

Passed by both Houses



New South Wales

Price Exploitation Code (New South Wales) Bill 1999

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 1999*



New South Wales

Price Exploitation Code (New South Wales) Bill 1999

Act No , 1999

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.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

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

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

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

2 Commencement

This Act commences, or is taken to have commenced, on 10 December 1999.

3 Definitions

(1) In this Act:

application law means:

- (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
- (b) any regulations or other legislative instrument made under a law described in paragraph (a), or
- (c) the New Tax System Price Exploitation Code, applying as a law of the participating jurisdiction, either with or without modifications.

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.

instrument means any document whatever, including:

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

- (f) an agreement, or
- (g) an application made, information or complaint laid, affidavit sworn, or warrant issued, for any purpose, or
- (h) an indictment, presentment, summons or writ, or
- (i) any other pleading in, or process issued in connection with, a legal or other proceeding.

jurisdiction means a State.

law, in relation to a Territory, means a law of, or in force in, that Territory.

modifications includes additions, omissions and substitutions.

month 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.

New Tax System Price Exploitation Code means (according to the context):

- (a) the New Tax System Price Exploitation Code text, or
- (b) the New Tax System Price Exploitation Code text, applying as a law of a participating jurisdiction, either with or without modifications.

New Tax System Price Exploitation Code text means the text described in section 4.

officer, in relation to the Commonwealth, has the meaning given in Part XI AA of the Trade Practices Act.

participating jurisdiction means a jurisdiction that applies the New Tax System Price Exploitation Code as a law of the jurisdiction, either with or without modifications.

proclamation means a proclamation of the Governor published in the Government Gazette of this jurisdiction.

Schedule version of Part VB means the text that is set out in Part 2 of the Schedule to the Trade Practices Act.

State includes a Territory.

Territory means the Australian Capital Territory or the Northern Territory of Australia.

this jurisdiction means New South Wales.

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

Part 1 Preliminary

Trade Practices Act means the *Trade Practices Act 1974* of the Commonwealth.

- (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.
- (3) In this Act, a reference to a Commonwealth Act includes a reference to:
 - (a) that Commonwealth Act, as amended and in force for the time being, and
 - (b) an Act enacted in substitution for that Act.

Part 2 The New Tax System Price Exploitation Code

4 The New Tax System Price Exploitation Code text

- (1) The New Tax System Price Exploitation Code text consists of:
 - (a) the Schedule version of Part VB, and
 - (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
 - (c) the regulations under the Trade Practices Act, so far as they relate to any provisions covered by paragraph (a) or (b), and
 - (d) the guidelines under section 75AV of the Trade Practices Act.
- (2) For the purpose of forming part of the New Tax System Price Exploitation Code text:
 - (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
 - (b) in particular, references to corporations are to include references to persons who are not corporations.

5 Application of New Tax System Price Exploitation Code

- (1) The New Tax System Price Exploitation Code text, as in force for the time being, applies as a law of New South Wales.
- (2) This section has effect subject to section 6.

6 Future modifications of New Tax System Price Exploitation Code text

- (1) A modification made by a Commonwealth law to the New Tax System Price Exploitation Code text after the commencement of this section:
 - (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
 - (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.

- (2) A proclamation under subsection (1) (a):
 - (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
 - (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.
- (3) A proclamation under subsection (1) (b) has effect only if published before the end of 2 months after the date of the modification.
- (4) Subsection (1) (b) ceases to apply to the modification if a further proclamation so provides.
- (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.

7 Interpretation of New Tax System Price Exploitation Code

- (1) The *Acts Interpretation Act 1901* of the Commonwealth applies as a law of this jurisdiction to:
 - (a) the New Tax System Price Exploitation Code of this jurisdiction, and
 - (b) any instrument under that Code.
- (2) For the purposes of subsection (1), the Commonwealth Act mentioned in that subsection applies as if:
 - (a) the statutory provisions in the New Tax System Price Exploitation Code of this jurisdiction were a Commonwealth Act, and
 - (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.
- (3) The *Interpretation Act 1987* of New South Wales does not apply to:
 - (a) the New Tax System Price Exploitation Code of New South Wales, or
 - (b) any instrument under that Code.

