



New South Wales

# Price Exploitation Code (New South Wales) Bill 1999

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to enact legislation that will give effect in New South Wales to the New Tax System Price Exploitation Code of the Commonwealth. The Code is intended to prevent price exploitation as a result of the New Tax System.

Amendments to the *Trade Practices Act 1974* of the Commonwealth (the **Trade Practices Act**) effected by the *A New Tax System (Trade Practices Amendment) Act 1999* of the Commonwealth (the **Commonwealth Act**) are to be complemented by legislation enacted by the States and Territories.

This Bill deals principally with the application of the New Tax System Price Exploitation Code (the **Code**). It does so in concert with the Commonwealth Act, which effectively creates the Code but which does not itself apply the Code. Its principal purpose is to apply Part VB of the Trade Practices Act to those persons and things that do not or may not fall within the constitutional competence of the Commonwealth (especially individuals and partnerships). It does so by applying the

provisions of that Part to all persons (including corporations, as well as individuals and partnerships). The Code consists of the following:

- (a) the text set out in Part 2 of the Schedule to the Trade Practices Act (this repeats most, but not all, of Part VB, but generalised so as to apply to “persons” instead of “corporations”). The result will be an overlap, mainly in the area of corporations,
- (b) the remaining provisions of the Trade Practices Act (with certain exceptions), so far as they would relate to the Schedule version of Part VB if the Schedule version were substituted for the actual Part VB,
- (c) relevant regulations under the Trade Practices Act,
- (d) guidelines under section 75AV of the Trade Practices Act.

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on 10 December 1999.

**Clause 3** contains interpretive provisions for the proposed Act. Clause 3 (1) contains a list of definitions. An explanation of their origin or purpose is as follows:

***application law***—the same as in Part XI AA of the Trade Practices Act.

***Commission***—the same as in section 4 of the Trade Practices Act.

***instrument***—the same as the definition used in corporations legislation and competition policy reform legislation.

***jurisdiction***—to mean a State, which is in turn defined to include a Territory.

***law***—the same as the definition used in corporations legislation and competition policy reform legislation.

***modifications***—the same as in Part XI AA of the Trade Practices Act.

***month***—the same as in the *Acts Interpretation Act 1901* of the Commonwealth.

***New Tax System Price Exploitation Code***—the same as in Part XI AA of the Trade Practices Act.

***New Tax System Price Exploitation Code text***—the text of the law to be applied as the Code.

***officer***—the same as in Part XIAA of the Trade Practices Act.

***participating jurisdiction***—a jurisdiction that applies the Code.

***proclamation***—makes it clear that it is a proclamation of the State, not of the Commonwealth.

***Schedule version of Part VB***—the same as in Part XIAA of the Trade Practices Act.

***State***—is defined as including a Territory.

***Territory***—the same as in Part XIAA of the Trade Practices Act.

***this jurisdiction***—will mean New South Wales. Use of this definition reduces variation between the corresponding legislation.

***Trade Practices Act***—a convenient short definition.

**Clause 3 (2)** provides for expressions used in the Bill to have the same meanings as in the Trade Practices Act.

**Clause 3 (3)** provides that references to Commonwealth Acts include amendments and replacements.

## **Part 2 The New Tax System Price Exploitation Code**

**Clause 4** defines the Code text that will be applied to become the *New Tax System Price Exploitation Code of New South Wales* (the ***New South Wales Code***). As mentioned above, it consists primarily of the provisions of Part VB of the Trade Practices Act.

**Clause 5** is the operative clause of the Bill. It applies the Code text as a law of New South Wales.

**Clause 6** provides a scheme to deal with future modifications of the Code text by Commonwealth legislation. In essence, the scheme provides that there is to be at least a two month gap between the enactment or making of Commonwealth modifications and their application under clause 5. That period can be shortened by proclamation. Alternatively, a proclamation can provide that a modification is not to apply at all in the State.

**Clause 7** provides, for the purposes of uniformity, that the *Acts Interpretation Act 1901* of the Commonwealth applies to the interpretation of the New South Wales Code (instead of the *Interpretation Act 1987* of New South Wales).

**Clause 8** specifies the persons to whom, and the circumstances in which, the New South Wales Code applies within the State.

**Clause 9** provides that the New South Wales Code applies beyond the territorial limits of the State, and that the extraterritorial competence of the legislature of the State is being used.

### **Part 3 Citing the New Tax System Price Exploitation Codes**

**Clause 10** provides that the New Tax System Price Exploitation Code text, as applying as a law of the State, may be referred to as the “New Tax System Price Exploitation Code of New South Wales”.

**Clause 11** provides that a reference in any instrument to the New South Wales Code extends to a reference to the Codes of the other participating jurisdictions.

**Clause 12** provides that a reference to the Code of another participating jurisdiction is a reference to the New Tax System Price Exploitation Code text, as applying as a law of that jurisdiction.

