

FIRST PRINT

## GOVERNMENT PRICING TRIBUNAL BILL 1992

NEW SOUTH WALES



### EXPLANATORY NOTE

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

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

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### PART 1—PRELIMINARY

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

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

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

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

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

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

*Government Pricing Tribunal 1992*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



*Government Pricing Tribunal 1992*

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

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

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

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

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

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

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

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

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

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

Clause 24 protects the confidentiality of Cabinet documents and proceedings.

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*Government Pricing Tribunal 1992*

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**PART 5—MISCELLANEOUS**

Clause 25 provides that the proposed Act binds the Crown.

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

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

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

Clause 29 empowers the Governor to make regulations.

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

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

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

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

Schedule 4 makes amendments to several Acts.

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

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

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

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

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FIRST PRINT

## GOVERNMENT PRICING TRIBUNAL BILL 1992

NEW SOUTH WALES



### TABLE OF PROVISIONS

#### PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Definitions
4. Government monopoly services

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

5. Establishment of Tribunal
6. Members and procedure of Tribunal
7. Tribunal not subject to Ministerial control in making determinations or recommendations
8. Staff of Tribunal
9. Arrangements with other agencies, consultants etc.
10. Delegation of Tribunal's functions

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

11. Investigations and reports by Tribunal—standing reference
12. Investigations and reports by Tribunal—reference by Minister
13. Investigations and reports by Tribunal—general provisions
14. Method of fixing maximum prices
15. Matters to be considered by Tribunal under this Act
16. Report on financial impact if maximum price not charged
17. Gazettal of price determinations
18. Implementation of price determinations and other reports
19. Reports to be made public

*Government Pricing Tribunal 1992*

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PART 4—CONDUCT OF INVESTIGATIONS BY TRIBUNAL

20. General conduct of investigations
21. Holding of hearings etc. for purposes of investigation
22. Furnishing of information and documents to, and giving evidence before, the Tribunal
23. Offences
24. Cabinet documents and proceedings

PART 5—MISCELLANEOUS

25. Act binds Crown
26. Personal liability of members etc.
27. Service of documents on Tribunal
28. Proceedings for offences
29. Regulations
30. Amendment of other Acts

SCHEDULE 1—GOVERNMENT AGENCIES FOR WHICH TRIBUNAL HAS  
STANDING REFERENCE

SCHEDULE 2—PROVISIONS RELATING TO MEMBERS OF TRIBUNAL

SCHEDULE 3—PROVISIONS RELATING TO PROCEDURE OF TRIBUNAL AT  
MEETINGS

SCHEDULE 4—AMENDMENT OF OTHER ACTS

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**GOVERNMENT PRICING TRIBUNAL BILL 1992**

NEW SOUTH WALES



No.           , 1992

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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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*Government Pricing Tribunal 1992*

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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  
5 1992.

**Commencement**

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

**Definitions**

10 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  
15 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;

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

“**service**” includes:

(a) the supply of water, electricity, gas or other thing (whether or  
not of the same kind); and

25 (b) the provision of public transport; and

(c) the making available for use of facilities of any kind; and

(d) the conferring of rights, benefits or privileges for which the  
price is payable in the form of royalty, tribute, levy or similar  
exaction; and

30 (e) the exercise of the general functions of a public or local  
authority for which a rate or levy is payable by a section of the  
public,

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

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



*Government Pricing Tribunal 1992*

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“**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 5
- (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 and declared by the regulations or the Minister to be a government monopoly service. 10

(2) A service may be declared to be a government monopoly service if the Minister certifies that it is a service:

- (a) for which there are no other suppliers to provide competition in the part of the market concerned; and 15
- (b) for which there is no contestable market by potential suppliers in the short term in that part of the market.

(3) The regulations may prescribe criteria for the purpose of determining whether a particular service is a government monopoly service for the purposes of this Act. 20

(4) A service may be declared to be a government monopoly service by reference to:

- (a) a service specified or described in the declaration; or
- (b) the service for which a price specified or described in the declaration is payable. 25

(5) A declaration of a service by the Minister is to be made by order published in the Gazette.

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

**Establishment of Tribunal** 30

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.

*Government Pricing Tribunal 1992*

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**Members and procedure of Tribunal**

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

(2) Of the members of the Tribunal:

- 5 (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.

10 (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.

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

7. The Tribunal is not subject to the control or 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.

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**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.

25 (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.

30 (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.

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*Government Pricing Tribunal 1992*

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(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). 5

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

**Investigations and reports by Tribunal—standing reference**

11. (1) The Tribunal is to conduct investigations and make reports to the Minister on the following matters: 10

(a) the determination of the maximum price for a government monopoly service supplied by a government agency specified in Schedule 1;

(b) a periodic review of pricing policies in respect of government monopoly services supplied by such an agency. 15

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

**Investigations and reports by Tribunal—reference by Minister**

12. (1) The Tribunal is also to conduct investigations and make reports to the Minister on any of the following matters referred to the Tribunal by the Minister: 20

(a) the determination of the maximum price for a specified government monopoly service;

(b) a periodic review of pricing policies in respect of a specified government monopoly service. 25

(2) This section applies to a government monopoly service whether or not it is supplied by a government agency specified in Schedule 1.

(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. 30

(4) 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.

*Government Pricing Tribunal 1992*

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**Investigations and reports by Tribunal—general provisions**

13. (1) The Minister may, in respect of an investigation and report under this Part by the Tribunal, do any or all of the following:

- 5 (a) specify a period within which the report is required 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,

10 and the Tribunal must act accordingly.

(2) The Tribunal is required to give notice of any investigation under this Part in a newspaper circulating in the State and to the government agency concerned. The notice (and any report of the investigation) is to include the terms of any reference by the Minister and of any requirement  
15 made by the Minister under subsection (1).

(3) The Tribunal may also report to the Minister on any matter it considers relevant that arises from an investigation into a matter under this Part. Any such report may be part of the principal report to the Minister or may be a separate report.

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

(5) An investigation and report with respect to a government monopoly service may be limited to a particular part or category of that service or to  
25 a particular period during which that service is supplied or in any other manner.

(6) An investigation and report may relate to a number of government monopoly services supplied by a government agency.

**Method of fixing maximum prices**

30 14. (1) 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 an average price for a number of categories of the service;
- 35 (b) by fixing a percentage increase or decrease in existing prices;
- (c) by fixing an average percentage increase or decrease in existing prices for a number of categories of the service;



*Government Pricing Tribunal 1992*

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(d) by fixing a specified price for each category of the service (if any other manner is not considered appropriate).

(2) The Tribunal may fix such a price by reference to:

(a) a general price index (such as the Consumer Price Index); or

(b) the government agency's economic cost of production; or

(c) a rate of return on the assets of the government agency.

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**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):

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(a) the cost of providing the services concerned;

(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;

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(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.

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**Report on financial impact if maximum price not charged**

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 to the maximum permitted and the government agency concerned were to be compensated for the revenue foregone by an appropriation from the Consolidated Fund.

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**Gazettal of price determinations**

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

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(a) is to 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.

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*Government Pricing Tribunal 1992*

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**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 as follows:

- 5 (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 ensure that the price does not exceed the maximum price determined by the Tribunal;
- 10 (b) in any other case—the Minister responsible for the supply of the service (or for the government agency that supplies the service) is required to take the appropriate action available to the Minister to ensure that the price does not exceed the maximum price determined by the Tribunal.

15 (2) The approval of the Treasurer must be obtained if another Minister, an official or an agency fixes (or takes action to fix) the price below the maximum price determined by 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.

20 **Reports to be made public**

19. (1) As soon as practicable after the Minister receives a report from the Tribunal under this Act, the Minister is to arrange for copies of the report to be made available for public inspection.

25 (2) However, if the Tribunal recommends that the public release 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.