8 Application of New Tax System Price Exploitation Code

The New Tax System Price Exploitation Code of this jurisdiction applies to and in relation to:

- (a) persons carrying on business within this jurisdiction, or
- (b) bodies corporate incorporated or registered under the law of this jurisdiction, or
- (c) persons ordinarily resident in this jurisdiction, or
- (d) persons otherwise connected with this jurisdiction.

9 Extraterritorial application

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).

Clause 10 Price Exploitation Code (New South Wales) Bill 1999

Part 3 Citing the New Tax System Price Exploitation Codes

Part 3 Citing the New Tax System Price Exploitation Codes

10 Citation of New Tax System Price Exploitation Code of this jurisdiction

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.

11 References to New Tax System Price Exploitation Code

- (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.
- (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.
- (3) Subsection (2) has effect except so far as the contrary intention appears in the instrument or the context of the reference otherwise requires.

12 References to New Tax System Price Exploitation Codes of other jurisdictions

- (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.
- (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.

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

13 Application law of this jurisdiction

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.

14 Application law of other jurisdictions

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.

15 Activities that are not business

- (1) For the purposes of sections 13 and 14, the following do not amount to carrying on a business:
- (a) imposing or collecting:
 - (i) taxes, or
 - (ii) levies, or
 - (iii) fees for licences,
 - (b) granting, refusing to grant, revoking, suspending or varying licences (whether or not they are subject to conditions),
 - (c) a transaction involving:
 - (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
 - (ii) only persons who are all acting for the same authority of a State, or
 - (iii) only the Crown in right of a State and one or more non-commercial authorities of that State, or
 - (iv) only non-commercial authorities of the same State,
 - (d) the acquisition of primary products by a government body under legislation, unless the acquisition occurs because:
 - (i) the body chooses to acquire the products, or

- (ii) the body has not exercised a discretion that it has under the legislation that would allow it not to acquire the products.
- (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.
- (3) In this section:
acquisition of primary products by a government body under legislation includes vesting of ownership of primary products in a government body by legislation.
government body means a State or an authority of a State.
licence means a licence that allows the licensee to supply goods or services.
primary products means:
(a) agricultural or horticultural produce, or
(b) crops, whether on or attached to the land or not, or
(c) animals (whether dead or alive), or
(d) the bodily produce (including natural increase) of animals.
- (4) For the purposes of this section, an authority of a State is ***non-commercial*** if:
(a) it is constituted by only one person, and
(b) it is neither a trading corporation nor a financial corporation.

16 Crown not liable to pecuniary penalty or prosecution

- (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.
- (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.
- (3) The protection in subsection (1) or (2) does not apply to an authority of any jurisdiction.

17 This Part overrides the prerogative

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 18 | Price Exploitation Code (New South Wales) Bill 1999 |
| Part 5 | National administration and enforcement of New Tax System Price Exploitation Codes |
| Division 1 | Preliminary |

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

Division 1 Preliminary

18 Object

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.

Division 2 Conferral of functions

19 Conferral of functions and powers on certain bodies

- (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.
- (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.

20 Conferral of other functions and powers for purposes of law in this jurisdiction

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.

Division 3 Offences

21 Object

- (1) The object of this Division is to further the object of this Part by providing:
 - (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
 - (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.
- (2) The purposes for which an offence is to be treated as mentioned in subsection (1) include, for example (but without limitation):
 - (a) the investigation and prosecution of offences, and
 - (b) the arrest, custody, bail, trial and conviction of offenders or persons charged with offences, and
 - (c) proceedings relating to a matter referred to in paragraph (a) or (b), and
 - (d) appeals and reviews relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c), and
 - (e) the sentencing, punishment and release of persons convicted of offences, and
 - (f) fines, penalties and forfeitures, and
 - (g) liability to make reparation in connection with offences, and
 - (h) proceeds of crime, and
 - (i) spent convictions.

22 Application of Commonwealth laws to offences against New Tax System Price Exploitation Code of this jurisdiction

- (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.

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| Clause 22 | Price Exploitation Code (New South Wales) Bill 1999 |
| Part 5 | National administration and enforcement of New Tax System Price Exploitation Codes |
| Division 3 | Offences |

- (2) For the purposes of a law of this jurisdiction, an offence against the New Tax System Price Exploitation Code of this jurisdiction:
 - (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
 - (b) is taken not to be an offence against the laws of this jurisdiction.
- (3) Subsection (2) has effect for the purposes of a law of this jurisdiction except as prescribed by regulations under this Act.