### **Part 4 Application of New Tax System Price Exploitation Codes to Crown**

**Clause 13** provides that the application law of New South Wales will bind the Crown in all its capacities (to the full extent of constitutional capacity to do this). In line with section 2A (1) and section 2B (1) (aa) of the Trade Practices Act, this will apply to the Crown only when carrying on a business.

**Clause 14** is the counterpart of clause 13, and provides that the corresponding application law of another participating jurisdiction will bind the Crown in right of New South Wales. Again, this will apply to the Crown only when carrying on a business.

**Clause 15** makes it clear that certain activities carried on by governments or government authorities do not amount to carrying on a business (for the purposes of clauses 13 and 14). The clause reflects section 2C of the Trade Practices Act.

**Clause 16** provides that the Crown is not liable to pecuniary penalties or prosecutions. This clause reflects sections 2A (3) and 2B (2) of the Trade Practices Act.

**Clause 17** makes it clear that, where the law of another jurisdiction binds the Crown in right of New South Wales by virtue of this Part, that law overrides any prerogative right or privilege of the Crown (for example, in relation to the payment of debts). Similar provisions are included in corporations legislation and competition policy reform legislation.

## **Part 5 National administration and enforcement of New Tax System Price Exploitation Codes**

### **Division 1 Preliminary**

**Clause 18** provides that the object of the proposed Part is to help to ensure that the Codes of the participating jurisdictions are administered on a uniform basis.

### **Division 2 Conferral of functions**

**Clause 19** confers functions under the proposed Act on certain authorities and officers of the Commonwealth.

**Clause 20** empowers the Commission to do things in New South Wales in the exercise of its functions under the Code of a participating jurisdiction.

### **Division 3 Offences**

**Clause 21** provides that the object of the proposed Division is to provide that offences against the New South Wales Code and the Codes of the other participating jurisdictions are taken to be Commonwealth offences.

**Clause 22** applies Commonwealth law to offences against the New South Wales Code.

**Clause 23** applies Commonwealth law to offences against the Codes of the other participating jurisdictions.

**Clause 24** ensures that any power conferred on a Commonwealth officer or authority by Commonwealth law, as applied by proposed sections 22 and 23, is exercisable in relation to an offence against the New South Wales Code or the Code of a participating jurisdiction.

**Clause 25** prevents a New South Wales officer or authority from exercising any power that is exercisable by a Commonwealth officer or authority under the proposed Division.

#### **Division 4      Administrative law**

**Clause 26** defines the expression *Commonwealth administrative laws* for the purposes of the proposed Division.

**Clause 27** applies the Commonwealth administrative laws as laws of New South Wales to matters arising under the New South Wales Code.

**Clause 28** applies the Commonwealth administrative laws as laws of New South Wales to matters arising under the Codes of the other participating jurisdictions.

**Clause 29** ensures that any power conferred on a Commonwealth officer or authority by the Commonwealth administrative laws, as applied by proposed sections 27 and 28, is exercisable in relation to a matter arising under the New South Wales Code or the Code of a participating jurisdiction.

**Clause 30** prevents a New South Wales officer or authority from exercising any power that is exercisable by a Commonwealth officer or authority under the proposed Division.

### **Part 6 Miscellaneous**

**Clause 31** recognises that the same conduct is capable of being punished under more than one law (the New South Wales Code, the Code of another jurisdiction, or the Trade Practices Act), and removes this double jeopardy. The clause has its counterpart in section 150S of the Trade Practices Act.

**Clause 32** makes it clear that documentation and other things are not invalid because they also serve the Trade Practices Act or the Code of another participating jurisdiction.

**Clause 33** is intended to deal with the technical point that a reference in an applied law to another Commonwealth law is to be treated as if the other law were itself an applied law. There is a similar provision in the corporations legislation and competition policy reform legislation.

**Clause 34** provides that fees, taxes, penalties, fines and other money paid under the New South Wales Code are to be paid to the Commonwealth. This will not apply to amounts recovered in actions for damages or to money ordered to be refunded under section 80B of the Trade Practices Act. Clause 34 (2) is a technical provision

that imposes fees (including fees that are taxes) prescribed by the applied regulations.