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

**General conduct of investigations**

- 30 20. (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
- 35 (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.

*Government Pricing Tribunal 1992*

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(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**

21. (1) If the Tribunal is satisfied that it is necessary to do so, it may hold hearings for the purposes of an investigation. 5

(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 begin. 10

(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: 15

(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. 20

(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. 25

(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** 30

22. (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; 35



*Government Pricing Tribunal 1992*

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(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.

5 (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

10 (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.

15 (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

20 23. (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.

25 (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:

30 (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.

35 (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.



*Government Pricing Tribunal 1992*

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(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.

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**Cabinet documents and proceedings**

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

(a) to require any person to give any statement of information or answer any question which relates to confidential proceedings of Cabinet; or

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(b) to require any person to produce a Cabinet document; or

(c) to inspect a Cabinet document.

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

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(3) In this section:

“Cabinet” includes a committee of Cabinet or a subcommittee of such a committee;

“Cabinet document” means a document that is a restricted document by virtue of clause 1 of Part 1 of Schedule 1 to the Freedom of Information Act 1989.

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**PART 5—MISCELLANEOUS**

**Act binds Crown**

25. 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.

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**Personal liability of members etc.**

26. 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 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.

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*Government Pricing Tribunal 1992*

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**Service of documents on Tribunal**

27. (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
- 5 (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**

- 10 28. 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**

- 15 29. (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.

20 **Amendment of other Acts**

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

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*Government Pricing Tribunal 1992***SCHEDULE 1—GOVERNMENT AGENCIES FOR WHICH TRIBUNAL HAS  
STANDING REFERENCE**

(Sec. 11)

Electricity Commission	
Sydney Electricity	5
Water Board	
Hunter Water Corporation Limited	
Water supply authorities constituted under the Water Supply Authorities Act 1987	
County councils established for the supply of water or electricity	
Administrator of the South-west Tablelands Water Supply	10
Administrator of the Fish River Water Supply	
State Rail Authority	
State Transit Authority	

**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.

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



*Government Pricing Tribunal 1992*

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

**Terms of office of members**

3. Subject to this Schedule, a member holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment. 5

**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 10  
(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. 15

**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 20  
(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 25  
(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 30  
(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; or  
(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. 35

*Government Pricing Tribunal 1992*

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.

5 (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  
10 (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:

- 15 (a) is a member, or is in the employment, of a specified company or other body; or  
(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,

20 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  
25 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  
30 (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  
35 (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.

*Government Pricing Tribunal 1992*

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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. 5

(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, 10

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 15

(Sec. 6 (5))

**Definition**

1. In this Schedule:

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

**General procedure 20**

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). 25

**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. 30

**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 1992*

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

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

5 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.

10 (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),

15 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.

20 (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

25

(Sec. 30)

**Defamation Act 1974 No. 18**

Insert in appropriate order:

**Matters arising under the Government Pricing Tribunal Act 1992**

30 17M. (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.

35 (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.

*Government Pricing Tribunal 1992*

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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 1992 applies. 5

**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)** 10

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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## GOVERNMENT PRICING TRIBUNAL BILL 1992

MR PRESIDENT,

I MOVE THAT THIS BILL BE NOW READ A SECOND TIME.

MR PRESIDENT,

THE PURPOSE OF THIS BILL IS TO ESTABLISH A GOVERNMENT PRICING TRIBUNAL TO DETERMINE THE MAXIMUM PRICE FOR MONOPOLY SERVICES SUPPLIED BY NOMINATED GOVERNMENT AGENCIES AND TO REPORT ON THE PRICING POLICIES OF THOSE AGENCIES.

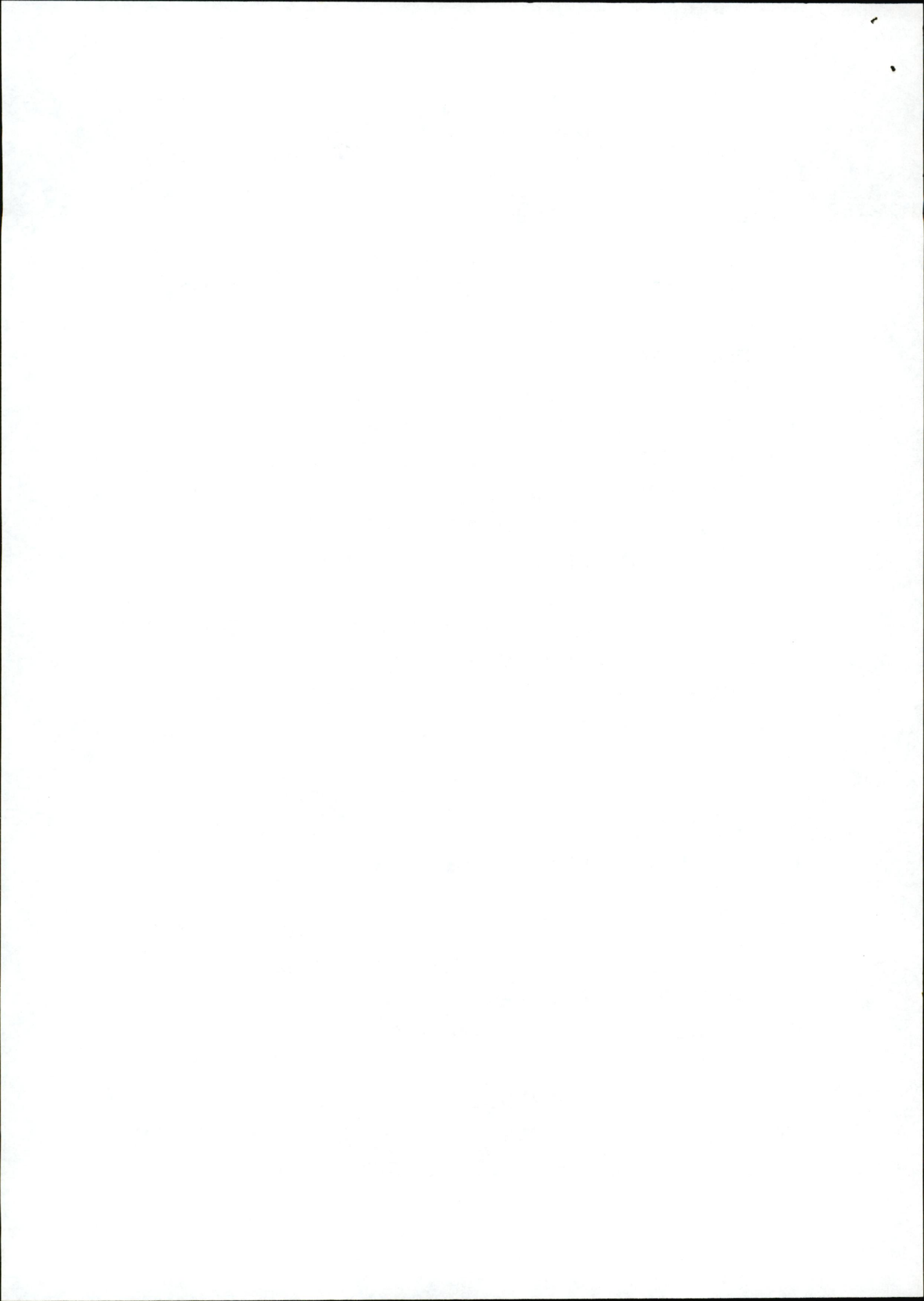
ITS PRINCIPAL AIM IS TO ENSURE THAT THE INTERESTS OF THE CITIZENS OF NEW SOUTH WALES BOTH AS CONSUMERS AND TAXPAYERS ARE PROTECTED AND ARE SEEN TO BE PROPERLY PROTECTED.

MANY GOVERNMENT BUSINESSES IN NEW SOUTH WALES ARE MONOPOLY SUPPLIERS OF SERVICES, NOTABLY ELECTRICITY, WATER AND TRANSPORT.

