



Queensland

# Queensland Competition Authority Amendment Bill 2018





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**2018**

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**A Bill**

for

**An Act to amend the *Queensland Competition Authority Act 1997* for particular purposes**

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<b>The Parliament of Queensland enacts—</b>	1
<b>Clause 1      Short title</b>	2
This Act may be cited as the <i>Queensland Competition Authority Amendment Act 2018</i> .	3 4
<b>Clause 2      Act amended</b>	5
This Act amends the <i>Queensland Competition Authority Act 1997</i> .	6 7
<b>Clause 3      Amendment of s 25 (Notice of investigation)</b>	8
(1) Section 25(2)—	9
<i>omit, insert—</i>	10
(2) The notice must be published on the authority’s website.	11 12
(2) Section 25—	13
<i>insert—</i>	14
(3A) The authority may also give the notice to anyone else it considers appropriate.	15 16
(3) Section 25(3A) and (4)—	17
<i>renumber</i> as section 25(4) and (5).	18
<b>Clause 4      Amendment of s 76 (Access criteria)</b>	19
Section 76(2) and (3)—	20
<i>omit, insert—</i>	21
(2) The access criteria are as follows—	22
(a) that access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service	23 24 25

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- would promote a material increase in competition in at least 1 market (whether or not in Australia), other than the market for the service;
  - (b) that the facility for the service could meet the total foreseeable demand in the market—
    - (i) over the period for which the service would be declared; and
    - (ii) at the least cost compared to any 2 or more facilities (which could include the facility for the service);
  - (c) that the facility for the service is significant, having regard to its size or its importance to the Queensland economy;
  - (d) that access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote the public interest.
- (3) For subsection (2)(b), if the facility for the service is currently at capacity, and it is reasonably possible to expand that capacity, the authority and the Minister may have regard to the facility as if it had that expanded capacity.
  - (4) Without limiting subsection (2)(b), the cost referred to in subsection (2)(b)(ii) includes all costs associated with having multiple users of the facility for the service, including costs that would be incurred if the service were declared.
  - (5) In considering the access criterion mentioned in subsection (2)(d), the authority and the Minister must have regard to the following matters—
    - (a) if the facility for the service extends outside Queensland—
      - (i) whether access to the service provided outside Queensland by means of the

[s 5]

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	facility is regulated by another jurisdiction; and	1 2
	(ii) the desirability of consistency in regulating access to the service;	3 4
	(b) the effect that declaring the service would have on investment in—	5 6
	(i) facilities; and	7
	(ii) markets that depend on access to the service;	8 9
	(c) the administrative and compliance costs that would be incurred by the provider of the service if the service were declared;	10 11 12
	(d) any other matter the authority or Minister considers relevant.	13 14
<b>Clause 5</b>	<b>Amendment of s 79A (Period for making recommendation)</b>	15 16
	Section 79A(4)—	17
	<i>omit, insert—</i>	18
	(4) If the authority fails to make the recommendation within the 6 month period mentioned in subsection (1), it must, as soon as practicable after the period ends—	19 20 21 22
	(a) prepare a written notice stating—	23
	(i) the reasons for the authority’s failure; and	24 25
	(ii) details about the action the authority proposes to take to make the recommendation as soon as reasonably practicable; and	26 27 28 29
	(b) publish the notice on its website; and	30
	(c) give a copy of the notice to—	31
	(i) the applicant for the request; and	32



	(ii) if the request was not made by the Minister—the Minister.	1 2
<b>Clause 6</b>	<b>Amendment of s 100 (Obligations of parties to negotiations)</b>	3 4
	Section 100(4)—	5
	<i>omit, insert—</i>	6
	(4) However, subsection (3) does not authorise an access provider to engage in conduct for the purpose of preventing or hindering a user’s access to the declared service.	7 8 9 10
	<i>Note—</i>	11
	See sections 104 and 125 in relation to conduct preventing or hindering a user’s access to the declared service.	12 13 14
<b>Clause 7</b>	<b>Amendment of s 117A (Period for making access determination)</b>	15 16
	Section 117A(4)—	17
	<i>omit, insert—</i>	18
	(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—	19 20 21 22
	(a) prepare a written notice stating—	23
	(i) the reasons for the authority’s failure; and	24 25
	(ii) details about the action the authority proposes to take to make an access determination as soon as reasonably practicable; and	26 27 28 29
	(b) give a copy of the notice to the parties and the Minister.	30 31