**Clause 35** allows regulations to be made for the purposes of the proposed Act.

**Clause 36** is a formal provision giving effect to Schedule 1 (Amendment of other Acts).

## **Schedule 1    Amendment of other Acts**

**Schedule 1.1** contains a consequential amendment to the *Competition Policy Reform (New South Wales) Act 1995*.

**Schedule 1.2 [1]** contains an amendment to the *Federal Courts (State Jurisdiction) Act 1999* to make the proposed Act a relevant State Act for the purposes of that Act. The amendment will enable regulations under that Act to make provision for or with respect to enabling jurisdiction conferred by or under the proposed Act, or by or under the Commonwealth laws applied by the proposed Act, to be exercised by State courts. As a result of the decision of the High Court in *Re Wakim; Ex parte McNally* [1999] HCA 27, State legislatures are not competent to confer jurisdiction on federal courts. Although the proposed Act is silent as to the courts that are to have jurisdiction to deal with matters arising under the Act, the Commonwealth laws applied by the proposed Act contemplate such jurisdiction being exercised by the Federal Court. It is intended that regulations under the *Federal Courts (State Jurisdiction) Act 1999* will confer this jurisdiction on the Supreme Court instead and provide for references in those laws to the Federal Court to be construed as references to the Supreme Court.

**Schedule 1.2 [2]** contains a further amendment to the *Federal Courts (State Jurisdiction) Act 1999* to ensure that a relevant State Act, and any law applied by a relevant State Act, does not attempt to confer jurisdiction on a federal court. The amendment protects a federal court's power to exercise jurisdiction arising under State legislation to the extent to which a federal court can validly exercise such jurisdiction, and nullifies the effect of any applied law that purports to exclude State courts from exercising jurisdiction arising under the applied law.



New South Wales

# Price Exploitation Code (New South Wales) Bill 1999

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New South Wales

# Price Exploitation Code (New South Wales) Bill 1999

No. , 1999

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## A Bill for

An Act to apply certain laws of the Commonwealth relating to the New Tax System Price Exploitation Code as laws of New South Wales; to make related amendments to other Acts; and for other purposes.

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Clause 1 Price Exploitation Code (New South Wales) Bill 1999

Part 1 Preliminary

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**The Legislature of New South Wales enacts:** 1

**Part 1 Preliminary** 2

**1 Name of Act** 3

This Act is the *Price Exploitation Code (New South Wales) Act 1999*. 4

**2 Commencement** 5

This Act commences, or is taken to have commenced, on 10 December 1999. 6  
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**3 Definitions** 8

(1) In this Act: 9

*application law* means: 10

- (a) a law of a participating jurisdiction that applies the New Tax System Price Exploitation Code, either with or without modifications, as a law of the participating jurisdiction, or 11  
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- (b) any regulations or other legislative instrument made under a law described in paragraph (a), or 14  
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- (c) the New Tax System Price Exploitation Code, applying as a law of the participating jurisdiction, either with or without modifications. 16  
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*Commission* means the Australian Competition and Consumer Commission established by section 6A of the Trade Practices Act, and includes a member of the Commission or a Division of the Commission performing functions of the Commission. 19  
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*instrument* means any document whatever, including: 23

- (a) an Act or an instrument made under an Act, or 24
- (b) a law of this jurisdiction or an instrument made under such a law, or 25  
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- (c) an award or other industrial determination or order, or an industrial agreement, or 27  
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- (d) any other order (whether executive, judicial or otherwise), or 29
- (e) a notice, certificate or licence, or 30
- (f) an agreement, or 31

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(g)	an application made, information or complaint laid, affidavit sworn, or warrant issued, for any purpose, or	1 2
(h)	an indictment, presentment, summons or writ, or	3
(i)	any other pleading in, or process issued in connection with, a legal or other proceeding.	4 5
	<b>jurisdiction</b> means a State.	6
	<b>law</b> , in relation to a Territory, means a law of, or in force in, that Territory.	7 8
	<b>modifications</b> includes additions, omissions and substitutions.	9
	<b>month</b> means a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of the next month.	10 11 12 13
	<b>New Tax System Price Exploitation Code</b> means (according to the context):	14 15
(a)	the New Tax System Price Exploitation Code text, or	16
(b)	the New Tax System Price Exploitation Code text, applying as a law of a participating jurisdiction, either with or without modifications.	17 18 19
	<b>New Tax System Price Exploitation Code text</b> means the text described in section 4.	20 21
	<b>officer</b> , in relation to the Commonwealth, has the meaning given in Part XI AA of the Trade Practices Act.	22 23
	<b>participating jurisdiction</b> means a jurisdiction that applies the New Tax System Price Exploitation Code as a law of the jurisdiction, either with or without modifications.	24 25 26
	<b>proclamation</b> means a proclamation of the Governor published in the Government Gazette of this jurisdiction.	27 28
	<b>Schedule version of Part VB</b> means the text that is set out in Part 2 of the Schedule to the Trade Practices Act.	29 30
	<b>State</b> includes a Territory.	31
	<b>Territory</b> means the Australian Capital Territory or the Northern Territory of Australia.	32 33
	<b>this jurisdiction</b> means New South Wales.	34
	<b>Trade Practices Act</b> means the <i>Trade Practices Act 1974</i> of the Commonwealth.	35 36

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Clause 3 Price Exploitation Code (New South Wales) Bill 1999

