



**Australian
Competition &
Consumer
Commission**



Independent Pricing and Regulatory Tribunal
New South Wales

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION (ACCC)

AND

THE INDEPENDENT PRICING AND REGULATORY
TRIBUNAL (IPART)

This Memorandum of Understanding (MoU) is made on 21 March 2016 between the Australian Competition and Consumer Commission (the ACCC) and the Independent Pricing and Regulatory Tribunal (IPART).

1 Parties to the understanding - roles and responsibilities

- 1.1 The parties to this MoU are the ACCC and IPART (together the Parties).
- 1.2 Under the *Water Act 2007* (Cth) the ACCC is responsible for:
 - 1.2.1 monitoring regulated water charges and compliance with the rules;
 - 1.2.2 setting prices for certain regulated charges or accrediting a state regulator to set such charges;
 - 1.2.3 enforcing and advising the Minister on the water charge rules and water market rules; and
 - 1.2.4 advising the Murray Darling Basin Authority on the water trading rules forming part of the Basin Plan (as defined in the *Water Act 2007* (Cth)).
- 1.3 IPART is an independent statutory authority established under the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW). Its functions include setting maximum prices that can be charged for certain water services in New South Wales.
- 1.4 On 23 September 2015, the ACCC approved IPART's application for accreditation arrangements under Part 9 of the *Water Charge (Infrastructure) Rules 2010* (WCIR). The accreditation arrangements commence on 1 June 2016 and expire on 1 June 2026. Upon commencement of the accreditation arrangements, IPART will be responsible for approving or determining the regulated charges for certain NSW infrastructure operators in the Murray Darling Basin under the WCIR. Full details of the accreditation can be found at www.accc.gov.au/water.

2 Purpose of the MoU

- 2.1 The purpose of this MoU is to:
 - 2.1.1 set out information sharing arrangements between the Parties; and
 - 2.1.2 promote effective co-operation and communication between the Parties to assist them to carry out their respective roles and responsibilities as set out in clauses 1.2 and 1.4.
- 2.2 The Parties do not intend for this MoU to create any legally binding obligations between them.
- 2.3 There are no funding arrangements or costs associated with this MoU.
- 2.4 Nothing in this MoU affects the exercise of legislative functions or responsibilities of the Parties.
- 2.5 This MoU does not override future memoranda of understanding entered into between the Parties unless otherwise provided in the future memoranda of understanding.

3 Term of MoU

- 3.1 This MoU commences on and from the date when it has been signed by both the Chairman of the ACCC and the Chairman of IPART.
- 3.2 From its commencement, this MoU will remain in force for a term of 10 years unless terminated earlier by one or both of the Parties in accordance with clause 8.

- 3.3 The term of this MoU may be extended for a further specified period by the Parties' written agreement.

4 Information sharing and confidentiality

- 4.1 Subject to this clause 4, the Parties will share information to assist the Parties to carry out their respective roles and responsibilities as set out in clauses 1.2 and 1.4.
- 4.2 The Parties have statutory obligations in relation to the use, disclosure and protection of information, including under the following legislation:
Privacy Act 1998 (Cth);
Freedom of Information Act 1982 (Cth);
Competition and Consumer Act 2010 (Cth);
Independent Pricing and Regulatory Tribunal Act 1992 (NSW);
Government Information (Public Access) Act 2009 (NSW); and
Privacy and Personal Information Protection Act 1998 (NSW).
- 4.3 Each Party agrees to provide information to the other Party only to the extent that it is permitted to do so by law. For example, section 155AAA(12) of the *Competition and Consumer Act 2010 (Cth)*, provides that particular protected information (as defined in section 155AAA(21) of the *Competition and Consumer Act 2010 (Cth)*) will only be disclosed by an authorised ACCC official to IPART if the Chair of the ACCC is satisfied that the information will assist or enable IPART to perform or exercise any of its functions or powers.
- 4.4 A Party is not required to disclose any information that it considers to be confidential (for example, where IPART has equitable or contractual obligations to maintain confidentiality over information).
- 4.5 Each Party may provide information to the other on the basis that the Party receiving the information maintains confidentiality over that information. Where a Party provides information to the other Party on such a basis:
- 4.5.1 the Party providing the information will identify the relevant part(s) of the information that is to be kept confidential;
 - 4.5.2 the Party receiving the information will maintain confidentiality over the information, except when:
 - 4.5.2.1 that information is in the public domain;
 - 4.5.2.2 that information is required to be disclosed by law; or
 - 4.5.2.3 the Party obtains the other Party's prior written consent to disclose that information; and
 - 4.5.3 prior to disclosing the information under clause 4.5.2, the receiving Party will use its best endeavours to notify the disclosing Party, in writing, of the intended disclosure.
- 4.6 Subject to clause 4.5, each Party may disclose any information obtained by it under this MoU to any other person.
- 4.7 Subject to any specific legal requirement to the contrary, each Party may use any information obtained by it under this MoU for any purpose. For example, if the ACCC has

obtained information in the course of one matter which is relevant to another matter, the ACCC will, in general, use that information in the context of the other matter.

