



Queensland

Queensland Competition Authority Amendment Act 2008

Act No. 35 of 2008



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Queensland

Queensland Competition Authority Amendment Act 2008

Act No. 35 of 2008

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

[Assented to 21 May 2008]

The Parliament of Queensland enacts—

1 Short title

This Act may be cited as the *Queensland Competition Authority Amendment Act 2008*.

2 Commencement

Section 40(1) and (2) commences on a day to be fixed by proclamation.

3 Act amended

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

4 Amendment of long title

Long title, ‘government’—
omit.

5 Amendment of s 10 (Authority’s functions)

(1) Section 10(a)(i)—

omit, insert—

‘(i) a government business activity or non-government business activity to be a monopoly business activity;’.

(2) Section 10, after paragraph (a)—

insert—

‘(aa) to make recommendations to the Ministers for the revocation of declarations of monopoly business activities made by the Ministers; and’.

(3) Section 10(b), ‘government’—

omit.

(4) Section 10—

insert—

‘(ba) to conduct price monitoring investigations in relation to monopoly business activities and report the results of the investigations to the Ministers; and’.

6 Amendment of pt 3 hdg (Pricing practices relating to government monopoly business activities)

Part 3, heading, ‘government’—

omit.

7 Replacement of s 13A (What pt 3 is about)

Section 13A—

omit, insert—

‘13A What pt 3 is about

‘(1) This part is about—

- (a) the declaration of monopoly business activities; and
- (b) the investigation and reporting by the authority about pricing practices relating to monopoly business activities; and
- (c) the conduct of price monitoring investigations by the authority in relation to monopoly business activities.

‘(2) This part applies generally to—

- (a) government agencies; and
- (b) other persons carrying on business activities involving services provided by means of facilities.

‘(3) The application of the part to an activity carried on by a local government entity depends on whether the activity is a significant business activity.’.

[s 8]

8 Amendment of pt 3, div 1A hdg (Criteria for declarations of government monopoly business activities)

Part 3, division 1A, heading, ‘government’—
omit.

9 Amendment of s 14 (Development of criteria)

(1) Section 14, heading, after ‘criteria’—

insert—

‘for government business activities’.

(2) Section 14(a), ‘government monopoly business activity’—

omit, insert—

‘monopoly business activity’.

10 Insertion of new s 14A

After section 14—

insert—

‘14A Development of criteria for non-government business activities

‘Within 6 months after the commencement of this section, the authority must—

(a) develop criteria for use by the Ministers for deciding whether to declare a non-government business activity to be a monopoly business activity; and

(b) give written notice of the criteria to the Ministers.’.

11 Amendment of s 15 (Revision of, and advice about, criteria)

Section 15(1)(a), after ‘14’—

insert—

‘or 14A’.

12 Amendment of pt 3, div 2 hdg (Declarations of government monopoly business activities)

Part 3, division 2, heading, ‘government’—
omit.

13 Insertion of new pt 3, div 2, sdiv 1 hdg

Part 3, division 2, before section 18—
insert—

‘Subdivision 1 Government business activities’.

14 Amendment of s 18 (Request for declaration)

- (1) Section 18, ‘government monopoly business activity’—
omit, insert—
‘monopoly business activity’.
- (2) Section 18(b), after ‘23’—
insert—
‘or 23A’.

15 Amendment of s 18B (Requests by local government entities and responsible local governments)

- (1) Section 18B(1), ‘government monopoly business activity’—
omit, insert—
‘monopoly business activity’.
- (2) Section 18B(1)(b), after ‘23’—
insert—
‘or 23A’.

16 Amendment of s 19 (Declaration by Ministers)

- (1) Section 19(1), ‘government monopoly business activity’—

[s 17]

omit, insert—

‘monopoly business activity’.

(2) Section 19—

insert—

‘(8) A declaration continues in operation until it is revoked.’.

17 Amendment of s 20 (Declaration by regulation)

Section 20(1), ‘government monopoly business activity’—

omit, insert—

‘monopoly business activity’.

18 Insertion of new pt 3, div 2, sdiv 2 and div 2A

Part 3, division 2, after section 21—

insert—

‘Subdivision 2 Non-government business activities

‘21A Declaration by Ministers

‘(1) The Ministers may declare a non-government business activity to be a monopoly business activity.

‘(2) The declaration must be made by gazette notice.

‘(3) In deciding whether to make the declaration, the Ministers must—

(a) have regard to—

(i) the relevant declaration criteria; and

(ii) any information or advice about the criteria given to them by the authority; and

(b) consult with the person carrying on the activity.

‘(4) A declaration must identify the non-government business activity by reference to the person carrying on the activity.

‘(5) A declaration continues in operation until it is revoked.

‘21B Declaration by regulation

- ‘(1) A regulation may declare a non-government business activity to be a monopoly business activity.
- ‘(2) A declaration must identify the non-government business activity by reference to the person carrying on the activity.