Part 1 Preliminary

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- (2) If an expression is defined in the Trade Practices Act and is also used in this Act, the expression as used in this Act has, unless the contrary intention appears, the same meaning as in that Act. 1  
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- (3) In this Act, a reference to a Commonwealth Act includes a reference to: 4  
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  - (a) that Commonwealth Act, as amended and in force for the time being, and 6  
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  - (b) an Act enacted in substitution for that Act. 8

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<b>Part 2 The New Tax System Price Exploitation Code</b>	1
<b>4 The New Tax System Price Exploitation Code text</b>	2
(1) The New Tax System Price Exploitation Code text consists of:	3
(a) the Schedule version of Part VB, and	4
(b) the remaining provisions of the Trade Practices Act (except sections 2A, 5, 6 and 172), so far as they would relate to the Schedule version if the Schedule version were substituted for Part VB of that Act, and	5 6 7 8
(c) the regulations under the Trade Practices Act, so far as they relate to any provisions covered by paragraph (a) or (b), and	9 10
(d) the guidelines under section 75AV of the Trade Practices Act.	11
(2) For the purpose of forming part of the New Tax System Price Exploitation Code text:	12
(a) the provisions referred to in subsection (1) (b), (c) and (d) are to be modified as necessary to fit in with the Schedule version of Part VB, and	13 14 15 16
(b) in particular, references to corporations are to include references to persons who are not corporations.	17 18
<b>5 Application of New Tax System Price Exploitation Code</b>	19
(1) The New Tax System Price Exploitation Code text, as in force for the time being, applies as a law of New South Wales.	20 21
(2) This section has effect subject to section 6.	22
<b>6 Future modifications of New Tax System Price Exploitation Code text</b>	23
(1) A modification made by a Commonwealth law to the New Tax System Price Exploitation Code text after the commencement of this section:	24
(a) does not apply under section 5 until at least the end of the period of 2 months after the date of the modification, unless a proclamation appoints an earlier date, and	25 26 27 28
(b) does not apply under that section at all, if the modification is declared by a proclamation to be excluded from the operation of that section.	29 30 31

(2) A proclamation under subsection (1) (a):	1
(a) cannot appoint any day that is earlier than the date of publication of the proclamation or that is earlier than the date on which the modification of the text takes effect, and	2 3 4
(b) is taken in such a case to appoint the date of publication of the proclamation or the date on which the modification of the text takes effect, whichever is the later.	5 6 7
(3) A proclamation under subsection (1) (b) has effect only if published before the end of 2 months after the date of the modification.	8 9
(4) Subsection (1) (b) ceases to apply to the modification if a further proclamation so provides.	10 11
(5) For the purposes of this section, the date of the modification is the date on which the Commonwealth Act effecting the modification receives the Royal Assent or the regulation effecting the modification is notified in the Commonwealth of Australia Gazette.	12 13 14 15
<b>7 Interpretation of New Tax System Price Exploitation Code</b>	16
(1) The <i>Acts Interpretation Act 1901</i> of the Commonwealth applies as a law of this jurisdiction to:	17 18
(a) the New Tax System Price Exploitation Code of this jurisdiction, and	19 20
(b) any instrument under that Code.	21
(2) For the purposes of subsection (1), the Commonwealth Act mentioned in that subsection applies as if:	22 23
(a) the statutory provisions in the New Tax System Price Exploitation Code of this jurisdiction were a Commonwealth Act, and	24 25 26
(b) the regulations in the New Tax System Price Exploitation Code of this jurisdiction or instruments mentioned in that subsection were regulations or instruments under a Commonwealth Act.	27 28 29
(3) The <i>Interpretation Act 1987</i> of New South Wales does not apply to:	30
(a) the New Tax System Price Exploitation Code of New South Wales, or	31 32
(b) any instrument under that Code.	33



<b>8 Application of New Tax System Price Exploitation Code</b>	1
The New Tax System Price Exploitation Code of this jurisdiction applies to and in relation to:	2
	3
(a) persons carrying on business within this jurisdiction, or	4
(b) bodies corporate incorporated or registered under the law of this jurisdiction, or	5
	6
(c) persons ordinarily resident in this jurisdiction, or	7
(d) persons otherwise connected with this jurisdiction.	8
<b>9 Extraterritorial application</b>	9
Subject to section 8, the New Tax System Price Exploitation Code of this jurisdiction extends to conduct, and other acts, matters and things, occurring or existing outside or partly outside this jurisdiction (whether within or outside Australia).	10
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Clause 10 Price Exploitation Code (New South Wales) Bill 1999