- 4.8 Each Party will take reasonable steps to protect any information provided to it under this MoU from being lost or destroyed and against any unauthorised use, modification, disclosure, recording or other misuse of information.
- 4.9 Subject to any specific legal requirement to the contrary and clause 4.4, each Party will, where appropriate, promptly refer to the other Party any complaint or enquiry that it receives, which is relevant to the roles and responsibilities (as set out in clauses 1.2 and 1.4) of the other Party. Any such referral will be made in writing and addressed to the relevant Party's liaison contact officer (refer to clause 6.1).

5 Consultation

5.1 Where appropriate, each Party will:

- 5.1.1 notify the other Party of any matter that may be relevant to the carrying out by the other Party of its roles and responsibilities (as set out in clauses 1.2 and 1.4), and keep the other Party informed of the progress of those matters. This could include:
- 5.1.1.1 the ACCC's compliance and enforcement activities under the WCIR as amended from time to time, which relate to infrastructure operators and their customers in NSW;
 - 5.1.1.2 IPART's approval or determination of regulated charges of infrastructure operators; and
 - 5.1.1.3 changes to relevant guidelines;
- 5.1.2 provide the other Party with copies of publications that may be relevant to the carrying out by the other Party of its roles and responsibilities (as set out in clauses 1.2 and 1.4). It may also be appropriate to provide an advance copy of, and briefing on the publication, prior to its general release; and
- 5.1.3 provide, where appropriate and before publication, the other Party with the opportunity to comment on a publication (such as a report or webpage) that contains a reference to the other Party.

6 Management of MoU

- 6.1 Each Party will ensure that, at all times while the MoU is in force, at least one of its staff members is designated and known to the other Party as its liaison contact officer for the purpose of this MoU. At the date of this MoU, the liaison contact officers for the Parties are specified in Appendix A to this MoU.
- 6.2 Each Party may change its liaison contact officer position title, as necessary, by email notification and by updating the liaison contact officer list at Appendix A.
- 6.3 The Parties' liaison contact officers will jointly decide whether to hold a coordination meeting as necessary to discuss matters of common interest, including but not limited to matters set out in clause 5.

- 6.4 The Parties agree that any dispute arising out of the operation or implementation of this MoU will be discussed and resolved through a process of consultation between the Parties' liaison contact officers. Each Party will actively participate in that consultation process with a view to cooperatively resolving the dispute. If the matter remains unresolved after reasonable attempts to consult about how the Parties might resolve the dispute, the dispute is to be escalated, initially, to more senior officers within each of the Parties, and ultimately, to the General Manager of Wireline and Water Markets at the ACCC and the Chief Executive Officer at IPART.

7 Review and amendment of MoU



- 7.1 The Parties will review the operation of the MoU on a periodic basis and will consult with each other with a view to improving its operation where necessary.
- 7.2 Any term of this MoU may be amended at any time with the mutual written consent of each Party.
- 7.3 Appendices to this MoU may be varied and additional appendices attached by either Party provided the other Party is provided with and agrees to the changes to the Appendix.
- 7.4 All variations to this MoU are to be recorded in the Change Control Register in Appendix B, except for variations under clause 6.2.

8 Termination

- 8.1 Either Party may terminate this MoU by giving 30 days written notice to the other Party. The termination will take effect on the date that is 30 days after the notice is sent unless otherwise agreed, in writing, between the parties.

9 Publication of MoU

- 9.1 The Parties agree that this MoU is a public document which may be publicised as each Party considers appropriate.

Signed on behalf of the Australian Competition and Consumer Commission	Signed on behalf of the Independent Pricing and Regulatory Tribunal
 Rodney Sims Chairman ACCC 16/3/16	 Peter J. Boxall AO Chairman IPART 21/3/16

Appendix A – Liaison Contact Officers

ACCC liaison contact officer

The liaison contact officer is the Director of the Water Compliance team.

IPART liaison contact officer

The liaison contact officer is the Director of the WaterNSW rural price review team.

Appendix B – Change Control Register