‘21C Effect on declaration of change of person carrying on activity

- ‘(1) This section applies if—
 - (a) a non-government business activity is declared to be a monopoly business activity under this subdivision; and
 - (b) after the declaration is made, the person carrying on the activity changes.
- ‘(2) The change in the person carrying on the monopoly business activity does not affect the validity of the declaration.
- ‘(3) The declaration is taken to identify the monopoly business activity by reference to the new person carrying on the activity.

‘Division 2A Revocation of declarations made by the Ministers**‘21D Recommendation to revoke**

- ‘(1) The authority may recommend to the Ministers that a declaration of a monopoly business activity made by the Ministers under section 19 or 21A (a *part 3 Ministerial declaration*) be revoked.
- ‘(2) Without limiting subsection (1), a relevant entity for a monopoly business activity may ask the authority to recommend the revocation of the part 3 Ministerial declaration.
- ‘(3) The Ministers may ask the authority to consider whether a part 3 Ministerial declaration should be revoked by the Ministers.

[s 18]

- ‘(4) The authority may recommend the revocation of a part 3 Ministerial declaration only if the authority is satisfied that revocation would be appropriate having regard to the relevant declaration criteria.
- ‘(5) In this section—
- relevant entity*, for a monopoly business activity, means any of the following—
- (a) the government agency or other person carrying on the activity;
 - (b) if the activity is a significant business activity—the responsible local government for the local government entity carrying on the activity.

‘21E Power of authority to conduct investigation

‘For making a revocation recommendation, the authority may conduct an investigation about the monopoly business activity.

‘21F Notice of investigation

- ‘(1) Before starting an investigation under this division, the authority must give reasonable notice of the investigation to—
- (a) the government agency or other person carrying on the monopoly business activity; and
 - (b) if the activity is a significant business activity—the responsible local government for the local government entity carrying on the activity; and
 - (c) any other person the authority considers appropriate.
- ‘(2) The notice must state the following—
- (a) the authority’s intention to conduct the investigation;
 - (b) the subject matter of the investigation;

- (c) an invitation to interested persons to make written submissions to the authority on the subject matter within a reasonable time stated in the notice;
- (d) the authority's address.

'21G Procedures for investigation

'Part 6 applies to an investigation under this division.

'21H Revocation

- '(1) The Ministers may revoke a part 3 Ministerial declaration only if the Ministers are satisfied that revocation would be appropriate having regard to the relevant declaration criteria.
- '(2) A part 3 Ministerial declaration may be revoked whether or not a revocation recommendation has been made.
- '(3) If the Ministers receive a revocation recommendation, the Ministers must either revoke the part 3 Ministerial declaration or decide not to revoke the declaration.

'21I Notice of decision

- '(1) The Ministers must publish in the gazette—
 - (a) notice of a decision to revoke, or not to revoke, a part 3 Ministerial declaration; and
 - (b) the reasons for the decision.
- '(2) Also, as soon as practicable after making the decision, the Ministers must give a written notice stating the decision and reasons for the decision to—
 - (a) the government agency or other person carrying on the activity; and
 - (b) if the business activity is a significant business activity—the responsible local government for the local government entity carrying on the activity; and
 - (c) the authority.

‘21J When revocation takes effect

‘A decision of the Ministers to revoke a part 3 Ministerial declaration 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.’.

19 Amendment of pt 3, div 3 hdg (Investigations about government monopoly business activities)

Part 3, division 3, heading, ‘government’—
omit.

20 Replacement of s 22 (Investigations by authority—standing reference)

Section 22—
omit, insert—

‘22 Meaning of *price monitoring investigation*

‘A *price monitoring investigation*, in relation to a monopoly business activity, means an ongoing investigation in which the authority—

- (a) monitors pricing practices relating to the activity; and
- (b) reports periodically to the Ministers about the results of the investigation.’.

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

- (1) Section 23, heading—
omit, insert—

‘23 Investigations about pricing practices’.

- (2) Section 23(1) to (2A)—
omit, insert—

-
- ‘(1) The Ministers may refer a monopoly business activity to the authority for an investigation about the pricing practices relating to the activity.
- ‘(2) In deciding whether to refer a monopoly business activity that is a significant business activity or non-government business activity to the authority under subsection (1), the Ministers must consult with—
- (a) for a significant business activity—the local government entity carrying on the activity and the responsible local government for the entity; or
 - (b) for a non-government business activity—the person carrying on the activity.’.

(3) Section 23(3), ‘investigations’—
omit, insert—
‘investigation’.

