

- (a) a water supply determination relating to the activity; or

- (b) an approved water supply undertaking for the activity; or
- (c) if the activity is a declared service—an access determination relating to the service; or
- (d) if the activity is a service, whether or not a declared service—an approved access undertaking for the service.

‘(2) A water pricing determination has no effect if it is made in contravention of this section.

### **‘Matters to be considered by authority in making water pricing determination**

‘170ZL(1) In making a water pricing determination, the authority must have regard to the following matters—

- (a) the need for efficient resource allocation;
- (b) the need to promote competition;
- (c) the protection of consumers from abuses of monopoly power;
- (d) decisions by the Ministers and local governments under part 3 about pricing practices of government monopoly business activities involving the supply of water;
- (e) the legitimate business interests of the water supplier carrying on the monopoly water supply activity to which the investigation relates;
- (f) the legitimate business interests of persons who have, or may acquire, rights to have the monopoly water supply activity provided to them by the water supplier;
- (g) in relation to the monopoly water supply activity—
  - (i) the cost of providing the activity in an efficient way, having regard to relevant interstate and international benchmarks; and
  - (ii) the actual cost of providing the activity; and

- (iii) the quality of the activities constituting the water supply activity; and
- (iv) the quality of the water being supplied;
- (h) the appropriate rate of return on water suppliers' assets;
- (i) the effect of inflation;
- (j) the impact on the environment of prices charged by the water supplier;
- (k) considerations of demand management;
- (l) social welfare and equity considerations, including community service obligations, the availability of goods and services to consumers and the social impact of pricing practices;
- (m) the need for pricing practices not to discourage socially desirable investment or innovation by water suppliers;
- (n) legislation and government policies relating to ecologically sustainable development;
- (o) legislation and government policies relating to occupational health and safety and industrial relations;
- (p) economic and regional development issues, including employment and investment growth.

‘(2) The authority may have regard to any other matters related to the matters mentioned in subsection (1) it considers are appropriate.

**‘When water pricing determination takes effect**

‘170ZJ. A water pricing determination takes effect on—

- (a) the day the determination is made; or
- (b) if a later day of effect is stated in the determination—the later day.

**‘Enforcement of water pricing determination**

**‘170ZK.** A water pricing determination may be enforced in the way provided under division 6.<sup>13</sup>

**‘Water suppliers’ pricing practices**

**‘170ZL.** A water supplier carrying on a monopoly water supply activity to which a water pricing determination relates must adopt pricing practices consistent with the determination.

**‘Register of water pricing determinations**

**‘170ZM.(1)** The authority must keep a register of water pricing determinations.

**‘(2)** For each determination, the register must include details of the following—

- (a) the name of the water supplier carrying on the monopoly water supply activity to which the determination relates;
- (b) the monopoly water supply activity;
- (c) the day the determination was made;
- (d) the day the determination is to take, or took, effect;
- (e) the authority’s reasons for the determination.

**‘(3)** The details of the authority’s reasons for the determination must not include details that are likely to damage the commercial activities of the water supplier.

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<sup>13</sup> Division 6 (Enforcement for pt 5A)



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***Division 3—Water supply agreements***

**‘Definition for div 3**

**‘170ZMA.** In this division—

**“water supply activity”** means carrying on a business the main purpose of which is supplying water to another person (other than supplying bottled or containerised water), whether or not supplying the water includes water delivery services or water storage.

**‘Obligation of private water supplier to negotiate**

**‘170ZN.** A water supplier must, if required by a water seeker, negotiate with the water seeker for making a water supply agreement.

**‘Obligations of parties to negotiations for water supply agreements**

**‘170ZO.** The water supplier and water seeker must negotiate in good faith for reaching a water supply agreement.

**‘Obligation of water supplier to satisfy water seeker’s requirements**

**‘170ZP(1).** In negotiations between a water supplier and a water seeker for a water supply agreement, the water supplier must make all reasonable efforts to try to satisfy the reasonable requirements of the water seeker.

**‘(2)** Without limiting subsection (1), and subject to any relevant approved water supply undertaking, the water supplier must give the water seeker the following—

- (a) information about the price at which the water supplier provides the water supply activity, including the way in which the price is calculated;
- (b) information about the amount of spare water available for supply by the water supplier;

- (c) if the authority has made a water supply determination or a water pricing determination about the water supply activity carried on by the water supplier—information about the determination.

### **‘Terms of supply under separate water supply agreements**

**‘170ZQ.** In entering into separate water supply agreements, a water supplier is not required to provide the water supply activity on the same terms under each agreement.

## ***‘Division 4—Water supply disputes***

### ***‘Subdivision 1—Preliminary***

#### **‘Definition for div 4**

**‘170ZQA.** In this division—

**“water supply activity”** means carrying on a business the main purpose of which is supplying water to another person (other than supplying bottled or containerised water), whether or not supplying the water includes water delivery services or water storage.

#### **‘Application of dispute resolution procedures to water supply disputes**

**‘170ZR.(1)** Subdivision 3 applies to the mediation, and subdivision 4 applies to the arbitration, of a water supply dispute only if a notice of the dispute has been given to the authority by a water supplier or water seeker under section 170ZS.

**‘(2)** However, a water supplier or water seeker may give a notice under section 170ZS about a water supply dispute only if the water supplier and water seeker have not agreed to deal with the dispute otherwise than by mediation or arbitration under this Act.

*‘Subdivision 2—Notices about water supply disputes***‘Giving water supply dispute notice**

**‘170ZS.(1)** This section applies if—

- (a) a water supplier and water seeker can not agree on an aspect of the provision of a water supply activity; and
- (b) there is no water supply agreement between the water supplier and water seeker; and
- (c) the water supplier is in a position to exercise market power for providing the activity.

**‘(2)** Either the water supplier or water seeker may notify the authority that a water supply dispute exists.

**‘(3)** For subsection (1), there is no water supply agreement between a water supplier and water seeker if the aspect of providing the activity about which the water supplier and water seeker can not agree is increased supply of water.

**‘Requirements about water supply dispute notice**

**‘170ZT.(1)** A notice given under section 170ZS(2) (a “**water supply dispute notice**”) must be in writing.

**‘(2)** A water supply dispute notice must—

- (a) state the name and address of the water supplier or water seeker giving the notice; and
- (b) state the name and address of the other party involved in the water supply dispute; and
- (c) state the basis for asserting that the water supplier is in a position to exercise market power for the provision of the water supply activity; and
- (d) state whether the dispute is to be dealt with by mediation or arbitration; and

- (e) state the steps the party giving the notice has taken, or tried to take, to satisfy its obligations about carrying out negotiations for a water supply agreement in good faith,<sup>14</sup> including, if the dispute is to be dealt with by arbitration, whether or not an attempt has been made to resolve the dispute by mediation under subdivision 3.

### **‘Notice by authority of water supply dispute**

**‘170ZU.** On receiving a water supply dispute notice, the authority must give written notice of the water supply dispute—

- (a) if the water supply dispute notice was given by a water supplier—to the water seeker stated in the notice as being the water seeker involved in the water supply dispute with the water supplier; and
- (b) if the water supply dispute notice was given by a water seeker—to the water supplier stated in the notice as being the water supplier involved in the water supply dispute with the water seeker; and
- (c) to any other person the authority considers is appropriate to become a party to the water supply dispute.