AS A RESULT, THESE AGENCIES ARE NOT SUBJECT TO COMPETITIVE FORCES AND ARE ABLE TO SET THEIR PRICES WITHOUT REFERENCE TO THE PRICES OF SUBSTITUTES FOR THEIR SERVICES.

IN THE ABSENCE OF REGULATION, THESE MONOPOLIES CAN CHARGE PRICES WHICH ARE HIGHER OR LOWER THAN THEY WOULD BE IF SET IN A COMPETITIVE MARKET.





MR PRESIDENT,

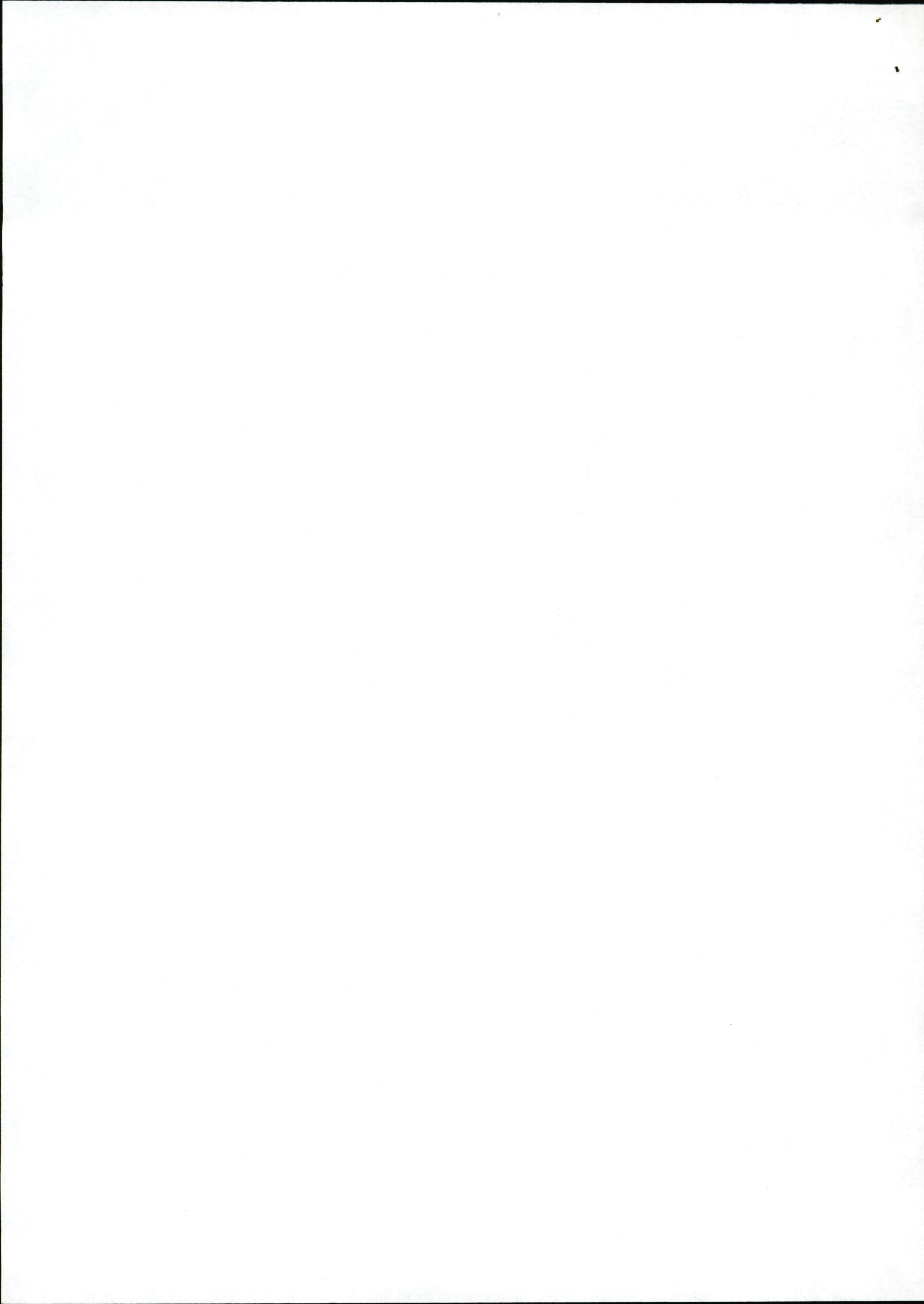
THE BILL INTRODUCED INTO THIS HOUSE TODAY IS THE RESULT OF EXTENSIVE CONSULTATIONS AND NEGOTIATIONS. THAT PROCESS ENSURES THAT THE BILL BEFORE THE HOUSE HAS BEEN REFINED TO TAKE INTO ACCOUNT CONCERNS OF VARIOUS ENVIRONMENTAL, CONSERVATION AND CONSUMER GROUPS, WHILE STILL ACHIEVING THE OBJECTS OF THE GOVERNMENT'S ORIGINAL PROPOSAL.

AS FORESHADOWED BY THE PREMIER DURING DEBATE ON THE BILL IN ANOTHER PLACE, A SMALL NUMBER OF MINOR AMENDMENTS TO THE BILL WILL BE MOVED IN THIS HOUSE. THESE AMENDMENTS WILL BE INTRODUCED TO CLARIFY CERTAIN INCONSISTENT AMENDMENTS MADE TO THE BILL IN THE OTHER PLACE. FOR THE BENEFIT OF HONOURABLE MEMBERS, I WILL FIRST DEAL WITH THE SCHEME ESTABLISHED BY THE BILL.

MR PRESIDENT,

THE PRICING TRIBUNAL ESTABLISHED BY THIS BILL, WITH POWER TO REVIEW AND DETERMINE PRICES CHARGED BY MONOPOLIES, WILL ENSURE THAT MONOPOLIES DO NOT ABUSE THE POWER WHICH THEY HAVE BY VIRTUE OF BEING THE SOLE SUPPLIER OF A GOOD OR SERVICE.

THE TRIBUNAL WILL PROVIDE A PROXY OF CONDITIONS WHICH WOULD OPERATE WERE THE MONOPOLY IN A





COMPETITIVE MARKET.

IT WILL ENSURE THAT THE PRICE SETTING PROCESS IS  
DEPOLITICISED AND RATIONAL.

MR PRESIDENT,

IT HAS BEEN SUGGESTED BY THE ALP THAT MONOPOLY  
PRICES SHOULD BE CONTROLLED SIMPLY BY LIMITING  
ANNUAL INCREASES TO CPI.

WHILST THIS APPROACH MIGHT BE JUSTIFIABLE IN A  
SHORT-TERM CONTEXT IN SOME CASES, IT IS  
DANGEROUSLY UNSOUND AS A BASIS FOR LONG-TERM  
PRICE REFORM. IT WOULD UNDERMINE ANY INCENTIVE  
TO DRIVE PRICES DOWN.

BY CONTRAST, MR PRESIDENT, THE BILL CURRENTLY  
BEFORE THE HOUSE WILL ENSURE THAT GOVERNMENT  
MONOPOLIES ARE PREVENTED FROM ABUSING THEIR  
MONOPOLY POSITION BUT AT THE SAME TIME IS  
DESIGNED TO ENSURE THAT PROPER PRICE REFORM AND  
EFFICIENCY GAINS ARE ENCOURAGED, NOT  
DISCOURAGED.

MR PRESIDENT,

THE TRIBUNAL, IN MAKING ITS DETERMINATIONS AND  
RECOMMENDATIONS WILL HAVE REGARD TO A NUMBER  
OF MATTERS.



THE COST OF PROVIDING THE SERVICES CONCERNED WILL ONLY BE ONE RELEVANT FACTOR TO TAKE INTO ACCOUNT.