Part 3 Citing the New Tax System Price Exploitation Codes

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<b>Part 3 Citing the New Tax System Price Exploitation Codes</b>	1
	2
<b>10 Citation of New Tax System Price Exploitation Code of this jurisdiction</b>	3
The New Tax System Price Exploitation Code text applying as a law of this jurisdiction may be cited as the New Tax System Price Exploitation Code of New South Wales.	4 5 6
<b>11 References to New Tax System Price Exploitation Code</b>	7
(1) The object of this section is to help ensure that the New Tax System Price Exploitation Code of this jurisdiction can operate, in appropriate circumstances, as if that Code, together with the New Tax System Price Exploitation Code of each other participating jurisdiction, constituted a single national New Tax System Price Exploitation Code applying throughout the participating jurisdictions.	8 9 10 11 12 13
(2) A reference in any instrument to the New Tax System Price Exploitation Code is a reference to the New Tax System Price Exploitation Codes of any or all of the participating jurisdictions.	14 15 16
(3) Subsection (2) has effect except so far as the contrary intention appears in the instrument or the context of the reference otherwise requires.	17 18
<b>12 References to New Tax System Price Exploitation Codes of other jurisdictions</b>	19 20
(1) This section has effect for the purposes of an Act, a law of this jurisdiction or an instrument under an Act or such a law.	21 22
(2) If a law of a participating jurisdiction other than this jurisdiction provides that the New Tax System Price Exploitation Code text as in force for the time being applies as a law of that jurisdiction, the New Tax System Price Exploitation Code of that jurisdiction is the New Tax System Price Exploitation Code text, applying as a law of that jurisdiction.	23 24 25 26 27 28

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<b>Part 4 Application of New Tax System Price Exploitation Codes to Crown</b>	1
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<b>13 Application law of this jurisdiction</b>	3
The application law of this jurisdiction binds (so far as the legislative power of Parliament permits) the Crown in right of this jurisdiction and of each other jurisdiction, so far as the Crown carries on a business, either directly or by an authority of the jurisdiction concerned.	4 5 6 7 8
<b>14 Application law of other jurisdictions</b>	9
The application law of each participating jurisdiction other than this jurisdiction binds the Crown in right of this jurisdiction, so far as the Crown carries on a business, either directly or by an authority of this jurisdiction.	10 11 12 13
<b>15 Activities that are not business</b>	14
(1) For the purposes of sections 13 and 14, the following do not amount to carrying on a business:	15 16
(a) imposing or collecting:	17
(i) taxes, or	18
(ii) levies, or	19
(iii) fees for licences,	20
(b) granting, refusing to grant, revoking, suspending or varying licences (whether or not they are subject to conditions),	21 22
(c) a transaction involving:	23
(i) only persons who are all acting for the Crown in the same right (and none of whom is an authority of a State), or	24 25 26
(ii) only persons who are all acting for the same authority of a State, or	27 28
(iii) only the Crown in right of a State and one or more non-commercial authorities of that State, or	29 30
(iv) only non-commercial authorities of the same State,	31

(d)	the acquisition of primary products by a government body under legislation, unless the acquisition occurs because:	1
	(i) the body chooses to acquire the products, or	2
	(ii) the body has not exercised a discretion that it has under the legislation that would allow it not to acquire the products.	3
(2)	Subsection (1) does not limit the things that do not amount to carrying on a business for the purposes of sections 13 and 14.	4
(3)	In this section:	5
	<i>acquisition of primary products by a government body under legislation</i> includes vesting of ownership of primary products in a government body by legislation.	6
	<i>government body</i> means a State or an authority of a State.	7
	<i>licence</i> means a licence that allows the licensee to supply goods or services.	8
	<i>primary products</i> means:	9
	(a) agricultural or horticultural produce, or	10
	(b) crops, whether on or attached to the land or not, or	11
	(c) animals (whether dead or alive), or	12
	(d) the bodily produce (including natural increase) of animals.	13
(4)	For the purposes of this section, an authority of a State is <i>non-commercial</i> if:	14
	(a) it is constituted by only one person, and	15
	(b) it is neither a trading corporation nor a financial corporation.	16
<b>16</b>	<b>Crown not liable to pecuniary penalty or prosecution</b>	17
(1)	Nothing in the application law of this jurisdiction makes the Crown in any capacity liable to a pecuniary penalty or to be prosecuted for an offence.	18
(2)	Without limiting subsection (1), nothing in the application law of a participating jurisdiction makes the Crown in right of this jurisdiction liable to a pecuniary penalty or to be prosecuted for an offence.	19
(3)	The protection in subsection (1) or (2) does not apply to an authority of any jurisdiction.	20

**17 This Part overrides the prerogative**

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If, because of this Part, a provision of the law of another participating jurisdiction binds the Crown in right of this jurisdiction, the Crown in that right is subject to that provision despite any prerogative right or privilege.