### **‘Withdrawal of water supply dispute notice**

**‘170ZV.(1)** A water supply dispute notice may be withdrawn only under this section.

**‘(2)** A water supplier or water seeker may withdraw a water supply dispute notice—

- (a) if the dispute is to be dealt with by mediation—at any time before a mediated resolution of the dispute has been achieved; or
- (b) if the dispute is to be dealt with by arbitration—at any time before the authority makes its determination.

**‘(3)** However, the water supplier may withdraw the water supply dispute notice only with the written agreement of the water seeker.

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<sup>14</sup> See section 170ZO (Obligations of parties to negotiations for water supply).

‘(4) Subsection (2) applies whether the water supply dispute notice was given by the water supplier or water seeker.

‘(5) If a water supply dispute notice is withdrawn, the notice is taken, for this part, never to have been given.

### ‘Authority may refer water supply dispute to mediation

‘170ZW.(1) This section applies if—

- (a) the authority has received a water supply dispute notice stating—
  - (i) the dispute is to be dealt with by arbitration; and
  - (ii) there has been no attempt to resolve the dispute by mediation; and
- (b) the authority considers a mediated resolution of the dispute can be achieved.

‘(2) The authority must give the following persons a written notice asking them to attend a conference to deal with the dispute by mediation (a “mediation conference”)—

- (a) the water seeker stated in the water supply dispute notice as being the water seeker involved in the water supply dispute with the water supplier;
- (b) the water supplier stated in the water supply dispute notice as being the water supplier involved in the water supply dispute with the water seeker.

### ‘Subdivision 3—Mediation of water supply disputes

### ‘Parties to mediation of water supply disputes

‘170ZX.(1) If section 170ZW applies, the parties to the mediation of a water supply dispute are the persons to whom a notice under the section is given by the authority.

‘(2) If section 170ZW does not apply, the parties to the mediation of a water supply dispute are—

- (a) the water supplier or water seeker who gives the water supply dispute notice for the water supply dispute; and
- (b) if the water supply dispute notice is given by a water supplier—the water seeker stated in the notice as being the water seeker involved in the water supply dispute with the water supplier; and
- (c) if the water supply dispute notice is given by a water seeker—the water supplier stated in the notice as being the water supplier involved in the water supply dispute with the water seeker.

#### **‘Other persons may take part in mediation conference**

‘**170ZY.(1)** A mediator may allow a person who applies to take part in a mediation conference to take part in the conference if—

- (a) the mediator is satisfied the person has a sufficient interest in the resolution of the water supply dispute; and
- (b) the parties to the mediation consent.

‘(2) However, the person does not become a party to the dispute.

#### **‘Conduct of mediation under subdiv**

‘**170ZZ.** Part 6A<sup>15</sup> applies to a mediation under this subdivision.

#### **‘Mediation agreements**

‘**170ZZA.(1)** This section applies if the parties to the mediation of a water supply dispute agree on a resolution (a “**mediated resolution**”) of the dispute.

‘(2) The agreement must be put into writing and signed by or for the parties (the “**mediation agreement**”).

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<sup>15</sup> Part 6A (Conduct of mediation)

‘(3) The mediator must give a copy of the signed agreement to the authority as soon as practicable after it is signed.

**‘Reference of water supply dispute—by mediator**

‘170ZZB.(1) This section applies if—

- (a) any of the following apply—
  - (i) the mediator considers the parties to a mediation can not achieve a mediated resolution of the water supply dispute the subject of the mediation;
  - (ii) a party to the mediation does not attend the mediation conference for the mediation;
  - (iii) the water supply dispute is not resolved within 4 months after the water supply dispute notice for the dispute was given to the authority; and
- (b) the water supply dispute notice has not been withdrawn.

‘(2) The mediator must, by written notice to the authority, refer the dispute to the authority for arbitration.

**‘Reference of water supply dispute—by party**

‘170ZZC. A party to the mediation of a water supply dispute may, by a further water supply dispute notice, refer the dispute to the authority for arbitration if—

- (a) a signed mediation agreement exists for the dispute; and
- (b) the party claims that another party to the mediation agreement has not complied with the agreement within the time stated for it or, if no time is stated, within 90 days after the agreement is signed.

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*Subdivision 4—Arbitration of water supply disputes and making of  
water supply determinations*

**Parties to arbitration of water supply disputes**

**170ZZD.(1)** If the water supply dispute notice for a water supply dispute states the dispute is to be dealt with by arbitration, the parties to the arbitration of the dispute are—

- (a) the water supplier or water seeker who gives the water supply dispute notice for the water supply dispute; and
- (b) if the water supply dispute notice is given by a water supplier—the water seeker stated in the notice as being the water seeker involved in the water supply dispute with the water supplier; and
- (c) if the water supply dispute notice is given by a water seeker—the water supplier stated in the notice as being the water supplier involved in the water supply dispute with the water seeker; and
- (d) any other person who applies to the authority in writing to be made a party and is accepted by the authority as having a sufficient interest.

**(2)** If a water supply dispute is referred by a mediator to the authority for arbitration under section 170ZZB, the parties to the arbitration of the dispute are—

- (a) the parties to the mediation to which the dispute relates; and
- (b) any other person who applies to the authority in writing to be made a party and is accepted by the authority as having a sufficient interest.



**‘Water supply determination by authority**

**‘170ZZE.(1)** The authority must make a written determination (a “**water supply determination**”) in an arbitration of a water supply dispute.

**‘(2)** However, the authority is not required to make a water supply determination if it ends the arbitration under section 170ZZJ.<sup>16</sup>

**‘(3)** The water supply determination may deal with any matter relating to the provision of the water supply activity by the water supplier, including matters that were not the basis for the water supply dispute notice for the water supply dispute.

**‘(4)** The authority is not required to make a water supply determination that requires the water supplier to supply water to the water seeker.

**‘(5)** Before making a water supply determination, the authority must give a draft of the determination to the parties.

**‘(6)** Subject to subsection (5), the authority is not required to consult with any entity before making a water supply determination.

**‘(7)** When making a water supply determination, the authority must give the parties its reasons for making the determination.

**‘(8)** The fact that a party to an arbitration did not engage in negotiations for a water supply agreement in good faith does not affect—

- (a) an arbitration; or
- (b) the making of a water supply determination, or a water supply determination made, in the arbitration.

**‘Examples of water supply determinations**

**‘170ZZF.** Without limiting section 170ZZE(3), a water supply determination may—

- (a) require the water supplier to supply water to the water seeker; or
  - (b) require the water seeker to accept water from the water supplier;
- or

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<sup>16</sup> Section 170ZZJ (Resolution of water supply dispute without arbitration or determination)

- (c) state the terms on which the water seeker is supplied with water from the water supplier; or
- (d) include a requirement that the water supplier and water seeker enter into a water supply agreement to give effect to a matter determined by the authority; or
- (e) include a requirement that the water supplier charge no more than a stated maximum price for the water supply activity it provides; or
- (f) include a requirement that the water supplier calculate the price for the water supply activity it provides in a particular way.