OTHER MATTERS THE TRIBUNAL MUST CONSIDER ARE:

- THE PROTECTION OF CONSUMERS FROM ABUSES OF MONOPOLY POWER IN TERMS OF PRICES, PRICING POLICIES AND STANDARD OF SERVICES;
- THE APPROPRIATE RATE OF RETURN ON PUBLIC SECTOR ASSETS;
- THE EFFECT ON GENERAL PRICE INFLATION OVER THE MEDIUM TERM;
- THE NEED FOR GREATER EFFICIENCY IN THE SUPPLY OF SERVICES SO AS TO REDUCE THE COSTS TO CONSUMERS AND TAXPAYERS;
- THE PROTECTION OF THE ENVIRONMENT BY APPROPRIATE PRICING POLICIES THAT TAKE ACCOUNT OF OPTIONS AVAILABLE TO PROTECT THE ENVIRONMENT;
- THE IMPACT ON PRICING POLICIES OF BORROWING, CAPITAL AND DIVIDEND REQUIREMENTS OF THE AGENCY ; AND
- THE IMPACT ON PRICING POLICIES OF ANY





ARRANGEMENTS THAT THE GOVERNMENT AGENCY CONCERNED HAS ENTERED INTO FOR THE EXERCISE OF ITS FUNCTIONS BY SOME OTHER PERSON OR BODY.

THE TRIBUNAL WILL NOT, THEREFORE, BE CONSTRAINED BY STRICT EFFICIENCY AND COST ISSUES, BUT WILL TAKE A BROADER RANGE OF MATTERS INTO ACCOUNT WHEN MAKING DETERMINATIONS AND RECOMMENDATIONS.

THIS WILL ENSURE THAT ENVIRONMENTAL AND SOCIAL ISSUES FORM PART OF THE EQUATION, AND THE TRIBUNAL WILL NEED TO WEIGH THESE MATTERS AGAINST STRICT COST-RELATED FACTORS.

MR PRESIDENT,

HONOURABLE MEMBERS WILL BE AWARE THAT ANY REASONABLE ANALYSIS OF THE PRICE OR PRICING STRUCTURE OF MONOPOLY SERVICES SUCH AS ELECTRICITY, WATER AND SEWERAGE MUST TAKE INTO ACCOUNT THE EXTERNALITIES RELEVANT TO THE SUPPLY OF THE SERVICES.

THE COST OF AVOIDING, OR MINIMISING, ANY ENVIRONMENTAL DAMAGE WHICH MIGHT OCCUR AS A RESULT OF THE SUPPLY OF MONOPOLY SERVICES SHOULD BE TAKEN INTO ACCOUNT WHEN DETERMINING THE APPROPRIATE PRICE TO BE CHARGED.





THIS ACTION WILL PROMOTE SOUND ENVIRONMENTAL PRACTICES AND DECISIONS AS WELL AS DETERMINING ECONOMICALLY APPROPRIATE PRICES FOR THE BENEFIT OF THE PEOPLE OF NEW SOUTH WALES.

IT WILL BE A FURTHER FACTOR OPERATING TO DISCOURAGE AND MINIMISE ENVIRONMENTAL DEGRADATION.

MR PRESIDENT,

THE TRIBUNAL ESTABLISHED BY THE BILL WILL CONSIST OF THREE MEMBERS, BEING A FULL TIME OR PART TIME CHAIRPERSON AND TWO OTHER PART TIME MEMBERS.

AS THE PREMIER INDICATED IN HIS SECOND READING SPEECH IN ANOTHER PLACE, THE GOVERNMENT HAS SET UP AN INTERIM TRIBUNAL, WHICH WILL BE A PRINCIPAL SOURCE OF ADVICE IN DETERMINING THIS YEAR'S PRICES, PENDING THE FORMAL ESTABLISHMENT OF THE TRIBUNAL ON THE PASSAGE OF THIS LEGISLATION.

THE THREE PEOPLE WHO HAVE BEEN APPOINTED TO THE INTERIM TRIBUNAL ARE PROFESSOR THOMAS PARRY, MS JOAN MCCLINTOCK AND MR SHAUN MAYS. AS REQUIRED BY THE BILL, THESE MEMBERS TOGETHER HAVE A KNOWLEDGE AND UNDERSTANDING OF ECONOMICS, THE INTERESTS OF CONSUMERS, AND THE INTERESTS OF GOVERNMENT AS THE OWNER OF THE AGENCIES ON BEHALF OF THE TAXPAYERS OF NEW SOUTH WALES.



THE TRIBUNAL WILL ALSO BE ABLE TO CALL IN SPECIALIST ADVICE TO ASSIST IT IN DETERMINING THE RIGHT LEVEL OF PRICES AND THE RIGHT PRICING POLICIES.

MR PRESIDENT,

PRICE DETERMINATIONS OF THE TRIBUNAL WILL NOT BE ABLE TO BE OVERTURNED BY THE GOVERNMENT.

THEY WILL BE PUBLISHED IN THE GOVERNMENT GAZETTE AND WILL TAKE EFFECT FROM THE DATE OF PUBLICATION, UNLESS A LATER DATE IS SPECIFIED IN THE DETERMINATION.

THE BILL PROVIDES A PROCEDURE FOR THE IMPLEMENTATION OF PRICE DETERMINATIONS WHICH REQUIRES MINISTERS AND AGENCIES TO ENSURE THAT THE PRICE DOES NOT EXCEED THE MAXIMUM PRICE DETERMINED BY THE TRIBUNAL. PRICES WILL ONLY BE ABLE TO BE FIXED BELOW THE LEVEL RECOMMENDED BY THE TRIBUNAL WITH THE CONSENT OF THE TREASURER.

THE BILL ALSO REQUIRES THE TRIBUNAL, WHEN DETERMINING MAXIMUM PRICES, TO REPORT ON THE LIKELY COSTS TO THE CONSOLIDATED FUND IF THE PRICE OF THE SERVICE WERE NOT INCREASED TO THE LEVEL PERMITTED AND THE REVENUE FOREGONE BY THE GOVERNMENT AGENCY CONCERNED WERE TO BE COMPENSATED BY AN APPROPRIATION FROM THE





CONSOLIDATED FUND.

IN OTHER WORDS, WHAT WE ARE TRYING TO DO IS TO ENSURE THAT THE BUDGETARY IMPLICATIONS OF THE ADOPTION OF A LOWER PRICE ARE FULLY CONSIDERED BEFORE PRICES ARE SET.