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Clause 15 Price Exploitation Code (New South Wales) Bill 1999

Part 4 Application of New Tax System Price Exploitation Codes to Crown

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**Part 5 National administration and enforcement of New Tax System Price Exploitation Codes** 1  
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**Division 1 Preliminary** 3

**18 Object** 4

The object of this Part is to help ensure that the New Tax System Price Exploitation Codes of the participating jurisdictions are administered on a uniform basis, in the same way as if those Codes constituted a single law of the Commonwealth. 5  
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**Division 2 Conferral of functions** 9

**19 Conferral of functions and powers on certain bodies** 10

- (1) The authorities and officers of the Commonwealth referred to in the New Tax System Price Exploitation Code of this jurisdiction, including (but not limited to) the Commission, have the functions and powers conferred or expressed to be conferred on them respectively under the New Tax System Price Exploitation Code of this jurisdiction. 11  
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- (2) In addition to the powers mentioned in subsection (1), the authorities and officers referred to in that subsection have power to do all things necessary or convenient to be done in connection with the performance of the functions and exercise of the powers referred to in that subsection. 17  
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**20 Conferral of other functions and powers for purposes of law in this jurisdiction** 22  
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The Commission has power to do acts in this jurisdiction in the performance or exercise of any function or power expressed to be conferred on it by the New Tax System Price Exploitation Code of another participating jurisdiction. 24  
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Price Exploitation Code (New South Wales) Bill 1999	Clause 18
National administration and enforcement of New Tax System Price Exploitation Codes	Part 5
Preliminary	Division 1

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<b>Division 3</b>	<b>Offences</b>	1
<b>21</b>	<b>Object</b>	2
(1)	The object of this Division is to further the object of this Part by providing:	3
(a)	for an offence against the New Tax System Price Exploitation Code of this jurisdiction to be treated as if it were an offence against a law of the Commonwealth, and	4
(b)	for an offence against the New Tax System Price Exploitation Code of another participating jurisdiction to be treated in this jurisdiction as if it were an offence against a law of the Commonwealth.	5
(2)	The purposes for which an offence is to be treated as mentioned in subsection (1) include, for example (but without limitation):	6
(a)	the investigation and prosecution of offences, and	7
(b)	the arrest, custody, bail, trial and conviction of offenders or persons charged with offences, and	8
(c)	proceedings relating to a matter referred to in paragraph (a) or (b), and	9
(d)	appeals and reviews relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c), and	10
(e)	the sentencing, punishment and release of persons convicted of offences, and	11
(f)	fines, penalties and forfeitures, and	12
(g)	liability to make reparation in connection with offences, and	13
(h)	proceeds of crime, and	14
(i)	spent convictions.	15
<b>22</b>	<b>Application of Commonwealth laws to offences against New Tax System Price Exploitation Code of this jurisdiction</b>	16
(1)	The Commonwealth laws apply as laws of this jurisdiction in relation to an offence against the New Tax System Price Exploitation Code of this jurisdiction as if that Code were a law of the Commonwealth and not a law of this jurisdiction.	17

Clause 21 Price Exploitation Code (New South Wales) Bill 1999

Part 5 National administration and enforcement of New Tax System Price Exploitation Codes

Division 3 Offences

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- (2) For the purposes of a law of this jurisdiction, an offence against the New Tax System Price Exploitation Code of this jurisdiction: 1  
2
- (a) is taken to be an offence against the laws of the Commonwealth, in the same way as if that Code were a law of the Commonwealth, and 3  
4  
5
- (b) is taken not to be an offence against the laws of this jurisdiction. 6  
7
- (3) Subsection (2) has effect for the purposes of a law of this jurisdiction except as prescribed by regulations under this Act. 8  
9
- 23 Application of Commonwealth laws to offences against New Tax System Price Exploitation Codes of other jurisdictions** 10  
11
- (1) The Commonwealth laws apply as laws of this jurisdiction in relation to an offence against the New Tax System Price Exploitation Code of another participating jurisdiction as if that Code were a law of the Commonwealth and not a law of that other jurisdiction. 12  
13  
14  
15
- (2) For the purposes of a law of this jurisdiction, an offence against the New Tax System Price Exploitation Code of another participating jurisdiction: 16  
17  
18
- (a) is taken to be an offence against the laws of the Commonwealth, in the same way as if that Code were a law of the Commonwealth, and 19  
20  
21
- (b) is taken not to be an offence against the laws of that jurisdiction. 22  
23
- (3) Subsection (2) has effect for the purposes of a law of this jurisdiction except as prescribed by regulations under this Act. 24  
25
- (4) This section does not require, prohibit, empower, authorise or otherwise provide for, the doing of an act outside this jurisdiction. 26  
27
- 24 Functions and powers conferred on Commonwealth officers and authorities** 28  
29
- (1) A Commonwealth law applying because of section 22 that confers on a Commonwealth officer or authority a function or power in relation to an offence against the Trade Practices Act also confers on the officer or authority the same function or power in relation to an offence against the corresponding provision of the New Tax System Price Exploitation Code of this jurisdiction. 30  
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(2)	A Commonwealth law applying because of section 23 that confers on a Commonwealth officer or authority a function or power in relation to an offence against the Trade Practices Act also confers on the officer or authority the same function or power in relation to an offence against the corresponding provision of the New Tax System Price Exploitation Code of another participating jurisdiction.	1 2 3 4 5 6
(3)	The function or power referred to in subsection (2) may only be performed or exercised in this jurisdiction.	7 8
(4)	In performing a function or exercising a power conferred by subsection (1) or (2), the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power in relation to an offence against the corresponding provision of the Trade Practices Act.	9 10 11 12 13
<b>25</b>	<b>Restriction of functions and powers of officers and authorities of this jurisdiction</b>	14 15
	Where, by reason of this Division, a function or power is conferred on a Commonwealth officer or authority, that function or power may not be performed or exercised by an officer or authority of this jurisdiction.	16 17 18
<b>Division 4</b>	<b>Administrative law</b>	19
<b>26</b>	<b>Definition</b>	20
	In this Division:	21
	<i>Commonwealth administrative laws</i> means:	22
(a)	the following Acts:	23
(i)	the <i>Administrative Appeals Tribunal Act 1975</i> of the Commonwealth,	24 25
(ii)	the <i>Freedom of Information Act 1982</i> of the Commonwealth,	26 27
(iii)	the <i>Ombudsman Act 1976</i> of the Commonwealth,	28
(iv)	the <i>Privacy Act 1988</i> of the Commonwealth, and	29
(b)	the regulations in force under those Acts.	30

