

FIRST PRINT

## GOVERNMENT PRICING TRIBUNAL BILL 1991

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 nominated Government agencies (such as agencies supplying water, electricity, public transport or hospital services) or to report on the pricing policies of those agencies.

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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, local government authority 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 specified in Schedule 1 to the proposed Act, being a service for which there is no competitive market and no contestable market in the short term by potential suppliers. At the outset, the Schedule will specify the electricity and water supply authorities, the government public transport authorities, public hospitals and the TAFE Commission. The regulations under the proposed Act may amend the Schedule and may add other government agencies.

### 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.

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

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members have a knowledge and understanding of economics, the interests of consumers and the interests of 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 specifies the principal function of the Tribunal, namely, 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;
- the pricing policy of the Government or a government agency in respect of a particular service;
- particular matters relating to prices for non-government services if those prices are determined or regulated by or under an Act;
- other related matters.

Clause 12 allows the Tribunal to report on any matters arising from an investigation into a matter referred to it by the Minister.

Clause 13 authorises the Minister when referring a matter to the Tribunal 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 Minister to publish a copy of any reference made to the Tribunal in a newspaper and to table it in each House of Parliament.

Clause 14 deals with the methods by which the Tribunal may fix maximum prices, including average prices for a number of services, a percentage increase or decrease in existing services or a specified 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

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the price were not increased 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 take the relevant action to ensure that the price accords with the Tribunal's determination. If the price is fixed by regulation or otherwise, the responsible Minister is to take action to recommend an amending regulation or to take other relevant action. 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 laid before each House of Parliament within 21 sitting days after the Minister receives the report. The Tribunal may recommend that the tabling of the report be delayed.

Clause 20 provides for the disallowance of a determination of the maximum price for a government monopoly service, but only if it is disallowed by both Houses of Parliament.

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

Clause 21 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 22 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 23 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 24 makes it an offence if a person fails to comply with a requirement under clause 23 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 25 protects the confidentiality of Cabinet proceedings.

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**PART 5—MISCELLANEOUS**

Clause 26 provides that the proposed Act binds the Crown.

Clause 27 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 28 provides that documents may be served on the Tribunal personally or by post.

Clause 29 provides that proceedings for offences against the proposed Act or regulations are to be dealt with summarily by a Magistrate.

Clause 30 empowers the Governor to make regulations.

Clause 31 is a formal provision giving effect to the amendment of various Acts set out in Schedule 4.

Schedule 1 lists the government agencies which provide "government monopoly services" within the meaning of the proposed Act. This 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.

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## GOVERNMENT PRICING TRIBUNAL BILL 1991

NEW SOUTH WALES



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**GOVERNMENT PRICING TRIBUNAL BILL 1991**

NEW SOUTH WALES



No.     , 1991

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**A BILL FOR**

An Act to establish the Government Pricing Tribunal of New South Wales; to enable the Tribunal to determine and advise on prices and pricing policy for government monopoly services; and for other purposes.

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The Legislature of New South Wales enacts:

**PART 1—PRELIMINARY**

**Short title**

1. This Act may be cited as the Government Pricing Tribunal Act 1991.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Definitions**

3. (1) In this Act:

“**Chairperson**” means the Chairperson of the Tribunal;

“**government agency**” means any public or local authority which supplies services to the public or any part of the public, and includes a government department, state owned corporation or public utility undertaking which supplies such services;

“**government monopoly service**” is defined in section 4;

“**investigation**” means an investigation conducted under this Act;

“**price**” includes any rate, fee, levy and charge and any other valuable consideration (however described), but does not include a State tax;

“**pricing policies**” includes policies relating to the level or structure of prices for services;

“**service**” includes:

- (a) the supply of water, gas, electricity or other thing (whether or not of the same kind); and
- (b) the making available for use of facilities of any kind; and
- (c) the conferring of rights, benefits or privileges for which the price is payable in the form of royalty, tribute, levy or similar exaction; and
- (d) the exercise of the general functions of a public or local authority for which a compulsory rate or levy is payable by a section of the public,

but does not include anything for which a State tax is payable;



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“**State tax**” means a tax such as land tax or stamp duty which is imposed for the general public revenue purposes of the State;

“**Tribunal**” means the Government Pricing Tribunal of New South Wales established by this Act.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

**Government monopoly services**

4. (1) For the purposes of this Act, a **government monopoly service** is a service supplied by a government agency specified in Schedule 1, being a service:

- (a) for which there are no other suppliers to provide a competitive market; and
- (b) for which there is no contestable market by potential suppliers in the short term.