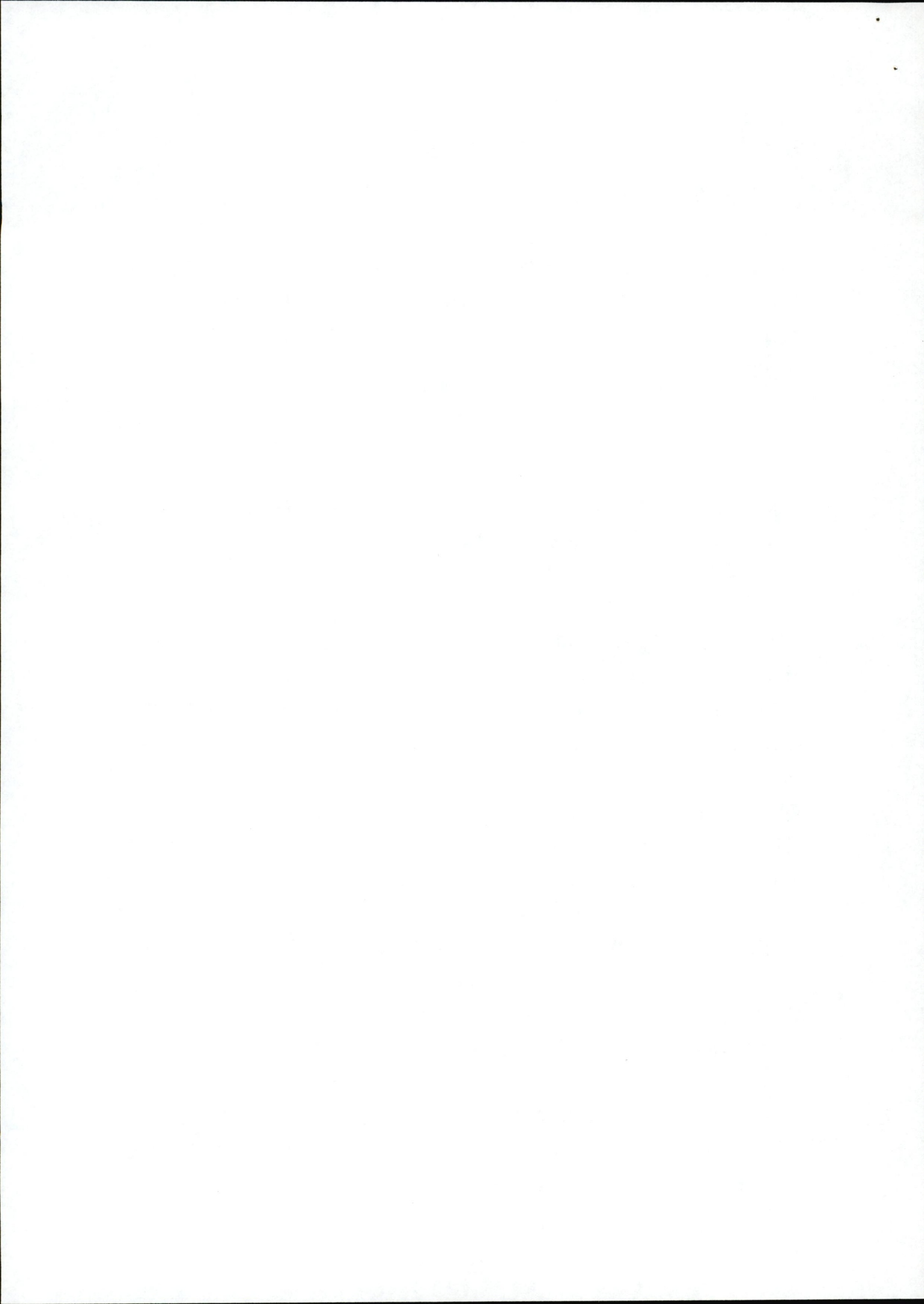
MR PRESIDENT,

THE TRIBUNAL WILL BE EMPOWERED TO CONDUCT INVESTIGATIONS AND HEARINGS.

IT IS INTENDED HOWEVER, THAT THE TRIBUNAL WILL OPERATE AS INFORMALLY AS POSSIBLE. THE TRIBUNAL MUST HOLD AT LEAST ONE HEARING IN EACH INVESTIGATION, AND MAY HOLD FURTHER HEARINGS IF IT CONSIDERS THAT IT IS NECESSARY.

INITIALLY, THE TRIBUNAL WILL HAVE A STANDING REFERENCE TO MAKE DETERMINATIONS IN RELATION TO THE ELECTRICITY AND WATER SUPPLY AUTHORITIES, THE GOVERNMENT PUBLIC TRANSPORT AUTHORITIES AND THE DEPARTMENT OF HOUSING. THE PRICES OF THESE AGENCIES HAVE THE GREATEST IMPACT ON FAMILIES AND FAMILY BUDGETS, AND THE GOVERNMENT CONSIDERS THAT THEY OUGHT TO BE A FIRST PRIORITY.

SUPPLIERS OF OTHER GOVERNMENT MONOPOLY SERVICES MAY BE ADDED TO THE SCHEDULE FROM TIME TO TIME, BY REGULATION.



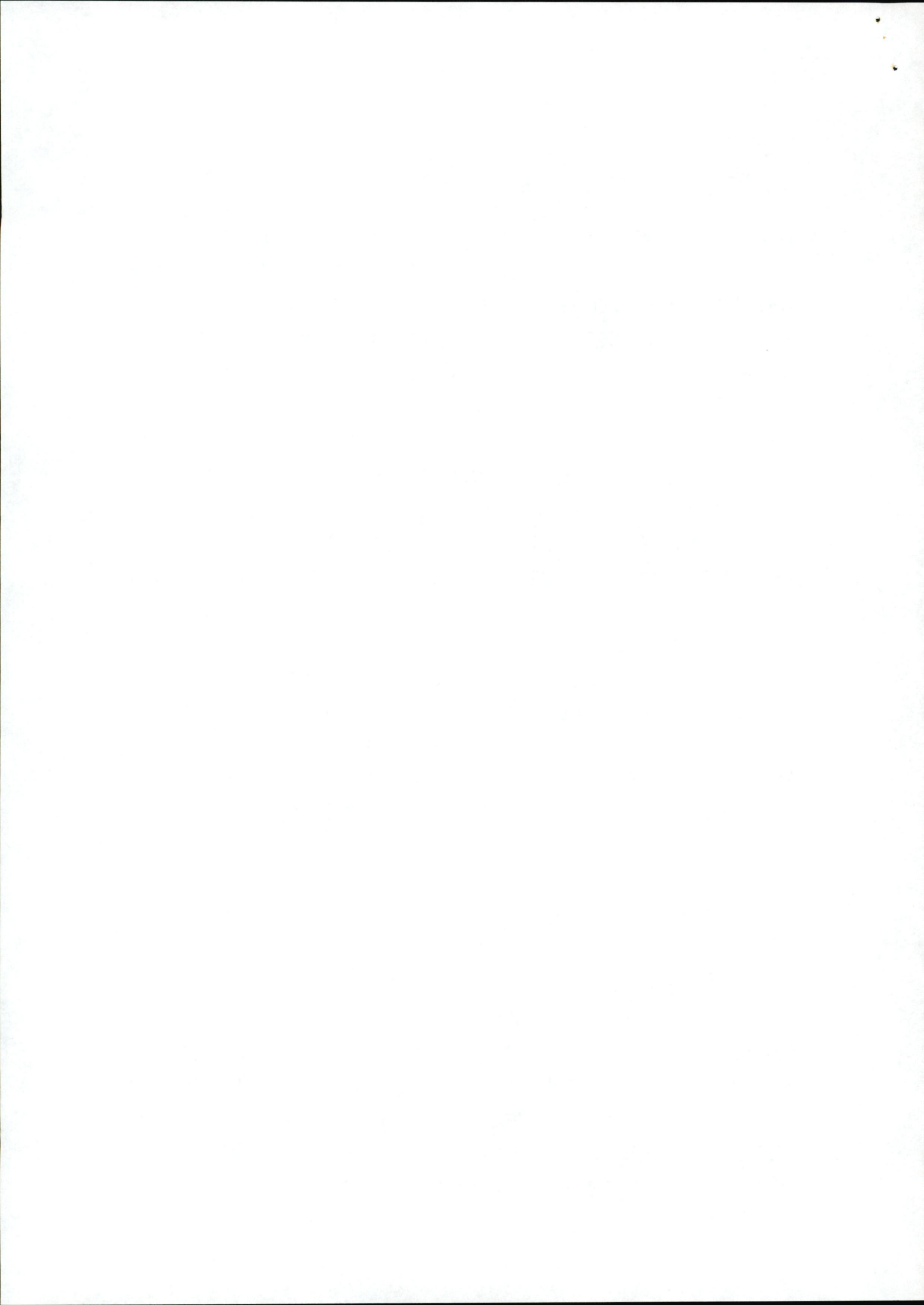


THERE IS ALSO THE CAPACITY FOR PARTICULAR GOVERNMENT MONOPOLY SERVICES TO BE REFERRED BY THE MINISTER TO THE TRIBUNAL FROM TIME TO TIME, AND THE TRIBUNAL MAY REQUEST THE MINISTER TO REFER PARTICULAR MATTERS.