Clause 24 Price Exploitation Code (New South Wales) Bill 1999

Part 5 National administration and enforcement of New Tax System Price Exploitation Codes

Division 3 Offences

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<b>27</b>	<b>Application of Commonwealth administrative laws to New Tax System Price Exploitation Code of this jurisdiction</b>	1 2
(1)	The Commonwealth administrative laws apply as laws of this jurisdiction to any matter arising in relation to the New Tax System Price Exploitation Code of this jurisdiction as if that Code were a law of the Commonwealth and not a law of this jurisdiction.	3 4 5 6
(2)	For the purposes of a law of this jurisdiction, a matter arising in relation to the New Tax System Price Exploitation Code of this jurisdiction:	7 8 9
(a)	is taken to be a matter arising in relation to laws of the Commonwealth in the same way as if that Code were a law of the Commonwealth, and	10 11 12
(b)	is taken not to be a matter arising in relation to laws of this jurisdiction.	13 14
(3)	Subsection (2) has effect for the purposes of a law of this jurisdiction except as prescribed by regulations under this Act.	15 16
(4)	Any provision of a Commonwealth administrative law applying because of this section that purports to confer jurisdiction on a federal court is taken not to have that effect.	17 18 19
<b>28</b>	<b>Application of Commonwealth administrative laws to New Tax System Price Exploitation Codes of other jurisdictions</b>	20 21
(1)	The Commonwealth administrative laws apply as laws of this jurisdiction to any matter arising in relation to the New Tax System Price Exploitation Code of another participating jurisdiction as if that Code were a law of the Commonwealth and not a law of that jurisdiction.	22 23 24 25 26
(2)	For the purposes of a law of this jurisdiction, a matter arising in relation to the New Tax System Price Exploitation Code of another participating jurisdiction:	27 28 29
(a)	is taken to be a matter arising in relation to laws of the Commonwealth in the same way as if that Code were a law of the Commonwealth, and	30 31 32
(b)	is taken not to be a matter arising in relation to laws of that jurisdiction.	33 34
(3)	Subsection (2) has effect for the purposes of a law of this jurisdiction except as prescribed by regulations under this Act.	35 36

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National administration and enforcement of New Tax System Price Exploitation Codes Part 5

Administrative law Division 4

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- (4) Any provision of a Commonwealth administrative law applying because of this section that purports to confer jurisdiction on a federal court is taken not to have that effect. 1  
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3
- (5) This section does not require, prohibit, empower, authorise or otherwise provide for, the doing of an act outside this jurisdiction. 4  
5
- 29 Functions and powers conferred on Commonwealth officers and authorities** 6  
7
- (1) A Commonwealth administrative law applying because of section 27 that confers on a Commonwealth officer or authority a function or power also confers on the officer or authority the same function or power in relation to a matter arising in relation to the New Tax System Price Exploitation Code of this jurisdiction. 8  
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- (2) A Commonwealth administrative law applying because of section 28 that confers on a Commonwealth officer or authority a function or power also confers on the officer or authority the same function or power in relation to a matter arising in relation to the New Tax System Price Exploitation Code of another participating jurisdiction. 13  
14  
15  
16  
17
- (3) The function or power referred to in subsection (2) may only be performed or exercised in this jurisdiction. 18  
19
- (4) In performing a function or exercising a power conferred by subsection (1) or (2), the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power under the Commonwealth administrative law. 20  
21  
22  
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24
- 30 Restriction of functions and powers of officers and authorities of this jurisdiction** 25  
26
- Where, by reason of this Division, a function or power is conferred on a Commonwealth officer or authority, that function or power may not be performed or exercised by an officer or authority of this jurisdiction. 27  
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Clause 29	Price Exploitation Code (New South Wales) Bill 1999
Part 5	National administration and enforcement of New Tax System Price Exploitation Codes
Division 4	Administrative law