#### **‘Restrictions affecting making of water supply determinations**

**‘170ZZG.(1)** The authority must not make a water supply determination relating to a water supply activity that is inconsistent with—

- (a) an approved water supply undertaking for the activity; or
- (b) a water pricing determination for the activity; or
- (c) if the activity is a declared service—an access determination relating to the service; or
- (d) if the activity is a service, whether or not a declared service—an approved access undertaking for the service.

**‘(2)** Also, the authority must not make a water supply determination that—

- (a) would have either of the following effects—
  - (i) a reduction in the amount of water able to be obtained by a water supplier;
  - (ii) the water seeker, or someone else, becoming the owner, or 1 of the owners, of the water, without the existing owner’s agreement; or
- (b) is inconsistent with an Act regulating the management of water; or

- (c) requires the transfer of an instrument given under an Act that—
  - (i) regulates the management of water; or
  - (ii) confers interests in water on the holder of the instrument.

‘(3) Despite subsection (2)(a), the authority may make a determination reducing the amount of water able to be obtained by the water supplier if—

- (a) the water supplier is a party to the arbitration; and
- (b) the reduction does not prevent the water supplier from obtaining a sufficient amount of water to be able to meet the water supplier’s reasonably anticipated requirements, as assessed by the authority, as at the time the water supply dispute notice was given; and
- (c) if the authority considers the water supplier is entitled to be compensated for the reduction—the amount of compensation is taken into account in fixing the amount to be paid by the water seeker for the supply of water.

‘(4) A water supply determination has no effect if it is made in contravention of this section.

### **‘Matters to be considered by authority in making a water supply determination**

‘170ZZH.(1) In making a water supply determination, the authority must have regard to the following matters—

- (a) the need for efficient resource allocation;
- (b) the need to promote competition;
- (c) the protection of consumers from abuses of monopoly power;
- (d) decisions by the Ministers and local governments under part 3 about pricing practices of government monopoly business activities involving the supply of water;
- (e) the legitimate business interests of the water supplier;
- (f) the legitimate business interests of persons who have, or may acquire, rights to have a water supply activity provided to them by the water supplier;

- (g) in relation to the water supply activity—
  - (i) the cost of providing the activity in an efficient way, having regard to relevant interstate and international benchmarks; and
  - (ii) the actual cost of providing the activity; and
  - (iii) the quality of the activities constituting the water supply activity; and
  - (iv) the quality of the water being supplied;
- (h) the appropriate rate of return on the assets of water suppliers;
- (i) the effect of inflation;
- (j) the impact on the environment of prices charged by the water supplier;
- (k) considerations of demand management;
- (l) social welfare and equity considerations, including community service obligations, the availability of goods and services to consumers and the social impact of pricing practices;
- (m) the need for pricing practices not to discourage socially desirable investment or innovation by water suppliers;
- (n) legislation and government policies relating to ecologically sustainable development;
- (o) legislation and government policies relating to occupational health and safety and industrial relations;
- (p) economic and regional development issues, including employment and investment growth.

‘(2) The authority may take into account any other matters relating to the matters mentioned in subsection (1).

#### **‘Conduct of arbitration under subdiv**

‘**170ZZI.** Part 7<sup>17</sup> applies to an arbitration under this subdivision.

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<sup>17</sup> Part 7 (Conduct of arbitration hearings by authority)

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**‘Resolution of water supply dispute by authority without arbitration or determination**

**‘170ZZJ.** The authority may decide not to start an arbitration, or at any time to end an arbitration under this subdivision without making a water supply determination, if it considers that—

- (a) the giving of the water supply dispute notice was vexatious; or
- (b) the subject matter of the water supply dispute is trivial, misconceived or lacking in substance; or
- (c) the party who gave the dispute notice has not engaged in negotiations for a water supply agreement in good faith; or
- (d) the water supplier is not in a position to exercise market power.

**‘When water supply determination takes effect**

**‘170ZZK.** A water supply determination takes effect on—

- (a) the day the determination is made; or
- (b) if a later day of effect is stated in the determination—the later day.

**‘Enforcement of water supply determination**

**‘170ZZL.** A water supply determination may be enforced in the way provided under division 6.<sup>18</sup>

**‘Register of water supply determinations**

**‘170ZZM.(1)** The authority must keep a register of water supply determinations.

**‘(2)** The register must include, for each water supply determination, details of the following—

- (a) the names of the parties to the determination;
- (b) the water supply activity to which the determination relates;

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<sup>18</sup> Division 6 (Enforcement for pt 5A)

- (c) the date the determination was made;
- (d) the date the determination is to take, or took, effect;
- (e) the authority's reasons for the determination.

‘(3) The details of the authority's reasons for the determination must not include details that are likely to damage the commercial activities of the parties to the determination.

**‘Water supply determination not a substitute for seeking access to a service**

‘170ZZN. A water supply determination requiring the supply of water does not remove or change a water seeker's rights or obligations under part 5, division 4.<sup>19</sup>

***‘Division 5—Water supply undertakings***

***‘Subdivision 1—Submission and approval of draft undertakings***

**‘Submission and approval of draft water supply undertaking**

‘170ZZO.(1) A water supplier may give a draft water supply undertaking to the authority.

‘(2) A person who expects to be a water supplier may give a draft water supply undertaking to the authority.

‘(3) The authority must consider a draft water supply undertaking given to it and either approve, or refuse to approve, it.

‘(4) If the authority refuses to approve the draft undertaking, it must give the person who gave the draft undertaking to the authority a written notice stating—

- (a) the reasons for the refusal; and

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<sup>19</sup> Part 5 (Access to services), division 4 (Access agreements for declared services)

- (b) the way in which the authority considers it is appropriate to amend the draft undertaking.

### **‘Contents of water supply undertakings**

**‘170ZZP.(1)** A water supply undertaking must state the expiry date of the undertaking.

**‘(2)** A water supply undertaking may include details of the following—

- (a) how prices for a water supply activity are to be calculated;
- (b) information about the basis on which a water supply activity will be provided, including terms to be included in water supply agreements with water seekers;
- (c) how negotiations for water supply agreements will be conducted;
- (d) information to be given to water seekers;
- (e) information to be given to the authority or another person;
- (f) an obligation on the water supplier to comply with decisions of the authority or another person about matters stated in the undertaking;
- (g) information to be given to the authority about compliance with the undertaking and performance indicators stated in the undertaking;
- (h) time frames for giving information in the conduct of negotiations for water supply agreements;
- (i) how the water supplier will calculate the amount of spare water available for supply by the water supplier;
- (j) arrangements for the transfer of all or part of the interest of a person to whom a water supply activity is provided under a water supply agreement;
- (k) accounting requirements to be satisfied by the water supplier and a person to whom a water supply activity is provided;
- (l) provision of water supply activities by water suppliers other than the water supplier giving the undertaking;
- (m) requirements for the safe provision of a water supply activity;

- (n) if the provision of water supply activity by the water supplier is a service for which an access undertaking has been approved under part 5—the access undertaking;
- (o) a review of the undertaking.

**‘Factors affecting approval of draft water supply undertaking**

**‘170ZZQ.(1)** The authority may approve a draft water supply undertaking only if it considers it appropriate to do so having regard to the following—

- (a) the legitimate business interests of the water supplier giving the undertaking;
- (b) the public interest, including the public interest in having competition in markets, whether or not in Australia;
- (c) the interests of water seekers;
- (d) any other issues the authority considers relevant.