AS I INDICATED EARLIER, I PROPOSE TO MOVE AN AMENDMENT TO THE BILL INTRODUCED INTO THE HOUSE, TO CLARIFY THE OPERATION OF THE REFERENCE PROVISIONS OF THE BILL. IT IS PROPOSED THAT THE TRIBUNAL WILL PUBLISH THE INITIAL TERMS OF REFERENCE FROM THE MINISTER AND, AFTER PUBLIC SUBMISSIONS ARE RECEIVED, THE TRIBUNAL WILL SETTLE THE TERMS OF REFERENCE IN CONSULTATION WITH THE MINISTER. THIS WILL PROVIDE AN OPPORTUNITY FOR PUBLIC INPUT INTO THE TERMS OF REFERENCE, AND ALLOW THE TRIBUNAL TO BECOME INVOLVED IN DEFINING THE APPROPRIATE LIMITS OF ITS INVESTIGATION AND REPORT.

MR PRESIDENT,

THE GOVERNMENT IS CONFIDENT THAT THE SCHEME ESTABLISHED BY THE BILL REPRESENTS THE MOST SENSIBLE WAY OF PROPERLY PRICING GOVERNMENT MONOPOLY SERVICES. THE TRIBUNAL'S ACTIVITIES WILL RESULT IN GREATER EFFICIENCY IN THE DELIVERY OF MONOPOLY SERVICES IN THE STATE, WHICH WILL DIRECTLY BENEFIT ALL FAMILIES IN NEW SOUTH WALES,



BOTH IN THE SHORT AND LONG TERM.

IT WILL ENSURE THAT RESOURCES ARE RATIONALLY ALLOCATED AND THAT IN THE LONGER TERM THESE AGENCIES OPERATE AT LEAST COST AND MAXIMUM EFFICIENCY, TAKING INTO ACCOUNT ALL RELEVANT FACTORS.

THE BILL IS ABOUT A FAIR DEAL FOR EVERYONE, BOTH NOW AND IN THE FUTURE. IT WILL ENSURE THAT FUTURE GENERATIONS ARE NOT LEFT WITH THE COST OF THE EXCESSES OF THIS GENERATION.

THIS BILL WILL ENSURE THAT WHAT WE WILL END UP WITH IS A SOCIETY IN NEW SOUTH WALES THAT IS MORE PROSPEROUS, THAT IS FAIRER AND THAT IS ENVIRONMENTALLY BETTER OFF.

I COMMEND THE BILL TO THE HOUSE.





SECOND PRINT

**GOVERNMENT PRICING TRIBUNAL BILL 1992**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

**PART 1—PRELIMINARY**

1. Short title
2. Commencement
3. Definitions
4. Government monopoly services

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

5. Establishment of Tribunal
6. Members and procedure of Tribunal
7. Tribunal not subject to Ministerial control in making determinations or recommendations
8. Staff of Tribunal
9. Arrangements with other agencies, consultants etc.
10. Delegation of Tribunal's functions

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

11. Investigations and reports by Tribunal—standing reference
12. Investigations and reports by Tribunal—reference by Minister
13. Investigations and reports by Tribunal—general provisions
14. Method of fixing maximum prices
15. Matters to be considered by Tribunal under this Act
16. Report on financial impact if maximum price not charged
17. Gazettal of price determinations
18. Implementation of price determinations and other reports
19. Reports to be made public

*Government Pricing Tribunal 1992*

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PART 4—CONDUCT OF INVESTIGATIONS BY TRIBUNAL

20. General conduct of investigations
21. Holding of hearings etc. for purposes of investigation
22. Furnishing of information and documents to, and giving evidence before, the Tribunal
23. Offences
24. Cabinet documents and proceedings

PART 5—MISCELLANEOUS

25. Act binds Crown
26. Personal liability of members etc.
27. Service of documents on Tribunal
28. Proceedings for offences
29. Regulations
30. Amendment of other Acts

SCHEDULE 1—GOVERNMENT AGENCIES FOR WHICH TRIBUNAL HAS  
STANDING REFERENCE

SCHEDULE 2—PROVISIONS RELATING TO MEMBERS OF TRIBUNAL

SCHEDULE 3—PROVISIONS RELATING TO PROCEDURE OF TRIBUNAL AT  
MEETINGS

SCHEDULE 4—AMENDMENT OF OTHER ACTS

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*This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

*Legislative Assembly*

*Clerk of the Legislative Assembly.*

NEW SOUTH WALES



Act No.           , 1992

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.

*Government Pricing Tribunal 1992*

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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  
5 1992.

**Commencement**

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

**Definitions**

10 3. (1) In this Act:

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

15 “**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;

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

“**service**” includes:

25 (a) the supply of water, electricity, gas or other thing (whether or not of the same kind); and

(b) the provision of public transport; and

(c) the making available for use of facilities of any kind; and

(d) the conferring of rights, benefits or privileges for which the price is payable in the form of royalty, tribute, levy or similar exaction; and

30 (e) the exercise of the general functions of a public or local authority for which a rate or levy is payable by a section of the public,

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

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

*Government Pricing Tribunal 1992*

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**“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 5
- (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 and declared by the regulations or the Minister to be a government monopoly service. 10

(2) A service may be declared to be a government monopoly service if the Minister certifies that it is a service:

- (a) for which there are no other suppliers to provide competition in the part of the market concerned; and 15
- (b) for which there is no contestable market by potential suppliers in the short term in that part of the market.

(3) A service may be declared to be a government monopoly service by reference to:

- (a) a service specified or described in the declaration; or 20
- (b) the service for which a price specified or described in the declaration is payable.

(4) A declaration of a service by the Minister is to be made by order published in the Gazette.

**PART 2—ESTABLISHMENT OF GOVERNMENT PRICING  
TRIBUNAL OF NEW SOUTH WALES** 25

**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. 30

**Members and procedure of Tribunal**

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



*Government Pricing Tribunal 1992*

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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.
- 5 (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.
- 10 (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**

- 15 7. The Tribunal is not subject to the control or 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**

- 20 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.
- 25 (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.**

- 30 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  
35 its functions.

*Government Pricing Tribunal 1992*

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**Delegation of Tribunal's functions**

10. (1) 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).

(2) The Tribunal may not delegate its function of making determinations or recommendations under this Act to a committee that includes persons who are not members of the Tribunal. 5

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

**Investigations and reports by Tribunal—standing reference** 10

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

- (a) the determination of the maximum price for a government monopoly service supplied by a government agency specified in Schedule 1; 15
- (b) a periodic review of pricing policies in respect of government monopoly services supplied by such an agency.

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

**Investigations and reports by Tribunal—reference by Minister** 20

12. (1) The Tribunal is also 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; 25
- (b) a periodic review of pricing policies in respect of a specified government monopoly service.

(2) This section applies to a government monopoly service whether or not it is supplied by a government agency specified in Schedule 1.

(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. 30

(4) The Tribunal may request the Minister to refer a matter to the Tribunal under this section.



*Government Pricing Tribunal 1992*

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(5) 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.

5 (6) The terms of any investigation shall be determined by the Tribunal after the Tribunal has first published the terms in draft and sought public comment upon them.

**Investigations and reports by Tribunal—general provisions**

13. (1) The Minister may, in respect of an investigation and report under this Part by the Tribunal, do any or all of the following:

- 10 (a) specify a period within which the report is required 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;
- 15 (c) require the Tribunal to consider specified matters when making its investigations,

and the Tribunal must act accordingly.

(2) The Tribunal is required to give notice of any investigation under this Part in a newspaper circulating in the State and to the government agency concerned. The notice (and any report of the investigation) is to include the terms of any reference by the Minister and of any requirement made by the Minister under subsection (1).