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<b>Part 6</b>	<b>Miscellaneous</b>	1
<b>31</b>	<b>No doubling-up of liabilities</b>	2
(1)	If:	3
(a)	an act or omission is an offence against the New Tax System Price Exploitation Code of this jurisdiction and is also an offence against the Trade Practices Act or an application law of another participating jurisdiction, and	4 5 6 7
(b)	the offender has been punished for the offence under the Trade Practices Act or the application law of the other jurisdiction,	8 9
	the offender is not liable to be punished for the offence against the New Tax System Price Exploitation Code of this jurisdiction.	10 11
(2)	If a person has been ordered to pay a pecuniary penalty under the Trade Practices Act or the application law of another participating jurisdiction, the person is not liable to a pecuniary penalty under the New Tax System Price Exploitation Code of this jurisdiction in respect of the same conduct.	12 13 14 15 16
<b>32</b>	<b>Things done for multiple purposes</b>	17
	The validity of an authorisation, notification or any other thing given or done for the purposes of the New Tax System Price Exploitation Code of this jurisdiction is not affected only because it was given or done also for the purposes of the Trade Practices Act or the New Tax System Price Exploitation Code of one or more other jurisdictions.	18 19 20 21 22
<b>33</b>	<b>Reference in Commonwealth law to a provision of another law</b>	23
	For the purposes of section 22, 23, 27 or 28, a reference in a Commonwealth law to a provision of that or another Commonwealth law is taken to be a reference to that provision as applying because of that section.	24 25 26 27

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<b>34</b>	<b>Fees and other money</b>	1
(1)	All fees, taxes, penalties (including pecuniary penalties referred to in section 76 of the New Tax System Price Exploitation Code), fines and other money that, under the application law of this jurisdiction, are authorised or directed to be payable by or imposed on any person (but not including an amount ordered to be refunded to another person) must be paid to the Commonwealth.	2 3 4 5 6 7
(2)	This subsection imposes the fees (including fees that are taxes) that the regulations in the New Tax System Price Exploitation Code of this jurisdiction prescribe.	8 9 10
<b>35</b>	<b>Regulations</b>	11
	The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	12 13 14 15
<b>36</b>	<b>Amendment of other Acts</b>	16
	Each Act listed in Schedule 1 is amended as set out in that Schedule.	17

<b>Schedule 1</b>	<b>Amendment of other Acts</b>	1
	(Section 36)	2
<b>1.1</b>	<b>Competition Policy Reform (New South Wales) Act 1995 No 8</b>	3
	<b>Section 3 Definitions</b>	4
	Insert “Part 1 of” after “set out in” in the definition of <i>Schedule version of Part IV</i> in section 3 (1).	5 6
<b>1.2</b>	<b>Federal Courts (State Jurisdiction) Act 1999 No 22</b>	7
<b>[1]</b>	<b>Section 3 Definitions</b>	8
	Insert after paragraph (h) of the definition of <i>relevant State Act</i> in section 3 (1):	9 10
	(h1) <i>Price Exploitation Code (New South Wales) Act 1999</i>	11
<b>[2]</b>	<b>Section 17</b>	12
	Insert after section 16:	13
	<b>17 Jurisdiction of courts</b>	14
	(1) Any provision of a relevant State law that purports to confer jurisdiction on a federal court is taken not to have that effect.	15 16
	(2) Any provision of a law applied by a relevant State Act that excludes or limits the jurisdiction of any or all State courts is taken not to have that effect.	17 18 19
	(3) This section does not operate:	20
	(a) so as to prevent a federal court from exercising jurisdiction (such as accrued jurisdiction) in connection with a relevant State law to the extent to which, but for subsection (1), that court could validly do so, or	21 22 23 24

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- (b) so as to prevent a relevant State law from conferring jurisdiction on a federal court to the extent to which, but for subsection (1), a State Act could validly do so. 1  
2  
3
  - (4) Nothing in this section limits section 16. 4
  - (5) In this section, *relevant State law* means a relevant State Act, or a law as applied by a relevant State Act, and includes a Commonwealth administrative law. 5  
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