(2) The Minister may (subject to any criteria prescribed by the regulations) determine whether a particular service is a government monopoly service for the purposes of this Act.

(3) The regulations may amend Schedule 1.

(4) An agency may not be added to Schedule 1 by the regulations unless it is a government agency.

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

**Establishment of Tribunal**

5. (1) There is established by this Act a Government Pricing Tribunal of New South Wales. The Tribunal is a body corporate.

(2) The Tribunal has such functions as are conferred or imposed on it by or under this Act or any other Act.

**Members and procedure of Tribunal**

6. (1) The Tribunal consists of 3 members appointed by the Governor on the recommendation of the Minister.

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(2) Of the members of the Tribunal:

- (a) 1 is to be appointed as Chairperson and either as a full-time or part-time member; and
- (b) 2 are to be appointed as part-time members.

(3) The Minister is to ensure that the persons recommended for appointment as members of the Tribunal have together a knowledge and understanding of economics, the interests of consumers and the interests of the Government as owner of the government agencies that supply government monopoly services.

(4) Schedule 2 has effect with respect to the members of the Tribunal.

(5) Schedule 3 has effect with respect to the procedure of the Tribunal.

**Tribunal not subject to Ministerial control in making determinations or recommendations**

7. The Tribunal is not subject to the control and direction of the Minister in respect of the contents of any determination or recommendation of the Tribunal, but in other respects is subject to the control and direction of the Minister.

**Staff of Tribunal**

8. (1) Such staff as may be necessary to enable the Tribunal to exercise its functions may be employed under Part 2 of the Public Sector Management Act 1988.

(2) The Tribunal may also employ staff. Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of any such staff.

(3) The Tribunal may arrange for the use of the services of any staff or facilities of a government agency.

(4) For the purposes of this Act, a person who is employed under subsection (1) or (2) or whose services are made use of under subsection (3) is an officer of the Tribunal.

**Arrangements with other agencies, consultants etc.**

9. (1) The Tribunal may enter into arrangements with government authorities or other bodies having price fixing or related functions for assistance to the Tribunal in connection with investigations or the exercise of other functions of the Tribunal.

(2) The Tribunal may engage consultants to assist it in the exercise of its functions.

**Delegation of Tribunal's functions**

10. The Tribunal may delegate its functions, other than this power of delegation, to any member of the Tribunal or to any committee of persons (whether of members only or members and other persons).

**PART 3—PRICES AND PRICING POLICIES FOR GOVERNMENT MONOPOLY SERVICES ETC.****Investigations and reports by Tribunal on reference by Minister**

11. (1) The Tribunal is to conduct investigations and make reports to the Minister on any of the following matters referred to the Tribunal by the Minister:

- (a) the determination of the maximum price for a specified government monopoly service;
- (b) a periodic review of the pricing policies of the Government, or a government agency, in respect of a specified government monopoly service;
- (c) any specified matter relating to the price for a service that is not a government monopoly service if the price for that service is determined or regulated by or under an Act;
- (d) any other specified matter relating to government monopoly services.

(2) A reference with respect to a government monopoly service may be limited to a particular part or category of that service or to a particular period during which the service is supplied or in any other manner specified in the reference.

(3) A reference with respect to the determination of the maximum price of a government monopoly service may extend to an annual or other periodic determination of that price.

(4) The fact that a determination of the maximum price of a government monopoly service is in force does not preclude a further reference on the matter.