**‘(2)** However, the authority may approve a draft water supply undertaking only if—

- (a) it is satisfied the undertaking is consistent with the following—
  - (i) for a water supply activity that is a declared service—an access determination relating to the service;
  - (ii) for a water supply activity that is a service, whether or not it is a declared service—an approved access undertaking for the service; and
- (b) it has published the undertaking and invited persons to make submissions on it to the authority within the time stated by the authority; and
- (c) it has considered any submissions received by it within the time.



*‘Subdivision 2—Preparation and approval of draft amending water supply undertakings*

**‘Requirement of responsible person to give draft amending water supply undertaking**

**‘170ZZR.(1)** The authority may, by written notice (an **“initial amendment notice”**) given to the responsible person for an approved water supply undertaking relating to a water supply activity, require the person to give the authority a draft undertaking amending the approved undertaking—

- (a) within 30 days after receiving the notice; or
- (b) if the authority extends, or further extends, the period by written notice given to the person in the period or extended period—within the period as extended.

**‘(2)** The authority may make a requirement under subsection (1) only if the authority considers it is necessary to amend the approved undertaking to make the undertaking consistent with a provision of this Act.

**‘Consideration and approval of draft amending water supply undertaking by authority**

**‘170ZZS.(1)** The authority must consider a draft water supply undertaking given to it in response to an initial amendment notice and either approve, or refuse to approve, the draft water supply undertaking within the prescribed period.

**‘(2)** If the authority refuses to approve the draft water supply undertaking, it must, within the prescribed period, give the responsible person a written notice (a **“secondary amendment notice”**) stating the reasons for the refusal and asking the person, within 30 days of receiving the notice—

- (a) to amend the draft water supply undertaking in the way the authority considers appropriate; and
- (b) to give a copy of the amended draft water supply undertaking to the authority.

‘(3) If the responsible person complies with the secondary amendment notice, the authority may approve the draft water supply undertaking.

‘(4) In this section—

**“prescribed period”** means—

- (a) the period of 30 days after the authority receives a draft water supply undertaking in response to an initial amendment notice; or
- (b) if the authority extends, or further extends, the period by written notice given to the responsible person in the period or extended period—the period as extended.

### **‘Preparation and approval of draft amending water supply undertaking by authority**

**‘170ZZT.** If the responsible person for an approved water supply undertaking does not comply with an initial or secondary amendment notice, the authority may prepare, and approve, a draft water supply undertaking amending the approved water supply undertaking.

### **‘Submission and approval of voluntary draft amending undertaking**

**‘170ZZU.(1)** The responsible person for an approved water supply undertaking may, without receiving an initial amendment notice, give to the authority a draft water supply undertaking amending the approved water supply undertaking.

‘(2) The authority must consider a draft water supply undertaking given to it under subsection (1) and either approve, or refuse to approve, the draft water supply undertaking.

‘(3) If the authority refuses to approve the draft water supply undertaking, it must give to the responsible person a written notice stating—

- (a) the reasons for the refusal; and
- (b) the way in which the authority considers it is appropriate to amend the draft water supply undertaking.

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‘(4) In this section—

**“responsible person for an approved water supply undertaking”** includes a person who gave the water supply undertaking because the person expects to be the water supplier carrying on the water supply activity to which the water supply undertaking relates.

**‘Factors affecting approval of draft amending water supply undertaking**

**‘170ZZV.(1)** This section applies to the following draft water supply undertakings amending approved water supply undertakings—

- (a) a draft water supply undertaking given to the authority in response to an initial amendment notice, whether or not the draft water supply undertaking is later amended in response to a secondary amendment notice;
- (b) a draft water supply undertaking prepared by the authority because of the failure of a responsible person to comply with an initial or secondary amendment notice;
- (c) a draft water supply undertaking given to the authority by a responsible person without receiving an initial amendment notice.

‘(2) The authority may approve a draft water supply undertaking only if it considers it appropriate to do so having regard to the matters mentioned in section 170ZZQ(1)(a) to (d).<sup>20</sup>

‘(3) However, the authority may approve a draft water supply undertaking only on the conditions mentioned in section 170ZZQ(2).

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<sup>20</sup> Section 170ZZQ (Factors affecting approval of draft water supply undertaking)

***‘Subdivision 3—Investigations about draft water supply undertakings*****‘Application of subdivision**

**‘170ZZW.** This subdivision applies to the following draft water supply undertakings—

- (a) a draft water supply undertaking given to the authority under section 170ZZO;<sup>21</sup>
- (b) a draft water supply undertaking given to the authority in response to an initial amendment notice;
- (c) a draft water supply undertaking amending an approved water supply undertaking given to the authority under section 170ZZU;
- (d) a draft water supply undertaking prepared by the authority because of the failure of a person to comply with an initial or secondary amendment notice.

**‘Power of authority to conduct investigation**

**‘170ZZX.** The authority may conduct an investigation—

- (a) for deciding whether to approve, or to refuse to approve, a draft water supply undertaking mentioned in section 170ZZW(a), (b) or (c); or
- (b) for preparing or approving a draft water supply undertaking mentioned in section 170ZZW(d).

**‘Notice of investigation**

**‘170ZZY.(1)** Before starting an investigation under this subdivision, the authority must give reasonable notice of the investigation to—

- (a) the water supplier carrying on the water supply activity; and
- (b) any other person the authority considers appropriate.

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<sup>21</sup> Section 170ZZO (Submission and approval of draft water supply undertaking)

‘(2) The notice must—

- (a) state the authority’s intention to conduct the investigation; and
- (b) state the subject matter of the investigation; and
- (c) invite the person to whom the notice is given to make written submissions to the authority on the subject matter within a reasonable time stated in the notice; and
- (d) state the authority’s address.

### ‘Procedures for investigation

‘170ZZZ. Part 6<sup>22</sup> applies to an investigation under this subdivision.

#### ‘Subdivision 4—Other matters about water supply undertakings

### ‘Withdrawal of approved water supply undertaking

‘170ZZZA.(1) An approved water supply undertaking may be withdrawn at any time by the person who gave the relevant draft water supply undertaking to the authority.

‘(2) The authority may withdraw an approved water supply undertaking if it prepared the relevant draft water supply undertaking.

‘(3) However, a withdrawal may be made only with the written agreement of—

- (a) for a withdrawal under subsection (1)—the authority; or
- (b) for a withdrawal under subsection (2)—the responsible person.

### ‘Period of operation of approved water supply undertaking

‘170ZZZB. An approved water supply undertaking—

- (a) comes into operation at the time of approval; and

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<sup>22</sup> Part 6 (Investigations by authority)

- (b) continues in operation until the earlier of the following—
- (i) the expiry date stated in the water supply undertaking;
  - (ii) the withdrawal of the water supply undertaking.

#### **‘Register of approved water supply undertakings**

**‘170ZZZC.(1)** The authority must keep a register of approved water supply undertakings in operation.

**‘(2)** The withdrawal of an approved water supply undertaking must be noted in the register.

#### **‘Obligation of responsible person to comply with water supply undertaking**

**‘170ZZZD.** A responsible person must comply with an approved water supply undertaking given by, or otherwise applicable to, the responsible person.

