

## GOVERNMENT PRICING TRIBUNAL BILL 1992\*

NEW SOUTH WALES



### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to establish a Government Pricing Tribunal to determine the maximum price for monopoly services supplied by Government agencies and to report on the pricing policies of those agencies. The Bill requires the Tribunal to deal with the monopoly services supplied by the Government agencies listed in Schedule 1 to the Bill (such as agencies supplying water, electricity or public transport services). The Minister may refer the monopoly services of other Government agencies to the Tribunal.

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### PART 1—PRELIMINARY

**Clause 1** sets out the short title of the proposed Act.

**Clause 2** provides that the proposed Act will commence on a day or days to be proclaimed.

**Clause 3** contains definitions used in the proposed Act. “Government agency” is defined to mean any public or local authority, including a government department, state owned corporation or public utility undertaking. “Price” is defined to include any rate, fee, levy or charge (except a State tax).

**Clause 4** defines “government monopoly service” to mean any service provided by a government agency and declared by the regulations or the Minister to be a government monopoly service. The services to be declared are those for which there is no competitive market and no contestable market in the short term by potential suppliers.

### PART 2—ESTABLISHMENT OF GOVERNMENT PRICING TRIBUNAL OF NEW SOUTH WALES

**Clause 5** establishes a Government Pricing Tribunal of New South Wales. The Tribunal is to be a body corporate.

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\* Amended in committee—see table at end of volume.

**Clause 6** provides that the Tribunal is to consist of 3 members, being a full-time or part-time Chairperson and 2 other part-time members. The clause requires that the members have a knowledge and understanding of economics, the interests of consumers and the interests of the Government as owner of the relevant government agencies.

**Clause 7** provides that the Tribunal is not subject to Ministerial control or direction with respect to its determinations or recommendations.

**Clause 8** deals with the staffing of the Tribunal. Public servants or other staff may be employed.

**Clause 9** empowers the Tribunal to enter into arrangements with other agencies for assistance in its investigations and to engage consultants.

**Clause 10** empowers the Tribunal to delegate its functions to any of its members or to any committee which includes its members.

### **PART 3—PRICES AND PRICING POLICIES FOR GOVERNMENT MONOPOLY SERVICES ETC.**

**Clause 11** authorises the Tribunal to conduct investigations and make reports on the following matters in respect of the Government agencies listed in Schedule 1:

- the maximum price for a particular government monopoly service;
- periodic reviews of pricing policy in respect of a particular service.

The Schedule specifies the principal agencies, such as the electricity and water supply authorities and the government public transport authorities. The Schedule may be amended by regulation.

**Clause 12** provides that the Tribunal is also to conduct investigations and make reports on the following matters referred to it by the Minister:

- the maximum price for a particular government monopoly service (whether or not listed in Schedule 1);
- a periodic review of pricing policy in respect of a particular service of such an agency.

**Clause 13** deals generally with investigations and reports. In particular, it authorises the Minister to require the Tribunal to report within a specified period, to make a draft report available during an investigation or to require specific matters to be considered. The clause requires the Tribunal to notify investigations in a newspaper and to include in the notice and its report to the Minister and Parliament the terms of any reference or direction from the Minister.

**Clause 14** deals with the methods by which the Tribunal may fix maximum prices, including average prices for a number of services or a percentage increase or decrease in existing services. Prices may be fixed by reference to a general price index, the economic cost of production or a rate of return on assets.

**Clause 15** lists the matters to which the Tribunal is to have regard in making determinations and recommendations. These include:

- the cost of providing the services concerned;
- consumer protection from abuses of monopoly power,
- an appropriate rate of return on public sector assets;

- the effect on general price inflation over the medium term;
- greater efficiency;
- the protection of the environment by appropriate pricing policies.

**Clause 16** requires the Tribunal, when determining a price increase for a government monopoly service, to report on the likely cost to the Consolidated Fund if the price were not increased to the maximum price and the revenue foregone by the agency were met from the Consolidated Fund.

**Clause 17** requires determinations made by the Tribunal of the maximum price for a government monopoly service to be published in the Gazette as soon as practicable after the Minister receives the Tribunal's report. Price determinations take effect from the date of publication unless a later day is specified in the determination.

**Clause 18** provides the procedure for the implementation of determinations of the maximum price for a government monopoly service. If the price for the service is fixed by a Minister or agency the clause requires the Minister or agency to ensure that the price does not exceed the maximum price determined by the Tribunal. If the price is otherwise fixed, the responsible Minister is to take the relevant action. The approval of the Treasurer is required if the responsible Minister or agency proposes to fix the price below the maximum price determined by the Tribunal. The clause also requires that any report of the Tribunal regarding pricing policies of a government agency is to be taken into account in the fixing of prices for the services concerned.

**Clause 19** requires reports of the Tribunal to be made public.

#### **PART 4—CONDUCT OF INVESTIGATIONS BY TRIBUNAL**

**Clause 20** deals with the conduct of investigations by the Tribunal. The clause provides that they are to be conducted informally and that they are not to be subject to the rules relating to legal hearings.

**Clause 21** provides that the Tribunal may hold hearings if necessary, and also seminars or workshops, for the purposes of an investigation. Any hearing is to be held in public unless the Tribunal otherwise determines.

**Clause 22** empowers the Chairperson of the Tribunal to require an officer of a government agency or other person to furnish a statement or document to the Tribunal or to attend at a hearing of the Tribunal.

**Clause 23** makes it an offence if a person fails to comply with a requirement under clause 22 or fails to answer a question at any hearing. A person may lawfully refuse to comply with such a requirement or to answer a question if compliance might tend to incriminate the person or make the person liable to a penalty or forfeiture. The clause also makes it an offence if a person knowingly gives false or misleading information to the Tribunal, hinders the Tribunal in the exercise of its functions or threatens the employment of a person who assists the Tribunal.

**Clause 24** protects the confidentiality of Cabinet documents and proceedings.

#### **PART 5—MISCELLANEOUS**

**Clause 25** provides that the proposed Act binds the Crown.

*Government Pricing Tribunal 1992 [Act 1992 No. 39]*

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**Clause 26** provides that members of the Tribunal and persons acting under its direction are not to be held personally liable for acts done in good faith for the purpose of the proposed Act.

**Clause 27** provides that documents may be served on the Tribunal personally or by post.

**Clause 28** provides that proceedings for offences against the proposed Act or regulations are to be dealt with summarily by a Magistrate.

**Clause 29** empowers the Governor to make regulations.

**Clause 30** is a formal provision giving effect to the amendment of various Acts set out in Schedule 4.

**Schedule 1** lists the government agencies for which the Tribunal will have standing reference. The list may be amended by regulation.

**Schedule 2** contains the usual provisions relating to members of the Tribunal including terms of office, remuneration and disclosure of pecuniary interests.

**Schedule 3** contains the usual provisions relating to the procedure of the Tribunal.

**Schedule 4** makes amendments to several Acts.

The Defamation Act 1974 is amended to provide a defence for publications to or by the Tribunal.

The Prices Regulation Act 1948 is amended to exclude from that Act the determination of the price of government monopoly services to which the proposed Act applies.

The Public Finance and Audit Act 1983 is amended to apply to the Tribunal the usual procedures for accounts, audit and annual reports of statutory bodies.

The Statutory and Other Offices Remuneration Act 1975 is amended to provide for the remuneration of a full-time Chairperson of the Tribunal.

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