(5) A reference may relate to a number of government monopoly services supplied by a government agency.

**Reports by Tribunal without reference by Minister**

12. (1) The Tribunal may also report to the Minister on any matter it considers relevant that arises from an investigation into a matter referred to the Tribunal by the Minister.

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(2) Any such report may be part of the report to the Minister on the reference concerned or may be a separate report.

**Reference of matters to Tribunal**

13. (1) In referring a matter to the Tribunal for investigation and report under this Part, the Minister may do any or all of the following:

- (a) specify a period within which the report is to be submitted to the Minister;
- (b) require the Tribunal to make a draft report available to the public, or to any specified persons or bodies, during the investigation;
- (c) require the Tribunal to consider specified matters when making its investigations,

and the Tribunal must act accordingly.

(2) If the Minister has referred a matter to the Tribunal for investigation and report, the Minister may withdraw or amend the reference at any time before the Minister has received the report from the Tribunal.

(3) When the Minister refers a matter to the Tribunal for investigation and report (or amends the reference), the Minister must cause a copy of the reference (or the amendment) to be published in a newspaper circulating in the State and must also cause a copy to be laid before each House of Parliament within 21 sitting days of that House after the day on which the reference was given (or amended).

**Method of fixing maximum prices**

14. A determination of the Tribunal of the maximum price for a government monopoly service may fix that price in any manner the Tribunal considers appropriate, including the following:

- (a) by fixing a specified price;
- (b) by fixing an average price for a number of services;
- (c) by fixing a maximum percentage increase or decrease in existing prices;
- (d) by fixing the price by reference to a specified rate of return on assets.

**Matters to be considered by Tribunal under this Act**

15. In making determinations and recommendations under this Act, the Tribunal is to have regard to the following matters (in addition to any other matters the Tribunal considers relevant):

- (a) the cost of providing the services concerned;

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- (b) the protection of consumers from abuses of monopoly power in terms of prices, pricing policies and standard of services;
- (c) the appropriate rate of return on public sector assets, including appropriate payment of dividends to the Government for the benefit of the people of New South Wales;
- (d) the effect on general price inflation over the medium term;
- (e) the need for greater efficiency in the supply of services so as to reduce costs for the benefit of consumers and taxpayers;
- (f) the protection of the environment by appropriate pricing policies which encourage conservation of scarce natural resources.

**Report on financial impact if price determinations not implemented**

16. If the Tribunal determines to increase the maximum price for a government monopoly service, the Tribunal is required to assess and report on the likely annual cost to the Consolidated Fund if the price were not increased and the revenue foregone by the government agency concerned were to be compensated by an appropriation from the Consolidated Fund.

**Gazettal of price determinations**

17. (1) A determination of the Tribunal of the maximum price for a government monopoly service:

- (a) must be published in the Gazette by the Minister as soon as practicable after the report is received by the Minister; and
- (b) takes effect on the day it is so published or on a later day specified in the determination for that purpose.

(2) A determination may specify different days for the commencement of different parts of the determination.

**Implementation of price determinations and other reports**

18. (1) A determination of the Tribunal of the maximum price for a government monopoly service is to be implemented in accordance with this section as soon as it takes effect.

- (2) Any such determination is to be implemented as follows:
  - (a) if the price for the service is fixed by a Minister, a public official (other than the Governor) or the relevant government agency—the Minister, official or agency is to take the relevant action to ensure that the price accords with the determination of the Tribunal;

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- (b) if the price for the service is fixed by the Governor—the Minister responsible for the supply of the service (or for the government agency that supplies the service) is to recommend to the Governor the taking of the relevant action to ensure that the price accords with the determination of the Tribunal;
- (c) in any other case—the Minister so responsible is required to take the appropriate action to ensure that the price accords with the determination of the Tribunal.

(3) If a report of the Tribunal makes recommendations with respect to the pricing policies for a government monopoly service, the recommendations are to be taken into account in the fixing of prices for those services.