#### ***‘Division 6—Enforcement for pt 5A***

#### **‘References to person involved in contraventions**

**‘170ZZZE.** In this division, a reference to a person involved in a contravention is a reference to a person who—

- (a) has aided, abetted, counselled or procured the contravention; or
- (b) has induced the contravention, whether through threats, promises or in another way; or
- (c) has been in any way, directly or indirectly, knowingly concerned in, or a party to, the contravention; or
- (d) has conspired with others to effect the contravention.

**‘Orders to enforce water supply and pricing determinations**

**‘170ZZZF.(1)** This section applies if—

- (a) on the application of a party to a water supply determination, the court is satisfied that another party (the **“contravening person”**), has engaged, is engaging, or proposes to engage, in conduct constituting a contravention of the determination; or
- (b) on the application of a person other than a party to a water supply determination, the court is satisfied that a water supplier (also the **“contravening person”**) is engaging, or proposes to engage, in conduct constituting a contravention of a water pricing determination.

**‘(2)** The court may make all or any of the following orders—

- (a) an order granting an injunction, on terms the court considers appropriate—
  - (i) restraining a contravening person from engaging in the conduct; or
  - (ii) if the conduct involves failing to do something—requiring a contravening person to do the thing;
- (b) an order directing a contravening person to compensate the applicant for loss or damage suffered because of the contravention;
- (c) another order the court considers appropriate.

**‘(3)** If the court has power under subsection (2) to grant an injunction restraining a contravening person from engaging in particular conduct, or requiring a contravening person to do anything, the court may make any other order, including granting an injunction, it considers appropriate against any other person involved in the contravention concerned.

**‘Consent injunctions**

**‘170ZZZG.** On application for an enforcement injunction, the court may grant the injunction by consent of all of the parties to the proceeding, whether or not the court is satisfied that the section under which the application is made applies.

**‘Interim injunctions**

**‘170ZZZH.(1)** The court may grant an interim injunction pending determination of an application for an enforcement injunction.

**‘(2)** If the application is made by the authority, the court must not require the authority or another person, as a condition of granting an interim injunction, to give an undertaking as to damages.

**‘Factors relevant to granting restraining injunction**

**‘170ZZZI.** The court may grant an enforcement injunction restraining a person from engaging in conduct whether or not—

- (a) it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) the person has previously engaged in conduct of that kind; or
- (c) there is an imminent danger of substantial damage to someone else if the person engages in conduct of that kind.

**‘Factors relevant to granting mandatory injunction**

**‘170ZZZJ.** The court may grant an enforcement injunction requiring a person to do a thing whether or not—

- (a) it appears to the court that the person intends to fail again, or to continue to fail, to do the thing; or
- (b) the person has previously failed to do the thing; or
- (c) there is an imminent danger of substantial damage to someone else if the person fails to do the thing.

**‘Discharge or variation of injunction or order**

**‘170ZZZK.** The court may discharge or vary an injunction or order granted under this division.



**‘Orders to enforce approved water supply undertaking**

**‘170ZZZL.(1)** The authority or another person may apply to the court for an order under this section concerning an approved water supply undertaking.

**‘(2)** An application may be made only if—

- (a) the applicant considers the responsible person for the undertaking has breached a term of the undertaking; and
- (b) the applicant considers—
  - (i) for an application made by the authority—a person’s interests have been adversely affected by the breach; or
  - (ii) for an application made by someone else—the applicant’s interests have been adversely affected by the breach.

**‘(3)** If the court is satisfied the responsible person has breached a term of the undertaking, the court may make all or any of the following orders—

- (a) an order directing the responsible person to comply with the term;
- (b) an order directing the responsible person to compensate anyone who has suffered loss or damage because of the breach;
- (c) another order the court considers appropriate.

**‘(4)** However, the court may make an order only if it is satisfied—

- (a) for an application made by the authority—a person’s interests have been adversely affected by the breach; or
- (b) for an application made by someone else—the applicant’s interests have been adversely affected by the breach.’.

**Amendment of s 171 (Application of part)**

**40.** Section 171(e)—

*omit, insert—*

- ‘(e) an investigation for part 5, division 7, subdivision 3;
- (f) an investigation for part 5A, division 2, subdivision 3;
- (g) an investigation for part 5A, division 2, subdivision 5;

- (h) an investigation for part 5A, division 2, subdivision 7;
- (i) an investigation for part 5A, division 5, subdivision 3.<sup>23</sup>.

### **Amendment of s 176 (Notice of hearings)**

**41.(1)** Section 176(3)(c), before ‘undertaking’—

*insert—*

‘access’.

**(2)** Section 176(3)—

*insert—*

‘(d) for an investigation under part 5A<sup>24</sup>—the water supplier carrying on the water supply activity to which the investigation relates, or to which the undertaking the subject of the investigation relates.’.

<sup>23</sup> Part 3 (Pricing practices relating to government monopoly business activities), division 3 (Investigations about government monopoly business activities)  
 Part 4 (Competitive neutrality and significant business activities), division 3 (Investigation of complaints)  
 Part 5 (Access to services), division 2 (Ministerial declarations), subdivision 3 (Investigations about candidate services) and subdivision 5 (Revocation of declaration)  
 Part 5 (Access to services), division 7 (Access undertakings for declared and non-declared services), subdivision 3 (Investigations about draft undertakings)  
 Part 5A (Pricing and supply of water), division 2 (Declarations, and investigations, of monopoly water supply activities), subdivision 3 (Investigations about candidate water supply activities), subdivision 5 (Revocation of declaration) and subdivision 7 (Investigations about monopoly water supply activities and making water pricing determinations)  
 Part 5A (Pricing and supply of water), division 5 (Water supply undertakings), subdivision 3 (Investigations about draft undertakings)

<sup>24</sup> Part 5A (Pricing and supply of water)

**Insertion of new pt 6A**

42. After section 187—

*insert—*

**‘PART 6A—CONDUCT OF MEDIATION*****‘Division 1—Preliminary*****‘Application of part**

‘187A. This part applies to the following—

- (a) the mediation of an access dispute for part 5, division 5, subdivision 2A;
- (b) the mediation of a water supply dispute for part 5A, division 4, subdivision 3.<sup>25</sup>

***‘Division 2—Constitution of mediator for mediation conferences*****‘Constitution of mediator**

‘187B.(1) For a mediation, the mediator is to be constituted by 1 or more appropriately qualified persons nominated in writing by the chairperson.

‘(2) If an associate member is appointed for the mediation, the person nominated, or 1 of the persons nominated, by the chairperson must be the associate member.

‘(3) In this section—

**“appropriately qualified”** includes having the qualifications, experience or standing appropriate to exercise the power.

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<sup>25</sup> Part 5 (Access to services), division 5 (Access disputes about declared services), subdivision 2A (Mediation of access disputes)  
Part 5A (Pricing and supply of water), division 4 (Water supply disputes), subdivision 3 (Mediation of water supply disputes)

**‘Presiding person**

**‘187C.(1)** If the mediator for a mediation is constituted by 1 person, the person is to preside at the mediation.

**‘(2)** If the mediator for a mediation is constituted by more than 1 person and includes the chairperson, the chairperson is to preside at the mediation.

