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OPP--OPPOSITION

LEGISLATIVE COUNCIL

Better Regulation Legislation Amendment Bill 2020

First print

Proposed amendment

No. 1 **Price gouging**

Page 15, Schedule 7. Insert after line 12—

7.1A Fair Trading Act 1987 No 68

Part 4C

Insert after Part 4B—

Part 4C Price gouging of declared goods or services

Division 1 Preliminary

59A Definitions

In this Part—

Consumer Price Index means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics in the latest published series of that index.

declared goods—see section 59B(1)(a).

declared services—see section 59B(1)(b).

essential goods means—

- (a) personal hygiene products and medical supplies, including medicine, and
- (b) personal protective equipment, and
- (c) perishable goods, and
- (d) non-perishable food products or ingredients.

essential services means services that are essential to the health, safety and mental and physical wellbeing of a person or a class of person.

Note. For example, medical services.

person includes a manufacturer, supplier or wholesaler.

price of goods order—see section 59C.

price of services order—see section 59H.

service does not include a government monopoly service within the meaning of the *Independent Pricing and Regulatory Tribunal Act 1992*.

59B Minister may declare goods and services

- (1) The Minister may, by order published in the Gazette, do the following—
 - (a) declare essential goods or a class of essential goods to be declared goods for the purposes of this Part (the *declared goods*),
 - (b) declare essential services or a class of essential services to be declared services for the purposes of this Part (the *declared services*).
- (2) A declaration made by the Minister under this section may apply generally or in the following ways—
 - (a) it may apply to a person or body or class of persons or bodies,
 - (b) it may apply to the State or a part of the State,
 - (c) it may be subject to conditions or unconditional,
 - (d) it may be subject to specified exceptions.
- (3) The Minister may make an order under this Part only if the price of the essential goods or essential services or class of essential goods or essential services to which the proposed order relates is inflated, or likely to be inflated, because of—
 - (a) a risk to public health that is the subject of an order made by the Minister of Health and Medical Research under the *Public Health Act 2010*, or
 - (c) a natural disaster, or
 - (b) a state of emergency within the meaning of the *State Emergency and Rescue Management Act 1989*, or
 - (c) another public emergency.
- (4) Unless repealed sooner by the Minister, an order made under this Part is repealed on the date that is 12 months after the commencement of the order.

Division 2 Price fixing of declared goods

59C Tribunal may fix maximum price of declared goods

- (1) The Tribunal may, with the concurrence of the Minister, publish an order in the Gazette to fix the maximum price at which declared goods may be sold (a *price of goods order*).
- (2) Without limiting subsection (1), a price of goods order may fix the following for the declared goods—
 - (a) different maximum prices according to—
 - (i) differences in quality or description or in the quantity sold, or
 - (ii) different forms, conditions or terms, or
 - (iii) different localities of trade, commerce, sale or supply, or
 - (iv) different parts of the State, or
 - (v) different persons or bodies or classes of persons or bodies,
 - (b) maximum prices on a sliding scale,
 - (c) maximum prices for cash or delivery, inclusive or exclusive of the cost of packing or delivery,
 - (d) maximum prices relative to weight, size or other measurement of the goods,
 - (e) maximum prices that vary in accordance with time, profits, wages or standards, including in accordance with the Consumer Price Index.

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- (3) Before making a price of goods order, the Tribunal must consider whether the making of the order would be contrary to the public interest.
 - (4) A price of goods order made under this section may be subject to conditions or unconditional.

59D Duration and repeal of price of goods order

- (1) A price of goods order comes into force on the day specified by the Tribunal in the order, being a date not earlier than the date the order is published in the Gazette.
- (2) A price of goods order is repealed on whichever date occurs first—
 - (a) the date that is 12 months after the commencement of the order, or
 - (b) the date that the goods to which the order relates cease to be declared goods.

59E Amendment, variation and repeal of price of goods order

An amendment, variation or repeal of a price of goods order takes effect on the date specified by the Tribunal in the order, being a date not earlier than the date the order is published in the Gazette.

59F Sale of declared goods at price greater than maximum price prohibited

- (1) This section applies to declared goods for which a price of goods order has been made and is in force.
- (2) A person must not sell, or offer for sale, declared goods at a greater price than the maximum price fixed by the Tribunal.
Maximum penalty—1,000 penalty units for a body corporate or 200 penalty units for an individual.
- (3) For the purposes of this section, a person is taken to have sold, or offered for sale, declared goods at a greater price than the maximum price fixed by the Tribunal if the goods are sold or offered for sale—
 - (a) on behalf of the person, or
 - (b) at the person's place of business, including on a website or social media platform in connection with the business.
- (4) A court may, in addition to a penalty imposed for an offence under this section, order the defendant to refund to the purchaser the difference between the maximum price fixed by the Tribunal and the price at which the declared goods were sold.
- (5) In this section—
offer for sale, in relation to declared goods, includes—
 - (a) notifying the price proposed by the person for the sale of goods, whether verbally, in writing, electronically or otherwise, and
 - (b) displaying the goods for sale in association with a price in a physical location or on the internet.