**Reports to be tabled in Parliament**

19. (1) When the Minister receives a report from the Tribunal under this Act, the Minister must cause a copy of the report to be laid before each House of Parliament within 21 sitting days of that House after the day on which the Minister receives the report.

(2) However, if the Tribunal recommends that the tabling of the report, or part of the report, be delayed for a specified period, subsection (1) applies to the report, or that part of the report, as if the report were received by the Minister at the end of that period.

(3) Failure to lay a report before each House of Parliament does not invalidate any determination contained in the report, but the report must nevertheless be laid before each House of Parliament.

**Disallowance by Parliament of price determinations**

20. (1) Either House of Parliament may pass a resolution disallowing a determination of the Tribunal of the maximum price for a government monopoly service, being a determination in a report made to the Minister and published in the Gazette.

(2) However, a determination is not disallowed unless both Houses have passed a resolution to disallow it.

(3) Any such resolution may be passed:

- (a) at any time before the report is laid before the House; or
- (b) at any time after the report is laid before the House, but only if notice of the resolution was given within 15 sitting days of the House after the report was so laid.

(4) The disallowance of a determination has the same effect as a revocation of the determination on the date of its disallowance.

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(5) This section applies to a part of a determination in the same way it applies to the whole of a determination.

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

**General conduct of investigations**

21. (1) In an investigation, the Tribunal:

- (a) is to act with as little formality as possible; and
- (b) may inform itself on any matter in any way it thinks fit and is not bound by the rules of evidence; and
- (c) may receive information or submissions in the form of oral or written statements; and
- (d) may consult with such persons as it thinks fit.

(2) The Tribunal is not required to hear evidence from a government agency or any other person affected by any investigation of the Tribunal.

**Holding of hearings etc. for purposes of investigation**

22. (1) If the Tribunal is satisfied that it is necessary to do so, it may hold hearings for the purposes of an investigation.

(2) The Tribunal may also hold public seminars, conduct workshops and establish working groups and task forces for the purposes of an investigation.

(3) Before the Tribunal begins to hold hearings for the purposes of an investigation, it must give reasonable notice, by advertisement published in a newspaper circulating in the State, of its intention to hold the hearings, the subject of the hearings and the time and place at which the first of the hearings is to be begun.

(4) A hearing is to be held in public.

(5) However, if the Tribunal is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason, it may:

- (a) direct that a hearing or a part of a hearing is to take place in private and give directions as to the persons who may be present; or
- (b) give directions prohibiting or restricting the publication of evidence given before the hearing or of matters contained in documents given to the Tribunal.

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(6) A person must not contravene a direction given under subsection (5) (b).

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

(7) Schedule 3 applies to a hearing, so far as that Schedule is capable of so applying, as if the hearing were a meeting of the Tribunal.

**Furnishing of information and documents to, and giving evidence before, the Tribunal**

23. (1) For the purposes of an investigation, the Chairperson may, by notice in writing served on an officer of a government agency or on any other person, require the officer or other person to do any one or more of the following:

- (a) to send to the Tribunal, on or before a day specified in the notice, a statement setting out such information as is so specified;
- (b) to send to the Tribunal, on or before a day specified in the notice, such documents as are so specified;
- (c) to attend at a hearing before the Tribunal to give evidence.

(2) If documents are given to the Tribunal under this section, the Tribunal:

- (a) may take possession of, and make copies of or take extracts from, the documents; and
- (b) may keep possession of the documents for such period as is necessary for the purposes of the investigation to which they relate; and
- (c) during that period must permit them to be inspected at all reasonable times by persons who would be entitled to inspect them if they were not in the possession of the Tribunal.

(3) A person (not being an officer of a government agency) who attends at a hearing because of a notice under this section is entitled to be paid by the State such allowances and expenses as are prescribed by the regulations or (subject to the regulations) as are approved by the Treasurer.

**Offences**

24. (1) A person must not, without reasonable excuse:

- (a) refuse or fail to comply with a notice served under this Part; or
- (b) refuse or fail to answer a question that the person is required to answer by the Chairperson at any hearing held under this Part.