**‘(3)** If the mediator for a mediation is constituted by more than 1 person but does not include the chairperson, the chairperson must nominate a person to preside at the mediation.

**‘Reconstitution of mediator**

**‘187D.(1)** This section applies if the person who constitutes, or 1 of the persons who constitutes, the mediator for a mediation—

- (a) stops being a member of the authority; or
- (b) for any reason, is not available for the mediation conference.

**‘(2)** For finishing the mediation, the chairperson must direct that the mediator is to be constituted by—

- (a) if the mediator is constituted by 1 person—by another person directed by the chairperson; or
- (b) if the mediator is constituted by more than 1 person—by the remaining person or persons.

**‘(3)** If a direction is given under subsection (2), the mediator as constituted under the direction—

- (a) must continue and finish the mediation; and
- (b) for that purpose, may have regard to any notes of the mediation conference made by the mediator as previously constituted.

**‘(4)** In subsection (1), a reference to the person who constitutes, or is 1 of the persons who constitutes, the mediator for a mediation includes a reference to the person who constitutes, or is 1 of the persons who constitutes, a mediator for that purpose because of the application on 1 or more occasions of subsection (2).

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**‘Deciding questions**

**‘187E.** If the mediator is constituted for a mediation by more than 1 person, any question before the mediator is to be decided—

- (a) if paragraph (b) does not apply—according to the opinion of the majority of those persons; or
- (b) if the persons are evenly divided on the question—according to the opinion of the person presiding.

***‘Division 3—General conduct of mediation conferences*****‘Conference to be in private**

**‘187F.(1)** A mediation conference must be held in private.

**‘(2)** However, the mediator may give written directions about the persons who may be present at the conference.

**‘(3)** In giving a direction, the mediator must have regard to the wishes of the parties and the need for commercial confidentiality.

**‘(4)** A person must not be present at a mediation conference in contravention of a direction under subsection (2).

Maximum penalty for subsection (4)—1 000 penalty units or 1 year’s imprisonment.

**‘Limited right to representation**

**‘187G.(1)** At a mediation conference, each party to the dispute must conduct the party’s own case.

**‘(2)** However, a party may be represented by someone else if—

- (a) the party is a corporation; or
- (b) the mediator is satisfied the party should be permitted to be represented by someone else.

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**‘General procedures**

**‘187H.(1)** In a mediation conference, the mediator—

- (a) must act with as little formality as possible; and
- (b) is not bound by technicalities, legal forms or rules of evidence; and
- (c) may inform himself, herself or themselves on any matter relevant to the mediation in any way the mediator considers appropriate; and
- (d) must comply with natural justice.

**‘(2)** For subsection (1)(c), the mediator may consult with persons as the mediator considers appropriate.

**‘Parties’ attendance at conference not compellable**

**‘187I.** A party to a mediation can not be compelled to attend a mediation conference.

**‘No official record of mediation conference**

**‘187J.(1)** A person must not make an official record of anything said at a mediation conference.

Maximum penalty—40 penalty units.

**‘(2)** A mediator does not commit an offence against subsection (1) merely by making notes of the mediation conference.

***‘Division 4—Other matters*****‘Confidential information**

**‘187K.(1)** This section applies if a person believes that—

- (a) stated information made available, or to be made available, in a mediation conference is confidential; and

- (b) the disclosure of the information is likely to damage the person’s commercial activities.

‘(2) The person may—

- (a) inform the mediator of the person’s belief; and  
 (b) ask the mediator not to disclose the information to another person.

‘(3) If the mediator is satisfied the person’s belief is justified and disclosure of the information would not be in the public interest, the mediator must take all reasonable steps to ensure the information is not, without the person’s consent, disclosed to another person.

‘(4) In this section—

“**commercial activities**” means activities conducted on a commercial basis.

“**person**” includes a government agency.’.

### **Replacement of s 188 (Application of part)**

**43.** Section 188—

*omit, insert—*

#### **‘Application of part**

‘**188.** This part applies to the following arbitrations—

- (a) the arbitration of an access dispute conducted by the authority for part 5, division 5, subdivision 3;  
 (b) the arbitration of a water supply dispute conducted by the authority for part 5A, division 4, subdivision 4.<sup>26</sup>

<sup>26</sup> Part 5 (Access to services), division 5 (Access disputes about declared services), subdivision 3 (Arbitration of access disputes and making of access determinations)  
 Part 5A (Pricing and supply of water), division 4 (Water supply disputes), subdivision 4 (Arbitration of water supply disputes and making of water supply determinations)

**‘Consolidation of arbitration of access and water supply disputes**

**188A.** The arbitration of an access dispute and a water supply dispute may be consolidated by the authority if—

- (a) the owner of the service the subject of the access dispute is the same person as the water supplier carrying on the water supply activity to which the water supply dispute relates; and
- (b) the access seeker for the service is the same person as the water seeker who is party to the water supply dispute.’.

**Amendment of s 196 (General procedures)**

**44.** Section 196(3)(a), ‘an access dispute’—

*omit, insert—*

‘a dispute’.

**Amendment of s 197 (Particular powers of authority)**

**45.** Section 197(f), ‘access’—

*omit.*

**Insertion of new pt 8, div 3A**

**46.** Part 8, after section 227—

*insert—*

***Division 3A—Registers*****‘Keeping registers**

**227A.** For each register to be kept by the authority under this Act, the authority may keep the register in the way it considers appropriate.



**‘Availability of registers for inspection**

**‘227B.** The authority must keep each register open for inspection by members of the public during office hours on business days at—

- (a) the authority’s head office; and
- (b) other places the authority considers appropriate.

**‘Inspection of registers**

**‘227C.** On payment of the fee prescribed under a regulation, the authority must—

- (a) permit a person to inspect a register; or
- (b) give a person a copy of a register, or a part of it.’.

**Insertion of new s 244A**

**47.** After section 244—

*insert—*

**‘Approval of forms**

**‘244A.** The authority may approve forms for use under this Act.’.

**Amendment of sch (Dictionary)**

**48.(1)** Schedule, definitions “competitive advantage”, “declaration”, “declaration recommendation”, “determination”, “dispute notice”, “enforcement injunction”, “government”, “government agency”, “government business activity”, “initial amendment notice”, “party”, “register”, “responsible person”, “secondary amendment notice” and “undertaking”—

*omit.*

(2) Schedule—

*insert—*

“**access determination**” see section 117(1).

“**access dispute notice**” see section 113(1).

“**access undertaking**”, for a service, means a written undertaking that sets out details of the terms on which an owner of the service undertakes to provide access to the service whether or not it sets out other information about the provision of access to the service.

“**approved access undertaking**” means an access undertaking approved by the authority under part 5, and includes the access undertaking as amended with the authority’s approval.

“**approved water supply undertaking**” means a water supply undertaking approved by the authority under part 5A, and includes the water supply undertaking as amended with the authority’s approval.

“**candidate water supply activity**” means a water supply activity that is—

- (a) carried on by a water supplier; and
- (b) declared under a regulation to be a candidate water supply activity.

“**declaration**” means—

- (a) for part 5—a Ministerial declaration or regulation-based declaration; or
- (b) for part 5A—a declaration of a monopoly water supply activity.