59G Offer to pay greater price for declared goods prohibited

- (1) This section applies to declared goods for which a price of goods order has been made and is in force.
- (2) A person must not, without reasonable excuse, do the following in relation to declared goods at a greater price than the maximum price fixed by the Tribunal—
 - (a) pay for, or offer to pay for, the goods,
 - (b) offer to act in connection with payment for the goods,

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- (c) hold themselves out as being willing to pay for, or offer to pay for, or being willing or able to obtain another person to pay for, the goods.

Maximum penalty—1,000 penalty units for a body corporate or 200 penalty units for an individual.

Division 3 Price fixing of declared services

59H Tribunal may fix maximum rate of declared services

- (1) The Tribunal may, with the concurrence of the Minister, publish an order in the Gazette to fix the maximum rate at which declared services may be provided (a *price of services order*).
- (2) Without limiting subsection (1), a price of services order may fix the following for the declared services—
 - (a) different maximum rates according to—
 - (i) differences in quality or description or in the volume of services provided, or
 - (ii) different forms, conditions or terms, or
 - (iii) different localities of trade, commerce or supply, or
 - (iv) different parts of the State, or
 - (v) different persons or bodies or classes of persons or bodies,
 - (b) maximum rates on a sliding scale,
 - (c) maximum rates for cash or on terms,
 - (d) maximum rates that vary in accordance with time, profits, wages or standards.
- (3) Before making a price of services order, the Tribunal must consider whether the making of the order would be contrary to the public interest.
- (4) A price of services order made under this section may be subject to conditions or unconditional.

59I Duration of price of services order

- (1) A price of services order comes into force on the day specified by the Tribunal in the order, being a date not earlier than the date the order is published in the Gazette.
- (2) A price of services order is repealed on whichever date occurs first—
 - (a) the date that is 12 months after the commencement of the order, or
 - (b) the date that the services to which the order relates cease to be declared services.

59J Amendment, variation and repeal of price of services order

An amendment, variation or repeal of a price of services order takes effect on the date specified by the Tribunal in the order, being a date not earlier than the date the order is published in the Gazette.

59K Charging excessive rate for declared services prohibited

- (1) This section applies to declared services for which a price of services order has been made and is in force.
- (2) A person must not provide, or offer to provide, declared services at a greater rate than the maximum rate fixed by the Tribunal.

Maximum penalty—1,000 penalty units for a body corporate or 200 penalty units for an individual.

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- (3) For the purposes of this section, a person is taken to have provided, or offered to provide, declared services at a greater price than the maximum rate fixed by the Tribunal if the services are provided or offered to be provided—
 - (a) on behalf of the person, or
 - (b) at the person's place of business.

59L Offer to pay greater rate for declared services prohibited

- (1) This section applies to declared services for which a price of services order has been made and is in force.
- (2) A person must not, without reasonable excuse, do the following in relation to declared services at a greater rate than the maximum rate fixed by the Tribunal—
 - (a) pay for, or offer to pay for, the services,
 - (b) offer to act in connection with payment for the services,
 - (c) hold themselves out as being willing to pay for, or offer to pay for, or being willing or able to obtain another person to pay for, the services.

Maximum penalty—1,000 penalty units for a body corporate or 200 penalty units for an individual.

Division 4 Miscellaneous

59M Tribunal to give prior notice of order to affected parties

- (1) The Tribunal must, if practicable, give prior notice of an order proposed to be made by the Tribunal under this Part to the following persons—
 - (a) for a price of goods order—the manufacturer, supplier or wholesaler concerned,
 - (b) for a price of services order—the provider of the services concerned.
- (2) If the good is a foreign good, notice may instead be given to an Australian importer or supplier of the good.
- (3) If practicable, notice is to be given at least 48 hours before the order is published in the Gazette.
- (4) The Tribunal may also comply with a requirement to give prior notice of an order under this section by publishing a notice, or causing a notice to be published, of the Tribunal's intention to make an order on the Department's website.
- (5) However, the Tribunal is not required to give prior notice of an order if—
 - (a) the Tribunal believes on reasonable grounds that, in the public interest, the publication of the order should not be delayed, or
 - (b) the Tribunal is unable, after making reasonable inquiries, to ascertain the identity of, or to locate, the person to whom the notice would otherwise be required to be given.

59N Description of goods and services

An order under this Part may specify declared goods or declared services to which it applies by reference to the following—

- (a) the description or brand,
- (b) for goods—
 - (i) the manufacturer, supplier or wholesaler of the goods, or
 - (ii) the period in which the goods are, or were, manufactured, supplied or sold, or
 - (iii) the country of origin of the goods, or

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- (iv) if the goods originated in Australia, the location in Australia from which the goods are, or were, manufactured, supplied or sold.