22 Insertion of new s 23A

After section 23—

insert—

‘23A Price monitoring investigations

- ‘(1) The Ministers may refer a monopoly business activity to the authority for a price monitoring investigation.
- ‘(2) In deciding whether to refer a monopoly business activity that is a significant business activity or non-government business activity to the authority under subsection (1), the Ministers must consult with—
- (a) for a significant business activity—the local government entity carrying on the activity and the responsible local government for the entity; or
 - (b) for a non-government business activity—the person carrying on the activity.
- ‘(3) In referring a monopoly business activity to the authority under subsection (1), the Ministers must give the authority a written notice stating—

[s 23]

- (a) the period for which the price monitoring investigation is to be conducted; and
 - (b) how often the authority must periodically report the results of the investigation to the Ministers.
- ‘(4) The authority must conduct the investigation.
- ‘(5) Unless the reference is earlier withdrawn or the period of the investigation is amended under subsection (6), the reference ends at the end of the period stated in the notice under subsection (3)(a).
- ‘(6) The Ministers may, by written notice given to the authority, withdraw or amend the reference at any time before it ends.
- ‘(7) A notice under subsection (6) must state the reasons for the withdrawal or amendment of the reference.’.

23 Amendment of s 24 (Directions of Ministers for Ministerial reference)

- (1) Section 24, heading, ‘Ministerial reference’—
omit, insert—
‘investigation’.
- (2) Section 24(1), ‘government’—
omit.
- (3) Section 24(1)—
insert—
 - (d) to make a recommendation to the Ministers about a stated matter, including, for example, if the activity was referred to the authority under section 23(1), a recommendation about—
 - (i) whether a price monitoring investigation should be conducted in relation to the activity; or
 - (ii) if a price monitoring investigation were to be conducted in relation to the activity, what the nature of the investigation should be, including, for

example, the matters mentioned in section 23A(3)(a) and (b).’.

24 Amendment of s 25 (Notice of investigation)

- (1) Section 25(3)(a), after ‘government agency’—
insert—
‘or other person’.
- (2) Section 25(3)(a), ‘government monopoly business authority’—
omit, insert—
‘monopoly business activity’.
- (3) Section 25(3)(b), ‘government monopoly business activity’—
omit, insert—
‘monopoly business activity’.

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

- (1) Section 26(1) and (2), ‘government monopoly business activity’—
omit, insert—
‘monopoly business activity’.
- (2) Section 26(1)(e), ‘government agency’—
omit.
- (3) Section 26(1)(g), from ‘by which’ to ‘carried on’—
omit, insert—
‘or other person carrying on the monopoly business activity’.
- (4) Section 26(1)(j), after ‘agencies’—
insert—
‘and persons carrying on non-government business activities’.
- (5) Section 26(1)(n), before ‘any’—

insert—

‘if the monopoly business activity is a government business activity—’.

26 Amendment of s 28 (Ending of authority’s jurisdiction for investigation)

(1) Section 28(1), ‘government’—

omit.

(2) Section 28(1)(b), after ‘withdrawn’—

insert—

‘, or otherwise ends under section 23A’.

(3) Section 28(2), from ‘the investigation’—

omit, insert—

‘the investigation, up to the time its jurisdiction ended, to—

(a) the Ministers; and

(b) if the monopoly business activity is a non-government business activity—the person carrying on the activity.’.

27 Amendment of s 29 (Application of division)

(1) Section 29(a), after ‘division 3’—

insert—

‘, including the periodic reporting of the results of a price monitoring investigation’.

(2) Section 29(b), ‘the report’—

omit, insert—

‘a report’.

28 Amendment of s 30 (Authority to report to Ministers)

(1) Section 30—

insert—

‘(1A) Also, if the investigation is a price monitoring investigation, the authority must periodically report the results of the investigation to the Ministers as required under the notice given to the authority under section 23A(3).’.

(2) Section 30(2), from ‘government monopoly’ to ‘results of the investigation’—

omit, insert—

‘monopoly business activity that is a significant business activity, the authority must, on the same day as it reports the results of the investigation to the Ministers, give a copy of the report’.

(3) Section 30(1A) and (2)—

renumber as section 30(2) and (3).

29 Replacement of s 31 (Authority to give copy of report to government agency)

Section 31—

omit, insert—

‘31 Authority to give copy of report to government agency or other person carrying on activity

‘On the same day as it reports the results of an investigation to the Ministers, the authority must give a copy of the report to the government agency or other person carrying on the monopoly business activity.’.

30 Amendment of s 33 (Contents of report)

(1) Section 33(1)(a) and (b)—

omit, insert—

‘(a) if the investigation is not a price monitoring investigation—its recommendations about the pricing practices relating to the monopoly business activity; and

(b) any recommendations made by the authority as required under a direction given to the authority by the Ministers for the investigation; and

[s 31]

- (ba) the reasons for its recommendations; and
 - (bb) if the investigation is a price monitoring investigation—the information obtained by the authority about the pricing practices relating to the monopoly business activity; and’.
- (2) Section 33(1)(ba) to (c)—
renumber as section 33(1)(c) to (e).