20

(3) The Tribunal is required to consider any public submissions about the terms of any reference from the Minister. The Tribunal may, after consultation with the Minister, decide to report to the Minister on any relevant matter raised by those public submissions that are not covered by the terms of reference.

25

(4) The Tribunal may also report to the Minister on any matter it considers relevant that arises from an investigation into a matter under this Part. Any such report may be part of the principal report to the Minister or may be a separate report.

30

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

35 (6) An investigation and report 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 that service is supplied or in any other manner.

(7) An investigation and report may relate to a number of government monopoly services supplied by a government agency.



*Government Pricing Tribunal 1992*

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(8) A report is to include any minority report by a member of the Tribunal who wishes to make such a report.

**Method of fixing maximum prices**

14. (1) 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: 5

- (a) by fixing an average price for a number of categories of the service;
- (b) by fixing a percentage increase or decrease in existing prices;
- (c) by fixing an average percentage increase or decrease in existing prices for a number of categories of the service; 10
- (d) by fixing a specified price for each category of the service (if any other manner is not considered appropriate).

(2) The Tribunal may fix such a price by reference to:

- (a) a general price index (such as the Consumer Price Index); or 15
- (b) the government agency's economic cost of production; or
- (c) a rate of return on the assets of the government agency.

**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): 20

- (a) the cost of providing the services concerned;
- (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; 25
- (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; 30
- (f) the protection of the environment (within the meaning of the Protection of the Environment Administration Act 1991) by appropriate pricing policies that take account of all the options available to protect the environment;

*Government Pricing Tribunal 1992*

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- (g) the impact on pricing policies of borrowing, capital and dividend requirements of the government agency concerned and, in particular, the impact of any need to renew or increase relevant assets;
- 5 (h) the impact on pricing policies of any arrangements that the government agency concerned has entered into for the exercise of its functions by some other person or body.

**Report on financial impact if maximum price not charged**

- 10 **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 to the maximum permitted and the government agency concerned were to be compensated for the revenue foregone by an appropriation from the Consolidated Fund.

15 **Gazettal of price determinations**

- 17.** (1) A determination in a report of the Tribunal of the maximum price for a government monopoly service:
- (a) is to be published in the Gazette by the Minister as soon as practicable after the report is received by the Minister; and
  - 20 (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**

- 25 **18.** (1) A determination of the Tribunal of the maximum price for a government monopoly service 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 ensure that the price does not
  - 30 exceed the maximum price determined by the Tribunal;
  - (b) in any other case—the Minister responsible for the supply of the service (or for the government agency that supplies the service) is required to take the appropriate action available to the Minister to
  - 35 ensure that the price does not exceed the maximum price determined by the Tribunal.
- (2) The approval of the Treasurer must be obtained if another Minister, an official or an agency fixes (or takes action to fix) the price below the maximum price determined by the Tribunal.



*Government Pricing Tribunal 1992*

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(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.

(4) A government agency which is the subject of a determination or recommendation of the Tribunal is required to include in its annual report:

- (a) particulars of how any such determination has been implemented; and
- (b) a statement of whether any such recommendation has been implemented and, if not, the reasons why it has not been implemented.

**Reports to be made public**

19. (1) As soon as practicable after the Minister receives a report from the Tribunal under this Act, the Minister is to arrange for copies of the report to be made available for public inspection.

(2) However, if the Tribunal in the special circumstances of the case recommends in its report that the public release 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) The arrangements under subsection (1) for making of copies of a report available for public inspection are to include:

- (a) the tabling of a copy of the report in each House of Parliament within 5 sitting days of the House; and
- (b) the forwarding of a copy of the report, within 5 days of its receipt by the Minister, to the Parliamentary Librarian to form part of the Parliamentary Library's collection; and
- (c) the making of a copy of the report available for public inspection at the office of the Tribunal during its ordinary hours of business.

(4) Copies of the report are also to be made available for sale at the principal office of the Government Information Service during its ordinary hours of business.

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

**General conduct of investigations**

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

- (a) is to act with as little formality as possible; and



*Government Pricing Tribunal 1992*

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- (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
- 5 (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**

10 21. (1) The Tribunal is required to hold at least one hearing for the purposes of each investigation and may hold further hearings if it considers that it is necessary to do so.

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

15 (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 begin.

20 (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:

- 25 (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.

30 (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.

*Government Pricing Tribunal 1992*

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

22. (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: 5

- (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; 10
- (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 15
- (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. 20

(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. 25

(4) Nothing in this section prevents the Tribunal from making documents given to the Tribunal under this section available for inspection by any person who the Tribunal considers has an interest in the matter unless the documents are exempt documents within the meaning of the Freedom of Information Act 1989. 30

**Offences**

23. (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. 35



*Government Pricing Tribunal 1992*

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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.

5 (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
- 10 (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.

15 (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 documents and proceedings**

20 24. (1) This Act does not enable the Tribunal:

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

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

30 (3) In this section:

“Cabinet” includes a committee of Cabinet or a subcommittee of such a committee;

35 “Cabinet document” means a document that is a restricted document by virtue of clause 1 of Part 1 of Schedule 1 to the Freedom of Information Act 1989.



**PART 5—MISCELLANEOUS****Act binds Crown**

25. 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.

5

**Personal liability of members etc.**

26. 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 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.

10

**Service of documents on Tribunal**

27. (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.

15

(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**

20

28. 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**

29. (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.

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

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**Amendment of other Acts**

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

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*Government Pricing Tribunal 1992*

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**SCHEDULE 1—GOVERNMENT AGENCIES FOR WHICH TRIBUNAL HAS  
STANDING REFERENCE**

(Sec. 11)

- Electricity Commission
- 5 Sydney Electricity
- Water Board
- Hunter Water Corporation Limited
- Water supply authorities constituted under the Water Supply Authorities Act 1987
- County councils established for the supply of water or electricity
- 10 Administrator of the South-west Tablelands Water Supply
- Administrator of the Fish River Water Supply
- State Rail Authority
- State Transit Authority
- Roads and Traffic Authority
- 15 Department of Housing

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

(Sec. 6 (4))

**Definitions**

1. In this Schedule:
- 20 “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.

25 **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.

- 30 (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
- 35 from time to time determine in respect of the person.

*Government Pricing Tribunal 1992*

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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**

5

3. Subject to this Schedule, a member holds office for such period (not exceeding 5 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:

10

- (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.

15

**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; or
- (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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*Government Pricing Tribunal 1992*

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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.

5 (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  
10 (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:

- 15 (a) is a member, or is in the employment, of a specified company or other body; or  
(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,

20 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  
25 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  
30 (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  
35 (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.

*Government Pricing Tribunal 1992*

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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. 5

(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, 10

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 15

(Sec. 6 (5))

**Definition**

1. In this Schedule:

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

**General procedure 20**

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). 25

**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. 30

**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 1992***SCHEDULE 3—PROVISIONS RELATING TO PROCEDURE OF TRIBUNAL AT MEETINGS—*continued*****Transaction of business outside meetings or by telephone etc.**

5 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.

10 (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),

15 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.

20 (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**

25

(Sec. 30)

**Defamation Act 1974 No. 18**

Insert in appropriate order:

**Matters arising under the Government Pricing Tribunal Act 1992**

30 17M. (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.

35 (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.



*Government Pricing Tribunal 1992*

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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 1992 applies.