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(2) It is a reasonable excuse for the purposes of subsection (1) that to comply with the notice or to answer the question might tend to incriminate the person or make the person liable to any forfeiture or penalty.

(3) A person must not:

- (a) give to the Tribunal, whether orally or in writing, information that the person knows to be false or misleading in a material particular (unless the person informs the Tribunal of that fact); or
- (b) at a hearing before the Tribunal, give evidence that the person knows to be false or misleading in a material particular.

(4) A person must not hinder, obstruct or interfere with the Chairperson or any other member of the Tribunal in the exercise of functions as Chairperson or other member.

(5) A person must not take any action that detrimentally affects the employment of another person, or threaten to do so, because that other person has assisted the Tribunal in any investigation.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

**Cabinet proceedings** (cf. s. 22 of Ombudsman Act 1974)

25. (1) This Act does not enable the Tribunal:

- (a) to require any person to give any statement of information, produce any document or answer any question which relates to confidential proceedings of Cabinet or a committee of Cabinet; or
- (b) to inspect any document which so relates.

(2) For the purposes of this section, a certificate of the head of The Cabinet Office that any information, document or question relates to confidential proceedings of Cabinet or of a committee of Cabinet is conclusive that it does so relate.

## PART 5—MISCELLANEOUS

### **Act binds Crown**

26. This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

### **Personal liability of members etc.**

27. A matter or thing done by the Tribunal, a member of the Tribunal or any person acting under the direction of the Tribunal does not, if the

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matter or thing was done in good faith for the purposes of executing this or any other Act, subject the member or a person so acting personally to any action, liability, claim or demand.

**Service of documents on Tribunal**

28. (1) A document may be served on the Tribunal by leaving it at, or by sending it by post to:

- (a) the office of the Tribunal; or
- (b) if it has more than one office—any one of its offices.

(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Tribunal in any other manner.

**Proceedings for offences**

29. Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Regulations**

30. (1) 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.

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

**Amendment of other Acts**

31. The Acts specified in Schedule 4 are amended as set out in that Schedule.

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**SCHEDULE 1—GOVERNMENT AGENCIES**

(Sec. 4)

1. Electricity Commission
2. Sydney Electricity
3. Water Board
4. Hunter Water Board
5. Water supply authorities constituted under the Water Supply Authorities Act 1987
6. County councils established for the supply of water or electricity
7. State Rail Authority
8. State Transit Authority
9. Area health services
10. Public hospitals specified in Schedule 2 to the Public Hospitals Act 1929
11. Technical and Further Education Commission

**SCHEDULE 2—PROVISIONS RELATING TO MEMBERS OF TRIBUNAL**

(Sec. 6 (4))

**Definitions**

1. In this Schedule:

“full-time Chairperson” means the Chairperson if appointed as a full-time member;

“member” means any member of the Tribunal, including the Chairperson;

“part-time member” means a part-time member of the Tribunal, including the Chairperson if appointed as a part-time member.

**Deputies**

2. (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment. The persons appointed as deputies must have the same qualifications as those required of persons appointed as members.

- (2) In the absence of a member, the member’s deputy:

- (a) may, if available, act in the place of the member, and

- (b) while so acting, has all the functions of the member and is taken to be a member.

- (3) A person while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

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**SCHEDULE 2—PROVISIONS RELATING TO MEMBERS OF TRIBUNAL—**  
*continued*

(4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

**Terms of office of members**

3. Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

**Remuneration**

4. (1) A full-time Chairperson is entitled to be paid:

- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the Chairperson.

(2) A part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

**Vacancy in office of member**

5. (1) The office of a member becomes vacant if the member:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed from office by the Governor under this clause or under Part 8 of the Public Sector Management Act 1988; or
- (e) in the case of a full-time Chairperson—is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any period of 12 months; or
- (f) in the case of a part-time member—is absent from 4 consecutive meetings of the Tribunal of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings; or
- (g) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (h) becomes a mentally incapacitated person;
- (i) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.