31 Amendment of s 34 (Public availability of reports)

Section 34(1)—

omit, insert—

- ‘(1) The authority must make a copy of a report available for public inspection as soon as practicable after giving the report to the Ministers.’.

32 Replacement of s 35 (Delaying public availability of reports)

Section 35—

omit, insert—

‘35 Delaying public availability of reports

- ‘(1) The authority may decide that, in the special circumstances of the case, a report, or a part of a report, must not be made available for public inspection for a stated period.
- ‘(2) The decision and the reasons for it must be stated in the report.
- ‘(3) Section 34(1) applies to the report, or part of the report, to which the decision relates as if the report were given to the Ministers at the end of the period mentioned in subsection (1).’.

33 Amendment of s 36 (Decision of Ministers about report)

- (1) Section 36, heading, ‘report’—

omit, insert—

‘particular recommendations in report—monopoly business activity that is a government business activity, other than a significant business activity’.

(2) Section 36(1)—

omit, insert—

‘(1) This section applies to recommendations about pricing practices, or price monitoring recommendations, contained in a report relating to a monopoly business activity that is a government business activity, other than a significant business activity.’.

(3) Section 36(2)(a) and (b), ‘about pricing practices contained in it’—

omit.

(4) Section 36(3), ‘government’—

omit.

(5) Section 36—

insert—

‘(5) In this section—

price monitoring recommendations means recommendations about—

- (a) whether a price monitoring investigation should be conducted in relation to the monopoly business activity; or
- (b) what the nature of a future price monitoring investigation in relation to the activity should be.’.

34 Amendment of s 36A (Decision of responsible local government about report)

(1) Section 36A, heading, ‘report’—

omit, insert—

[s 35]

‘particular recommendations in report—monopoly business activity that is a significant business activity’.

(2) Section 36A(1)—

omit, insert—

‘(1) This section applies to recommendations about pricing practices contained in a report relating to a monopoly business activity that is a significant business activity.’.

(3) Section 36A(2)(a) and (b), ‘about pricing practices contained in it’—

omit.

35 Insertion of new s 36B

After section 36A—

insert—

‘36B Response to report of person carrying on activity—monopoly business activity that is a non-government business activity

‘(1) This section applies to a report relating to a monopoly business activity that is a non-government business activity.

‘(2) Within 90 days after receiving the report, the person carrying on the activity must give the authority the person’s written response to the report, including details of any action the person will or may take in response to each recommendation contained in the report.

Maximum penalty—500 penalty units.’.

36 Replacement of ss 37–37B

Sections 37 to 37B—

omit, insert—

‘37 Referral of particular accepted recommendations to responsible Minister—monopoly business activity that is government business activity

- ‘(1) This section applies if the Ministers accept recommendations about pricing practices relating to a monopoly business activity that is a government business activity.
- ‘(2) The Ministers must refer the recommendations, and any qualifications on which the recommendations are accepted, to the responsible Minister for the government agency carrying on the monopoly business activity.

‘37A Register of recommendations, and decisions or responses, relating to monopoly business activities involving the supply of water

- ‘(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 monopoly business activities involving the supply of water; and
 - (b) whichever of the following applies in relation to the recommendations—
 - (i) if the activities are government business activities other than significant business activities—the Ministers’ decisions under section 36(2);
 - (ii) if the activities are significant business activities—the decisions of the responsible local governments under section 36A(2);
 - (iii) if the activities are non-government business activities—the responses of the persons carrying on the activities.
- ‘(2) The register must include, for each recommendation, details of the following—
- (a) the name of the government agency or other person carrying on the monopoly business activity;
 - (b) the monopoly business activity;

[s 37]

- (c) the reasons for the recommendation;
 - (d) the day the report in which the recommendation is made is to be, or was, given to—
 - (i) if the activity is a significant business activity—the responsible local government for the local government entity carrying on the activity; or
 - (ii) otherwise—the Ministers.
- ‘(3) The register must also include, for each decision mentioned in subsection (1)(b), details of the following—
- (a) the day the decision was made;
 - (b) the day the decision is to be, or was, notified under section 36(4) or 36A(4).’.

37 Insertion of new pt 3, div 5

Part 3—

insert—

‘Division 5 Miscellaneous

‘37B Authority may give advice about pricing practices

- ‘(1) The authority may, if requested by a government agency or another person carrying on a monopoly business activity, give the person advice about pricing practices relating to the activity.
- ‘(2) Advice given under this section is not binding on any person.’.

38 Replacement of pt 5, div 1 hdg (Interpretation)

Part 5, division 1, heading—

omit, insert—

‘Division 1 Preliminary’.

39 Insertion of new s 69E

Part 5, division 1—

insert—

‘69E Object of pt 5

‘The object of this part is to promote the economically efficient operation of, use of and investment in, infrastructure by which services are provided, with the effect of promoting effective competition in upstream and downstream markets.’.