23 Application of Commonwealth laws to offences against New Tax System Price Exploitation Codes of other jurisdictions

- (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.
- (2) For the purposes of a law of this jurisdiction, an offence against the New Tax System Price Exploitation Code of another participating jurisdiction:
 - (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
 - (b) is taken not to be an offence against the laws of that jurisdiction.
- (3) Subsection (2) has effect for the purposes of a law of this jurisdiction except as prescribed by regulations under this Act.
- (4) This section does not require, prohibit, empower, authorise or otherwise provide for, the doing of an act outside this jurisdiction.

24 Functions and powers conferred on Commonwealth officers and authorities

- (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.

- (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.
- (3) The function or power referred to in subsection (2) may only be performed or exercised in this jurisdiction.
- (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.

25 Restriction of functions and powers of officers and authorities of this jurisdiction

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.

Division 4 Administrative law

26 Definition

In this Division:

Commonwealth administrative laws means:

- (a) the following Acts:
 - (i) the *Administrative Appeals Tribunal Act 1975* of the Commonwealth,
 - (ii) the *Freedom of Information Act 1982* of the Commonwealth,
 - (iii) the *Ombudsman Act 1976* of the Commonwealth,
 - (iv) the *Privacy Act 1988* of the Commonwealth, and
- (b) the regulations in force under those Acts.

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| Clause 27 | 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 |

27 Application of Commonwealth administrative laws to New Tax System Price Exploitation Code of this jurisdiction

- (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.
- (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:
 - (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
 - (b) is taken not to be a matter arising in relation to laws of this jurisdiction.
- (3) Subsection (2) has effect for the purposes of a law of this jurisdiction except as prescribed by regulations under this Act.
- (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.

28 Application of Commonwealth administrative laws to New Tax System Price Exploitation Codes of other jurisdictions

- (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.
- (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:
 - (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
 - (b) is taken not to be a matter arising in relation to laws of that jurisdiction.
- (3) Subsection (2) has effect for the purposes of a law of this jurisdiction except as prescribed by regulations under this Act.

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| Price Exploitation Code (New South Wales) Bill 1999 | Clause 28 |
| National administration and enforcement of New Tax System Price Exploitation Codes | Part 5 |
| Administrative law | Division 4 |

- (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.
- (5) This section does not require, prohibit, empower, authorise or otherwise provide for, the doing of an act outside this jurisdiction.

29 Functions and powers conferred on Commonwealth officers and authorities

- (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.
- (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.
- (3) The function or power referred to in subsection (2) may only be performed or exercised in this jurisdiction.
- (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.

30 Restriction of functions and powers of officers and authorities of this jurisdiction

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.

Part 6 Miscellaneous

31 No doubling-up of liabilities

- (1) If:
- (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
 - (b) the offender has been punished for the offence under the Trade Practices Act or the application law of the other jurisdiction,
- the offender is not liable to be punished for the offence against the New Tax System Price Exploitation Code of this jurisdiction.
- (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.

32 Things done for multiple purposes

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.

33 Reference in Commonwealth law to a provision of another law

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.

34 Fees and other money

- (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) 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.

35 Regulations

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.

36 Amendment of other Acts

Each Act listed in Schedule 1 is amended as set out in that Schedule.

Schedule 1 Amendment of other Acts

(Section 36)

1.1 Competition Policy Reform (New South Wales) Act 1995 No 8

Section 3 Definitions

Insert “Part 1 of” after “set out in” in the definition of *Schedule version of Part IV* in section 3 (1).

1.2 Federal Courts (State Jurisdiction) Act 1999 No 22

[1] Section 3 Definitions

Insert after paragraph (h) of the definition of *relevant State Act* in section 3 (1):

(h1) *Price Exploitation Code (New South Wales) Act 1999*

[2] Section 17

Insert after section 16:

17 Jurisdiction of courts

- (1) Any provision of a relevant State law that purports to confer jurisdiction on a federal court is taken not to have that effect.
- (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.
- (3) This section does not operate:
 - (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

- (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.
- (4) Nothing in this section limits section 16.
- (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.