“**declaration of a monopoly water supply activity**” means a declaration of a candidate water supply activity to be a monopoly water supply activity made by the Ministers under part 5A, division 2.

“**declaration recommendation**” means—

- (a) for part 5—a recommendation made by the authority under section 79; or
- (b) for part 5A—a recommendation made by the authority under section 170I.

“**dispute notice**” means an access dispute notice or a water supply dispute notice.

**“enforcement injunction”** means—

- (a) for part 5—an injunction under section 152 or 153; or
- (b) for part 5A—an injunction under section 170ZZZF.

**“government”** means—

- (a) for part 3—
  - (i) the government of the State; or
  - (ii) a local government; or
- (b) other than for part 3—the government of the State.

**“government agency”** means—

- (a) for part 3—
  - (i) a government agency under paragraph (b); or
  - (ii) a local government entity; or
- (b) other than for part 3—
  - (i) a government company or part of a government company; or
  - (ii) a State instrumentality, agency, authority or entity, or a division, branch or other part of a State instrumentality, agency, authority or entity; or
  - (iii) a department or a division, branch or other part of a department; or
  - (iv) a government owned corporation.

**“government business activity”** means—

- (a) for a government agency other than a local government entity—a business activity carried on by the government agency; or
- (b) for a government agency that is a local government entity—a significant business activity carried on by the government agency.

**“initial amendment notice”**—

- (a) for part 5—see section 139; or
- (b) for part 5A—see section 170ZZR.

**“local government entity”** means—

- (a) a local government or part of a local government; or
- (b) a local government owned corporation.

**“local government Minister”** means the Minister administering the *Local Government Act 1993*.

**“local government owned corporation”** means a local government owned corporation under the *Local Government Act 1993*, chapter 8, part 7.<sup>27</sup>

**“mediated resolution”**—

- (a) of an access dispute—see section 115E(1); or
- (b) of a water supply dispute—see section 170ZZA(1).

**“mediation agreement”**—

- (a) for part 5, division 5, subdivision 2A—see section 115E(2); or
- (b) for part 5A, division 4, subdivision 3—see section 170ZZA(2).

**“mediation conference”**—

- (a) for part 5, division 5, subdivision 2—see section 115A(2); or
- (b) for part 5A, division 3, subdivision 3, subdivision 2—see section 170ZW(2).

**“mediator”**, for a mediation, means 1 or more persons constituted as a mediator under part 6A, division 2.

**“monopoly water supply activity”** means a candidate water supply activity declared by the Ministers, under section 170N, to be a monopoly water supply activity.

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<sup>27</sup> Chapter 8 (National competition reform of significant business activities), part 7 (Local government owned corporations)

**“party”** means—

- (a) for the mediation of an access or water supply dispute—a party to the mediation;<sup>28</sup> or
- (b) for the arbitration of an access or water supply dispute—a party to the arbitration;<sup>29</sup> or
- (c) for an access determination—a party to the arbitration in which the authority made the access determination; or
- (d) for a water supply determination—a party to the arbitration in which the authority made the water supply determination.

**“register”** means any of the following registers kept by the authority—

- (a) the register of recommendations and Ministerial decisions relating to government monopoly business activities involving the supply of water;
- (b) the register of recommendations and Ministerial decisions relating to government monopoly business activities that are significant business activities involving the supply of water;
- (c) the register of Ministerial declarations under part 5;
- (d) the register of access determinations;
- (e) the register of approved access undertakings;
- (f) the register of conduct notices under the *Electricity Act 1994*, section 120S;<sup>30</sup>
- (g) the register of declarations of monopoly water supply activities;
- (h) the register of water pricing determinations;

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<sup>28</sup> The issue of who is a party in the mediation of an access dispute is dealt with in section 115B (Parties to mediation of access disputes). The issue of who is a party in the mediation of a water supply dispute is dealt with in section 170ZX (Parties to mediation of water supply disputes).

<sup>29</sup> The issue of who is a party in the arbitration of an access dispute is dealt with in section 116 (Parties to arbitration of access disputes). The issue of who is a party in the arbitration of a water supply dispute is dealt with in section 170ZZD (Parties to arbitration of water supply disputes).

<sup>30</sup> Section 120S (Register of conduct notices)

- (i) the register of water supply determinations;
- (j) the register of approved water supply undertakings.

**“responsible local government”**, for a local government entity, means—

- (a) for a local government entity that is a local government or part of a local government—the local government; or
- (b) for a local government entity that is a local government owned corporation—
  - (i) if a local government holds all the shares in the local government owned corporation—the local government; or
  - (ii) if 2 or more local governments hold shares in the local government owned corporation—the local governments.

**“responsible person”** means—

- (a) for an approved access undertaking—the person to whom the undertaking applies as an owner of the relevant service; or
- (b) for an approved water supply undertaking—the person to whom the undertaking applies as a water supplier carrying on the relevant water supply activity.

**“revocation recommendation”** means—

- (a) for part 5—a recommendation made by the authority under section 88; or
- (b) for part 5A—a recommendation made by the authority under section 170R.

**“secondary amendment notice”**—

- (a) for part 5—see section 140(2); or
- (b) for part 5A—see section 170ZZS(2).

**“significant business activity”** means—

- (a) for part 3—a significant business activity of a local government under the *Local Government Act 1993*, section 545;<sup>31</sup> or
- (b) for part 4—see section 39(1).

**“water pricing determination”** see section 170ZF(1).

**“water seeker”** means a person seeking water from a water supplier.

**“water supplier”** means—

- (a) an entity, other than the State, that—
  - (i) carries on, or negotiates to carry on, a water supply activity; and
  - (ii) is not owned, whether legally or beneficially and whether entirely or in part, by the State or a local government; or
- (b) SEQ Water Corporation Limited ACN 088 729 766.

**“water supply activity”** means—

- (a) for part 5A, division 3—see section 170ZMA; or
- (b) for part 5A, division 4—see section 170ZQA; or
- (c) other than for part 5A, divisions 3 and 4—carrying on a business, the main purpose of which is—
  - (i) water storage, including water storage for another person; or
  - (ii) water delivery services; or
  - (iii) supplying water to another person, other than supplying bottled or containerised water.

**“water supply agreement”** means an agreement between a water seeker and water supplier for the water supplier to provide water supply activities to the water seeker.

**“water supply criteria”** see section 170C.

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<sup>31</sup> See section 545 (Definitions for ch 8). Under section 545, “significant business activity” is defined by a combination of definitions to effectively refer to the provision of specified services by specified local governments.

**“water supply determination”** see section 170ZZE(1).

**“water supply dispute notice”** see section 170ZT(1).

**“water supply undertaking”**, for a water supply activity, means a written undertaking that sets out details of the terms on which a water supplier undertakes to provide a water supply activity to water seekers whether or not it sets out other information about carrying on the activity.’.

(3) Schedule, definition “goods”, paragraph (c)—

*omit, insert—*

‘(c) water, including treated and waste water; and’.