40 Amendment of s 72 (Meaning of *service*)

(1) Section 72(2)—

insert—

‘(ba) a service—

- (i) provided, or to be provided, by means of a facility for which a decision of the Australian Competition and Consumer Commission, approving a competitive tender process under the *Trade Practices Act 1974* (Cwlth), section 44PA, is in force; and
- (ii) that was stated under section 44PA(2) of that Act in the application for the approval; or’.

(2) Section 72(2)(ba) and (c)—

renumber as section 72(2)(c) and (d).

(3) Section 72(3), after ‘part’—

insert—

‘and part 5A’.

41 Amendment of s 76 (Access criteria)

(1) Section 76(3)(a) to (g)—

renumber as section 76(3)(b) to (h).

(2) Section 76(3)—

insert—

‘(a) the object of this part;’.

42 Amendment of s 88 (Recommendation to revoke)

(1) Section 88—

insert—

‘(1A) Without limiting subsection (1), the owner of the declared service may ask the authority to recommend revocation of the Ministerial declaration.’.

(2) Section 88(1A) and (2)—

renumber as section 88(2) and (3).

43 Amendment of s 109 (Decision on application)

(1) Section 109(2)(a) to (c)—

renumber as section 109(2)(b) to (d).

(2) Section 109(2)—

insert—

‘(a) the object of this part; and’.

44 Insertion of new s 117A

After section 117—

insert—

‘117A Period for making access determination

‘(1) The authority must use its best endeavours to make an access determination within 6 months from the day the access dispute notice for the relevant access dispute was given to the authority.

‘(2) However, the 6 month period mentioned in subsection (1) does not include any of the following—

-
- (a) if mediation of the access dispute is conducted under subdivision 2A—a day earlier than the day the dispute is referred by the mediator to the authority for arbitration;
 - (b) if a person is given a notice under section 205 requiring the person to give information or produce a document for the arbitration of the access dispute, a day in the period—
 - (i) starting on the day the notice is given to the person; and
 - (ii) ending on the day the person complies with the notice;
 - (c) if the authority invites the parties to comment, within a period stated by the authority, on a draft determination given to the parties under section 117(5)—a day in the period for making comments stated by the authority;
 - (d) if the parties agree to a day not being included in the 6 month period—a day agreed to by the parties.
- ‘(3) The authority must publish a notice on its website, for each access dispute being dealt with by arbitration, stating—
- (a) the day the 6 month period mentioned in subsection (1) started or will start; and
 - (b) the day the period will end; and
 - (c) for a day not included in the period under subsection (2)—the reason the day is not included in the period.

Editor’s note—

The authority’s website can be found at <www.qca.org.au>.

- ‘(4) If the authority fails to make an access determination within the 6 month period mentioned in subsection (1), it must, as soon as practicable after the period ends, give written notice of the reasons for the authority’s failure to the parties and the Ministers.’

45 Amendment of s 119 (Restrictions affecting making of access determination)

Section 119(1)—

omit, insert—

- ‘(1) The authority must not make an access determination that is inconsistent with—
- (a) an approved access undertaking, or access code, for the service; or
 - (b) subject to section 150K, a ruling relating to the service that is in effect under division 7A.’.

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

- (1) Section 120(1)(a) to (i)—

renumber as section 120(1)(b) to (j).

- (2) Section 120(1)—

insert—

- ‘(a) the object of this part;
- (k) the effect of excluding existing assets for pricing purposes;
- (l) the pricing principles mentioned in section 168A.’.

47 Amendment of s 134 (Consideration and approval of draft access undertaking by authority)

- (1) Section 134(1), ‘within the prescribed period’—

omit.

- (2) Section 134(2), ‘, within the prescribed period,’—

omit.

- (3) Section 134(4)—

omit.

48 Amendment of s 138 (Factors affecting approval of draft access undertaking)

(1) Section 138(2), before paragraph (a)—

insert—

‘(aa) the object of this part;’.

(2) Section 138(2)—

insert—

‘(da) if the service is a declared service—

(i) the effect of excluding existing assets for pricing purposes; and

(ii) the pricing principles mentioned in section 168A;’.

(3) Section 138(2)(aa) to (e)—

renumber as section 138(2)(a) to (g).

(4) Section 138(3)(b) and (c)—

renumber as section 138(3)(c) and (d).

(5) Section 138(3)—

insert—

‘(b) it is satisfied the undertaking is not inconsistent with a ruling relating to the service that is in effect under division 7A; and’.

(6) Section 138—

insert—

‘(4) Subsection (3)(b) applies subject to section 150K.

‘(5) The authority may not refuse to approve a draft access undertaking only because the authority considers a minor and inconsequential amendment should be made to a particular part of the undertaking.

‘(6) In this section—

minor and inconsequential amendment, in relation to part of a draft access undertaking, means an amendment that, if

made, would have no real effect or consequence in relation to that part of the undertaking and the undertaking as a whole.’.