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SCHEDULE 2—PROVISIONS RELATING TO MEMBERS OF TRIBUNAL—  
*continued*

(2) The Governor may remove a full-time Chairperson from office for misbehaviour, incompetence or incapacity.

(3) The Governor may remove a part-time member from office at any time.

**Disclosure of pecuniary interests**

6. (1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Tribunal; and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Tribunal.

(2) A disclosure by a member at a meeting of the Tribunal that the member:

- (a) is a member, or is in the employment, of a specified company or other body;
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the Tribunal in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee (if any) determined by the Tribunal.

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Tribunal otherwise determines:

- (a) be present during any deliberation of the Tribunal with respect to the matter; or
- (b) take part in any decision of the Tribunal with respect to the matter.

(5) For the purposes of the making of a determination by the Tribunal under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Tribunal for the purpose of making the determination; or
- (b) take part in the making by the Tribunal of the determination.

(6) A contravention of this clause does not invalidate any decision of the Tribunal.

**Filling of vacancy in office of member**

7. If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

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SCHEDULE 2—PROVISIONS RELATING TO MEMBERS OF TRIBUNAL—  
*continued*

**Effect of certain other Acts**

8. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable to the person under this Act as a part-time member.

SCHEDULE 3—PROVISIONS RELATING TO PROCEDURE OF  
TRIBUNAL AT MEETINGS

(Sec. 6 (5))

**Definition**

1. In this Schedule:

“member” means a member of the Tribunal, including the Chairperson.

**General procedure**

2. The procedure for the calling of meetings of the Tribunal and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Tribunal.

**Quorum**

3. The quorum for a meeting of the Tribunal is 2 members (one of whom is to be the Chairperson).

**Presiding member**

4. (1) The Chairperson is to preside at a meeting of the Tribunal.

(2) The Chairperson has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**Voting**

5. A decision supported by a majority of the votes cast at a meeting of the Tribunal at which a quorum is present is the decision of the Tribunal.

*Government Pricing Tribunal 1991*

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SCHEDULE 3—PROVISIONS RELATING TO PROCEDURE OF TRIBUNAL AT MEETINGS—*continued*

**Transaction of business outside meetings or by telephone etc.**

6. (1) The Tribunal may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Tribunal for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Tribunal.

(2) The Tribunal may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of:

- (a) the approval of a resolution under subclause (1); or
- (b) a meeting held in accordance with subclause (2),

the Chairperson and each member have the same voting rights they have at an ordinary meeting of the Tribunal.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Tribunal.

(5) Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

**First meeting**

7. The Minister may call the first meeting of the Tribunal in such manner as the Minister thinks fit.

**SCHEDULE 4—AMENDMENT OF OTHER ACTS**

(Sec. 31)

**Defamation Act 1974 No. 18**

After section 17M, insert:

**Matters arising under the Government Pricing Tribunal Act 1991**

17N. (1) There is a defence of absolute privilege for a publication to or by the Government Pricing Tribunal or to any member of the Tribunal or member of staff of the Tribunal in his or her capacity as such a member.

(2) This section applies in relation to any hearing before the Government Pricing Tribunal or any other matter relating to the powers, authorities, duties or functions of the Tribunal.

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SCHEDULE 4—AMENDMENT OF OTHER ACTS—*continued*

**Prices Regulation Act 1948 No. 26**

After section 3, insert:

**Act not to apply to government monopoly services**

3A. This Act does not apply to any government monopoly service to which the Government Pricing Tribunal Act 1991 applies.

**Public Finance and Audit Act 1983 No. 152**

Schedule 2 (Statutory Bodies):

Insert in alphabetical order the words "Government Pricing Tribunal."

**Statutory and Other Offices Remuneration Act 1975 (1976 No. 4)**

Schedule 2 (Public Offices):

Insert at the end of Part 1 the following matter:

Chairperson of the Government Pricing Tribunal (being a full-time member).

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