<b>Clause 8</b>	<b>Amendment of s 138A (Terms of particular approved access undertakings)</b>	1 2
	Section 138A(2)—	3
	<i>omit.</i>	4
<b>Clause 9</b>	<b>Amendment of s 147A (Period for approving draft access undertaking)</b>	5 6
	Section 147A(5)—	7
	<i>omit, insert—</i>	8
	(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—	9 10 11 12 13
	(a) prepare a written notice stating—	14
	(i) the reasons for the authority’s failure; and	15 16
	(ii) details about the action the authority proposes to take to decide whether to approve, or refuse to approve, the draft access undertaking as soon as reasonably practicable; and	17 18 19 20 21
	(b) publish the notice on its website; and	22
	(c) give a copy of the notice to—	23
	(i) the owner or operator of the service, or the responsible person; and	24 25
	(ii) the Minister.	26
<b>Clause 10</b>	<b>Amendment of s 168C (Prohibition on particular treatment of users by access providers)</b>	27 28
	Section 168C(3)—	29
	<i>omit, insert—</i>	30
	(3) However, subsection (2) does not authorise an	31

	access provider to do anything under an access agreement or access determination to which the provider is a party if the provider is prevented from doing the thing under section 104 or 125.	1 2 3 4
<b>Clause 11</b>	<b>Amendment of s 171 (Application of part)</b>	5
	(1) Section 171(c) and (d)—	6
	<i>omit.</i>	7
	(2) Section 171(e) to (l)—	8
	<i>renumber</i> as section 171(c) to (j).	9
<b>Clause 12</b>	<b>Amendment of s 176 (Notice of hearings)</b>	10
	(1) Section 176(2)—	11
	<i>omit, insert—</i>	12
	(2) The authority must publish the notice on its website.	13 14
	(2) Section 176(3)(b)—	15
	<i>omit.</i>	16
	(3) Section 176(3)(c) and (d)—	17
	<i>renumber</i> as section 176(3)(b) and (c).	18
<b>Clause 13</b>	<b>Amendment of s 187B (Constitution of mediator)</b>	19
	Section 187B(2), ‘section 214D(2)’—	20
	<i>omit, insert—</i>	21
	section 214D(3)	22
<b>Clause 14</b>	<b>Amendment of s 242 (Annual reports)</b>	23
	Section 242(c) and (d)—	24
	<i>omit.</i>	25

[s 15]

<b>Clause 15</b>	<b>Amendment of s 244 (Tabling reports)</b>	1
	Section 244(1), ‘or 55’—	2
	<i>omit.</i>	3
<b>Clause 16</b>	<b>Amendment of s 245 (Regulation-making power)</b>	4
	Section 245(3)—	5
	<i>omit.</i>	6
<b>Clause 17</b>	<b>Insertion of new pt 17</b>	7
	After section 254—	8
	<i>insert—</i>	9
	<b>Part 17</b>	10
	<b>Transitional provision</b>	11
	<b>for Queensland</b>	12
	<b>Competition Authority</b>	13
	<b>Amendment Act 2018</b>	14
	<b>255 Preparation and approval of particular draft, or</b>	15
	<b>draft amending, access undertakings</b>	16
	This Act, as in force immediately before the	17
	commencement, continues to apply to the	18
	preparation and approval of the following started,	19
	but not completed, before the commencement—	20
	(a) a draft access undertaking under part 5,	21
	division 7, subdivision 1;	22
	(b) a draft amending access undertaking under	23
	part 5, division 7, subdivision 2.	24
<b>Clause 18</b>	<b>Amendment of sch 2 (Dictionary)</b>	25
	Schedule 2, definition <i>applicant</i> —	26
	<i>omit, insert—</i>	27
	<i>applicant</i> , for a request made to the authority	28

under section 77 or 170G, means the person who  
made the request.

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