49 Amendment of s 140 (Consideration and approval of draft amending access undertaking by authority)

- (1) Section 140(1), ‘within the prescribed period’—
omit.
- (2) Section 140(2), ‘, within the prescribed period,’—
omit.
- (3) Section 140(4)—
omit.

50 Insertion of new s 147A

Part 5, division 7, subdivision 4—
insert—

‘147A Period for approving draft access undertaking

- ‘(1) This section applies to a draft access undertaking, whether or not amending an approved access undertaking, given to the authority by an owner or operator of a declared service or a responsible person—
 - (a) in response to an initial undertaking notice or initial amendment notice; or
 - (b) without receiving an initial undertaking notice or initial amendment notice.
- ‘(2) The authority must use its best endeavours to decide whether to approve, or refuse to approve, the draft access undertaking within 6 months from—
 - (a) if the authority decides, within 2 weeks from the day the undertaking was given to the authority, to conduct an investigation for making the decision—the last day of the time for making submissions stated in an investigation notice for the investigation under section 146(2)(c); or

-
- (b) otherwise—the day that is 2 weeks from the day the undertaking was given to the authority.
- ‘(3) However, the 6 month period mentioned in subsection (2) does not include any of the following days—
- (a) if the authority conducts an investigation for making the decision and gives a notice under section 185 to a person requiring the person to give information or produce a document for the investigation—a day in the period—
 - (i) starting on the day the notice is given to the person; and
 - (ii) ending on the day the person complies with the notice;
 - (b) if the authority publishes the draft access undertaking, or another document about the undertaking, and invites persons to make submissions on the undertaking or document to the authority within a stated period—a day in the period for making submissions stated by the authority;
 - (c) if the owner or operator of the service, or the responsible person, agrees to a day not being included in the 6 month period—a day agreed to by the person.
- ‘(4) The authority must publish a notice on its website, while the authority is considering a draft access undertaking, stating—
- (a) the day the 6 month period mentioned in subsection (2) started or will start; and
 - (b) the day the period will end; and
 - (c) for a day not included in the period under subsection (3)—the reason the day is not included in the period.

Editor’s note—

The authority’s website can be found at <www.qca.org.au>.

- ‘(5) If the authority fails to decide whether to approve, or refuse to approve, the draft access undertaking within the 6 month period mentioned in subsection (2), it must, as soon as practicable after the period ends, give written notice of the reasons for the authority’s failure to—

[s 51]

- (a) the owner or operator of the service or the responsible person; and
- (b) the Ministers.’.

51 Insertion of new pt 5, div 7A

Part 5—

insert—

‘Division 7A Rulings

‘Subdivision 1 Preliminary

‘150B Purpose of div 7A

‘The purpose of this division is to enable the authority to make a decision, on an application made by a prescribed person, about how the authority intends to treat a matter relating to access to a service for the purpose of—

- (a) if the service is or becomes a declared service—making access determinations relating to the service; and
- (b) deciding whether to approve draft access undertakings relating to the service.

‘150C Definitions for div 7A

‘In this division—

application see section 150D(2).

draft access undertaking includes a draft access undertaking amending an approved access undertaking.

prescribed person means—

- (a) an owner or operator of a service that is a declared service; or
- (b) an owner or operator of a service that is not a declared service; or

- (c) a person who expects to be the owner or operator of a service, whether or not the service is a declared service.

relevant assumption, for a ruling, means an assumption stated under section 150F(6)(d) in the ruling notice given for the ruling.

relevant circumstances, for a ruling, means the circumstances stated under section 150F(6)(c) in the ruling notice given for the ruling.

ruling means a ruling made by the authority under this division about a matter relating to access to a service.

ruling notice see section 150F(5).

‘Subdivision 2 Applying for and making rulings

‘150D Application for a ruling

- ‘(1) A prescribed person may, by written notice, ask the authority to make a stated ruling relating to a relevant service for the person.
- ‘(2) A notice given under subsection (1) is an *application* for the ruling stated in it.
- ‘(3) The prescribed person may, by written notice given to the authority, withdraw the application before the authority gives the person—
- (a) a ruling notice for the ruling; or
 - (b) notice of the authority’s decision not to make the ruling.
- ‘(4) In this section—

relevant service, for a prescribed person, means a service in relation to which the person is a prescribed person.

‘150E Authority must decide whether to make ruling

‘If the authority receives an application for a ruling, it must—

- (a) decide whether to make the ruling stated in the application; and
- (b) if it decides not to make the ruling—give written notice of its decision and the reasons for the decision to the prescribed person who applied for the ruling.