(4) Schedule, definition “investigation notice”, paragraphs (c), (d) and (e)—

*omit, insert—*

‘(c) for an investigation under part 5, division 2, subdivision 3—a notice of the investigation given under section 82; or

(d) for an investigation under part 5, division 2, subdivision 5—a notice of the investigation given under section 90; or

(e) for an investigation under part 5, division 7, subdivision 3—a notice of the investigation given under section 146; or

(f) for an investigation under part 5A, division 2, subdivision 3—a notice of the investigation given under section 170L; or

(g) for an investigation under part 5A, division 2, subdivision 5—a notice of the investigation given under section 170T; or

(h) for an investigation under part 5A, division 2, subdivision 7—a notice of the investigation given under section 170ZC; or



- (i) for an investigation under part 5A, division 5, subdivision 3<sup>32</sup>—a notice of the investigation given under section 170ZZY.’.

(5) Schedule, definition “member”—

*insert—*

‘(ba)for a particular mediation—an associate member appointed for the mediation; and’.

(6) Schedule, definition “Ministerial declaration”, before ‘made’—

*insert—*

‘of a service’.

(7) Schedule, definition “public facility”, from ‘includes’—

*omit, insert—*

‘includes a facility owned by a government owned corporation or a water board.’.

(8) Schedule, both definitions “service”, ‘part 5’—

*omit, insert—*

‘parts 5 and 5A’.

<sup>32</sup> Part 5 (Access to services), division 2 (Ministerial declarations), subdivision 3 (Investigations about candidate services), subdivision 5 (Revocation of declaration)

Part 5 (Access to services), division 2 (Ministerial declarations), subdivision 5 (Revocation of declaration)

Part 5, (Access to services), division 7 (Undertakings for declared and non-declared services), subdivision 3 (Investigations about draft undertakings)

Part 5A (Pricing and supply of water), division 2 (Declarations, and investigations, of monopoly water supply activities), subdivision 3 (Investigations about candidate water supply activities)

Part 5A (Pricing and supply of water), division 2 (Declarations, and investigations, of monopoly water supply activities), subdivision 5 (Revocation of declaration)

Part 5A (Pricing and supply of water), division 2 (Declarations, and investigations, of monopoly water supply activities), subdivision 7 (Investigations about monopoly water supply activities and making water pricing determinations)

Part 5A (Pricing and supply of water), division 5 (Water supply undertakings), subdivision 3 (Investigations about draft undertakings)

(9) Schedule, definition “user”, before ‘determination’—  
*insert—*  
‘access’.

**SCHEDULE****MINOR OR CONSEQUENTIAL AMENDMENTS**

section 2

**1. Section 39(1), ‘A “significant”—***omit, insert—*‘For this part, a **“significant”**’.**2. Section 78(2)(a), ‘promptly’—***omit, insert—*

‘immediately’.

**3. Section 78(2)(b), ‘promptly’—***omit, insert—*

‘immediately’.

**4. Section 104(6)(a), ‘approved’—***omit, insert—*

‘approved access’.

**5. Section 106(6)(b), ‘approved’—***omit, insert—*

‘approved access’.

## SCHEDULE (continued)

**6. Section 110, ‘promptly’—***omit, insert—*

‘immediately’.

**7. Section 114, ‘a dispute notice’—***omit, insert—*

‘an access dispute notice’.

**8. Part 5, division 5, subdivision 3, heading, before ‘*determinations*’—***insert—*‘*access*’.**9. Section 118, heading, before ‘*determinations*’—***insert—*‘*access*’.**10. Section 118, ‘a determination’—***omit, insert—*

‘an access determination’.

**11. Section 119, heading, before ‘*determination*’—***insert—*‘*access*’.

## SCHEDULE (continued)

**12. Section 119, ‘a determination’—***omit, insert—*

‘an access determination’.

**13. Section 119(1), ‘approved’—***omit, insert—*

‘approved access’.

**14. Section 119(3)(b), ‘the dispute notice’—***omit, insert—*

‘the access dispute notice’.

**15. Section 119(7), ‘A determination’—***omit, insert—*

‘An access determination’.

**16. Section 122, heading, before ‘dispute’—***insert—*

‘access’.

**17. Section 122, ‘a determination’—***omit, insert—*

‘an access determination’.

## SCHEDULE (continued)

**18. Section 122, ‘the dispute notice’—***omit, insert—*

‘the access dispute notice’.

**19. Section 123, heading, before ‘determination’—***insert—*

‘access’.

**20. Section 123, ‘A determination’—***omit, insert—*

‘An access determination’.

**21. Section 124, heading, before ‘determination’—***insert—*

‘access’.

**22. Section 124, ‘A determination’—***omit, insert—*

‘An access determination’.

**23. Section 125(1), ‘a determination’—***omit, insert—*

‘an access determination’.

## SCHEDULE (continued)

**24. Section 125(6)(a), ‘approved’—***omit, insert—*

‘approved access’.

**25. Part 5, division 7, heading, ‘Undertakings’—***omit, insert—*

‘Access undertakings’.

**26. Part 5, division 7, subdivision 1, heading, after ‘draft’—***insert—*

‘access’.

**27. Section 133, after ‘draft’—***insert—*

‘access’.

**28. Section 133(2), before ‘undertaking’—***insert—*

‘access’.

**29. Section 134, after ‘draft’—***insert—*

‘access’.

## SCHEDULE (continued)

**30. Section 135, after ‘draft’—***insert—*

‘access’.

**31. Section 136, after ‘draft’—***insert—*

‘access’.

**32. Part 5, division 7, subdivision 2, heading, before ‘undertakings’—***insert—*‘*access*’.**33. Section 139, before ‘undertaking’—***insert—*

‘access’.

**34. Section 140, before ‘undertaking’—***insert—*

‘access’.

**35. Section 141, before ‘undertaking’—***insert—*

‘access’.



## SCHEDULE (continued)

**36. Section 142, before ‘undertaking’—***insert—*

‘access’.

**37. Section 143, before ‘undertaking’—***insert—*

‘access’.

**38. Section 143(1), before ‘undertakings’—***insert—*

‘access’.

**39. Part 5, division 7, subdivision 3, heading, before ‘undertakings’—***insert—*‘*access*’.**40. Section 144, ‘following draft undertakings’—***omit, insert—*

‘following draft access undertakings’.

**41. Section 144(a), (b) and (c), after ‘draft’—***insert—*

‘access’.

## SCHEDULE (continued)

**42. Section 144(c), after ‘approved’—***insert—*

‘access’.

**43. Section 145, before ‘undertaking’—***insert—*

‘access’.

**44. Section 148, after ‘approved’—***insert—*

‘access’.

**45. Section 149, after ‘approved’—***insert—*

‘access’.

**46. Section 150, after ‘approved’—***insert—*

‘access’.

**47. Part 5, division 8, heading—***omit, insert—*‘*Division 8—Enforcement for pt 5*’.

## SCHEDULE (continued)

**48. Section 152, heading, before ‘determination’—***insert—*

‘access’.

**49. Section 152(1), ‘a determination’—***omit, insert—*

‘an access determination’.

**50. Section 158A, ‘approved’—***omit, insert—*

‘approved access.’

**51. Section 168, heading, after ‘and’—***insert—*

‘access’.

**52. Section 168, after ‘approved’—***insert—*

‘access’.

**53. Section 213, after ‘investigation’—***insert—*

‘, mediation’.

## SCHEDULE (continued)

**54. Section 214, after ‘investigation’—***insert—*

‘, mediation’.