‘150F Requirements for making ruling

- ‘(1) If the authority receives an application for a ruling, the authority may, if the authority considers it appropriate, make the ruling stated in the application.
- ‘(2) However, the authority may make the ruling only if the authority is satisfied—
 - (a) it would not be prevented under section 119 from making an access determination consistent with the ruling; and
 - (b) it would not be prevented under section 138(3)(a) from approving a draft access undertaking consistent with the ruling.
- ‘(3) In making the ruling, the authority must—
 - (a) comply with natural justice; and
 - (b) have regard to the criteria stated in section 120(1) and 138(2).
- ‘(4) In making the ruling, the authority may make assumptions about future events or matters.
- ‘(5) The authority makes the ruling by giving written notice (a *ruling notice*) to the prescribed person who applied for the ruling.
- ‘(6) For subsection (5), a ruling notice must state each of the following—
 - (a) the service to which the ruling relates;
 - (b) the ruling and the reasons for it;
 - (c) the circumstances relating to the service—
 - (i) existing at the time the ruling is made; and

- (ii) considered by the authority to be material to the ruling;
- (d) if the ruling is made on the basis of assumptions about future events or matters considered by the authority to be material to the ruling—the assumptions made by the authority;
- (e) the period for which the ruling has effect.

‘150G Period for which ruling has effect

- ‘(1) A ruling has effect for the period stated under section 150F(6)(e) in the ruling notice given for the ruling.
- ‘(2) A ruling relating to a service does not stop having effect only because—
 - (a) when the ruling was made, the service was not a declared service; and
 - (b) the service is later declared.

‘Subdivision 3 Investigations about rulings

‘150H Authority may investigate

‘For making a ruling, or deciding whether to make a ruling, the authority may conduct an investigation.

‘150I Notice of investigation

- ‘(1) Before starting an investigation under this division, the authority must give reasonable notice of the investigation to—
 - (a) the prescribed person who applied for the ruling; and
 - (b) any other person the authority considers appropriate.
- ‘(2) The notice must state the following—
 - (a) the authority’s intention to conduct the investigation;
 - (b) the subject matter of the investigation;

[s 51]

- (c) an invitation for the person to whom the notice is given to make written submissions to the authority on the subject matter within the time stated in the notice;
- (d) the authority's address.

'150J Procedures for investigation

'Part 6 applies to an investigation under this division.

'Subdivision 4 Other matters

'150K When a ruling does not apply

- '(1) This section states the circumstances in which a ruling does not apply for the purpose of—
 - (a) the making by the authority of an access determination relating to the relevant service; or
 - (b) the making of a decision by the authority about whether to approve a draft access undertaking relating to the relevant service.
- '(2) The circumstances are—
 - (a) information used by the authority to make the ruling was false or misleading in a material particular; or
 - (b) the circumstances relating to the service existing when the authority makes the determination or decision mentioned in subsection (1) are materially different to the relevant circumstances for the ruling; or
 - (c) if there is a relevant assumption for the ruling—the event or matter to which the assumption relates has not happened as assumed.
- '(3) This section applies despite section 150G.

‘150L Costs of making a ruling

- ‘(1) In making a ruling, the authority may make any order it considers appropriate about the payment, by the prescribed person who applied for the ruling, of the costs, or part of the costs, incurred by the authority in making the ruling.
- ‘(2) The costs ordered to be paid by the prescribed person may be recovered by the authority as a debt owing to the authority by the person.
- ‘(3) A reference in this section to making a ruling includes a reference to deciding whether to make a ruling.
- ‘(4) This section applies despite section 150D(3).

‘150M Register of rulings

- ‘(1) The authority must keep a register of rulings that are in effect.
- ‘(2) The register must include, for each ruling, details of the following—
 - (a) the service to which the ruling relates;
 - (b) the period for which the ruling has effect;
 - (c) the ruling and the authority’s reasons for it;
 - (d) the relevant circumstances for the ruling;
 - (e) any relevant assumptions for the ruling;
 - (f) the person who applied for the ruling.
- ‘(3) The details in the register of the authority’s reasons for a ruling must not include details that are likely to damage the commercial activities of the person who applied for the ruling.’.

52 Insertion of new s 168A

After section 168—

insert—

‘168A Pricing principles

‘The pricing principles in relation to the price of access to a declared service are that the price should—

- (a) generate expected revenue for the service that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved; and
- (b) allow for multi-part pricing and price discrimination when it aids efficiency; and
- (c) not allow a vertically integrated access provider to set terms and conditions that discriminate in favour of its downstream operations, except to the extent the cost of providing access to other operators is higher; and
- (d) provide incentives to reduce costs or otherwise improve productivity.

Note—

The authority must have regard to the pricing principles when it makes an access determination or decides whether to approve a draft access undertaking. See sections 120 and 138.’

53 Amendment of s 170R (Recommendation to revoke)

- (1) Section 170R—

insert—

‘(1A) Without limiting subsection (1), the water supplier carrying on the monopoly water supply activity may ask the authority to recommend revocation.’

- (2) Section 170R(1A) and (2)—

renumber as section 170R(2) and (3).

54 Amendment of s 170ZA (Investigations by authority)

- (1) Section 170ZA(1), from ‘either’—

omit, insert—

‘an investigation about the pricing practices relating to the activity.’.

- (2) Section 170ZA(2), ‘investigations’—
omit, insert—
‘investigation’.

55 Amendment of s 170ZI (Matters to be considered by authority in making water pricing determination)

Section 170ZI(1)(d), ‘government’—
omit.

56 Amendment of s 170ZZH (Matters to be considered by authority in making a water supply determination)

Section 170ZZH(1)(d), ‘government’—
omit.

57 Amendment of s 171 (Application of part)

- (1) Section 171, before paragraph (a)—
insert—
‘(aa) an investigation for part 3, division 2A;’.
- (2) Section 171—
insert—
‘(ea) an investigation for part 5, division 7A;’.
- (3) Section 171(aa) to (i)—
renumber as section 171(a) to (l).

58 Amendment of s 176 (Notice of hearings)

Section 176(3)(a), ‘carrying on the government’—
omit, insert—
‘or other person carrying on the’.

59 Insertion of new pt 11

After section 245—

insert—

**‘Part 11 Transitional provisions for
Queensland Competition
Authority Amendment Act 2008**

‘246 Making of particular access determinations

- ‘(1) This section applies to an access dispute under part 5 if an access dispute notice for the dispute was given to the authority before the commencement of this section.
- ‘(2) For the making of an access determination by the authority in relation to the access dispute—
 - (a) section 117A does not apply; and
 - (b) section 120, as it was in force immediately before the commencement of this section, continues to apply; and
 - (c) without limiting section 120(2), the authority may take into account the following matters—
 - (i) the object of part 5;
 - (ii) the effect of excluding existing assets for pricing purposes;
 - (iii) the pricing principles mentioned in section 168A.

‘247 Decisions about whether to approve particular draft access undertakings

- ‘(1) This section applies to a draft access undertaking, whether or not amending an approved access undertaking, given to the authority under part 5, division 7 before the commencement of this section.
- ‘(2) For the making of a decision by the authority about whether to approve the draft access undertaking—
 - (a) section 147A does not apply; and

- (b) sections 134, 138 and 140, as they were in force immediately before the commencement of this section, continue to apply.’

60 Amendment of schedule (Dictionary)

- (1) Schedule, definitions *government monopoly business activity* and *pricing practice*—

omit.

- (2) Schedule—

insert—

‘application, for part 5, division 7A, see section 150C.

draft access undertaking, for part 5, division 7A, see section 150C.

monopoly business activity means a government business activity or non-government business activity declared to be a monopoly business activity under a regulation or by the Ministers.

non-government business activity means a business activity—

- (a) carried on by a person other than a government agency; and
- (b) involving services provided by means of a facility.

part 3 Ministerial declaration see section 21D(1).

prescribed person, for part 5, division 7A, see section 150C.

price monitoring investigation see section 22.

pricing practice, for a monopoly business activity, means—

- (a) the level and structure of prices for the business activity; or
- (b) anything that affects the level and structure of prices for the business activity, including, for example, the service quality, costs of production and levels of performance relating to the business activity.

relevant assumption, for part 5, division 7A, see section 150C.

relevant circumstances, for part 5, division 7A, see section 150C.

relevant declaration criteria, for part 3, means the current criteria for deciding whether to declare a government business activity, or a non-government business activity, to be a monopoly business activity, given by the authority to the Ministers under part 3, division 1A.

Note—

The criteria are given by the authority to the Ministers under section 14 for a government business activity or section 14A for a non-government business activity.

ruling, for part 5, division 7A, see section 150C.

ruling notice, for part 5, division 7A, see section 150C.’.

- (3) Schedule, definition *investigation notice*, before paragraph (a)—

insert—

‘(aa) for an investigation under part 3, division 2A—a notice of the investigation given under section 21F; or’.

- (4) Schedule, definition *investigation notice—*

insert—

‘(ea) for an investigation under part 5, division 7A—a notice of the investigation given under section 150I; or’.

- (5) Schedule, definition *investigation notice*, paragraphs (aa) to (i)—

renumber as paragraphs (a) to (k).

- (6) Schedule, definition *register*, paragraphs (a) and (b)—

omit, insert—

‘(a) the register of recommendations, and decisions or responses, relating to monopoly business activities involving the supply of water;’.

- (7) Schedule, definition *register—*

insert—

‘(ea) the register of rulings under part 5, division 7A;’.

(8) Schedule, definition *register*, paragraphs (c) to (ea)—
renumber as paragraphs (b) to (e).

(9) Schedule, definition *revocation recommendation*, paragraphs (a) and (b)—
renumber as paragraphs (b) and (c).

(10) Schedule, definition *revocation recommendation—*
insert—

‘(a) for part 3—a recommendation made by the authority under section 21D; or’.