5

**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)**

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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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# GOVERNMENT PRICING TRIBUNAL ACT 1992 No. 39

NEW SOUTH WALES



## TABLE OF PROVISIONS

### PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Definitions
4. Government monopoly services

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

5. Establishment of Tribunal
6. Members and procedure of Tribunal
7. Tribunal not subject to Ministerial control in making determinations or recommendations
8. Staff of Tribunal
9. Arrangements with other agencies, consultants etc.
10. Delegation of Tribunal's functions

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

11. Investigations and reports by Tribunal—standing reference
12. Investigations and reports by Tribunal—reference by Minister
13. Investigations and reports by Tribunal—general provisions
14. Method of fixing maximum prices
15. Matters to be considered by Tribunal under this Act
16. Report on financial impact if maximum price not charged
17. Gazettal of price determinations
18. Implementation of price determinations and other reports
19. Reports to be made public



*Government Pricing Tribunal Act 1992 No. 39*

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

20. General conduct of investigations
21. Holding of hearings etc. for purposes of investigation
22. Furnishing of information and documents to, and giving evidence before, the Tribunal
23. Offences
24. Cabinet documents and proceedings

**PART 5—MISCELLANEOUS**

25. Act binds Crown
26. Personal liability of members etc.
27. Service of documents on Tribunal
28. Proceedings for offences
29. Regulations
30. Amendment of other Acts

**SCHEDULE 1—GOVERNMENT AGENCIES FOR WHICH TRIBUNAL HAS  
STANDING REFERENCE**

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

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

**SCHEDULE 4—AMENDMENT OF OTHER ACTS**

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**GOVERNMENT PRICING TRIBUNAL ACT 1992 No. 39**

**NEW SOUTH WALES**



**Act No. 39, 1992**

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.  
[Assented to 19 May 1992]

The Legislature of New South Wales enacts:

**PART 1—PRELIMINARY**

**Short title**

1. This Act may be cited as the Government Pricing Tribunal Act 1992.

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

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

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



*Government Pricing Tribunal Act 1992 No. 39*

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**“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 and declared by the regulations or the Minister to be a government monopoly service.

(2) A service may be declared to be a government monopoly service if the Minister certifies that it is a service:

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

(3) A service may be declared to be a government monopoly service by reference to:

- (a) a service specified or described in the declaration; or
- (b) the service for which a price specified or described in the declaration is payable.

(4) A declaration of a service by the Minister is to be made by order published in the Gazette.

**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.

*Government Pricing Tribunal Act 1992 No. 39*

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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 or 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. (1) 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).

(2) The Tribunal may not delegate its function of making determinations or recommendations under this Act to a committee that includes persons who are not members of the Tribunal.

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

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

- (a) the determination of the maximum price for a government monopoly service supplied by a government agency specified in Schedule 1;
- (b) a periodic review of pricing policies in respect of government monopoly services supplied by such an agency.

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

**Investigations and reports by Tribunal—reference by Minister**

12. (1) The Tribunal is also 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 pricing policies in respect of a specified government monopoly service.

(2) This section applies to a government monopoly service whether or not it is supplied by a government agency specified in Schedule 1.

(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 Tribunal may request the Minister to refer a matter to the Tribunal under this section.



*Government Pricing Tribunal Act 1992 No. 39*

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(5) 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.

**Investigations and reports by Tribunal—general provisions**

13. (1) The Minister may, in respect of an investigation and report under this Part by the Tribunal, do any or all of the following:

- (a) specify a period within which the report is required 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) The Tribunal is required to give notice of any investigation under this Part in a newspaper circulating in the State and to the government agency concerned. The notice (and any report of the investigation) is to include the terms of any reference by the Minister and of any requirement made by the Minister under subsection (1).

(3) The Tribunal is required, after considering any public comments on any such terms of reference, to settle the final terms of reference in the matter in consultation with the Minister.

(4) The Tribunal may also report to the Minister on any matter it considers relevant that arises from an investigation into a matter under this Part. Any such report may be part of the principal report to the Minister or may be a separate report.

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

(6) An investigation and report 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 that service is supplied or in any other manner.

(7) An investigation and report may relate to a number of government monopoly services supplied by a government agency.

*Government Pricing Tribunal Act 1992 No. 39*

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(8) A report is to include any minority report by a member of the Tribunal who wishes to make such a report.

**Method of fixing maximum prices**

14. (1) 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 an average price for a number of categories of the service;
- (b) by fixing a percentage increase or decrease in existing prices;
- (c) by fixing an average percentage increase or decrease in existing prices for a number of categories of the service;
- (d) by fixing a specified price for each category of the service (if any other manner is not considered appropriate).

(2) The Tribunal may fix such a price by reference to:

- (a) a general price index (such as the Consumer Price Index); or
- (b) the government agency's economic cost of production; or
- (c) a rate of return on the assets of the government agency.

**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;
- (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 (within the meaning of the Protection of the Environment Administration Act 1991) by appropriate pricing policies that take account of all the feasible options available to protect the environment;



*Government Pricing Tribunal Act 1992 No. 39*

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- (g) the impact on pricing policies of borrowing, capital and dividend requirements of the government agency concerned and, in particular, the impact of any need to renew or increase relevant assets;
- (h) the impact on pricing policies of any arrangements that the government agency concerned has entered into for the exercise of its functions by some other person or body.

**Report on financial impact if maximum price not charged**

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 to the maximum permitted and the government agency concerned were to be compensated for the revenue foregone by an appropriation from the Consolidated Fund.

**Gazettal of price determinations**

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

- (a) is to 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 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 ensure that the price does not exceed the maximum price determined by the Tribunal;
- (b) in any other case—the Minister responsible for the supply of the service (or for the government agency that supplies the service) is required to take the appropriate action available to the Minister to ensure that the price does not exceed the maximum price determined by the Tribunal.

(2) The approval of the Treasurer must be obtained if another Minister, an official or an agency fixes (or takes action to fix) the price below the maximum price determined by the Tribunal.



*Government Pricing Tribunal Act 1992 No. 39*

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(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.

(4) A government agency which is the subject of a determination or recommendation of the Tribunal is required to include in its annual report:

- (a) particulars of how any such determination has been implemented; and
- (b) a statement of whether any such recommendation has been implemented and, if not, the reasons why it has not been implemented.

**Reports to be made public**

19. (1) As soon as practicable after the Minister receives a report from the Tribunal under this Act, the Minister is to arrange for copies of the report to be made available for public inspection.

(2) However, if the Tribunal in the special circumstances of the case recommends in its report that the public release 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) The arrangements under subsection (1) for making of copies of a report available for public inspection are to include:

- (a) the tabling of a copy of the report in each House of Parliament within 5 sitting days of the House; and
- (b) the forwarding of a copy of the report, within 5 days of its receipt by the Minister, to the Parliamentary Librarian to form part of the Parliamentary Library's collection; and
- (c) the making of a copy of the report available for public inspection at the office of the Tribunal during its ordinary hours of business.

(4) Copies of the report are also to be made available for sale at the principal office of the Government Information Service during its ordinary hours of business.

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

**General conduct of investigations**

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

- (a) is to act with as little formality as possible; and

*Government Pricing Tribunal Act 1992 No. 39*

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- (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**

21. (1) The Tribunal is required to hold at least one hearing for the purposes of each investigation and may hold further hearings if it considers that it is necessary to do so.

(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 begin.

(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.

(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**

22. (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.

(4) Nothing in this section prevents the Tribunal from making documents given to the Tribunal under this section available for inspection by any person who the Tribunal considers has an interest in the matter unless the documents are exempt documents within the meaning of the Freedom of Information Act 1989.

**Offences**

23. (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.



*Government Pricing Tribunal Act 1992 No. 39*

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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 documents and proceedings**

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

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

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

(3) In this section:

“**Cabinet**” includes a committee of Cabinet or a subcommittee of such a committee;

“**Cabinet document**” means a document that is a restricted document by virtue of clause 1 of Part 1 of Schedule 1 to the Freedom of Information Act 1989.

**PART 5—MISCELLANEOUS****Act binds Crown**

25. 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.**

26. 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 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**

27. (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**

28. 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**

29. (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**

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

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*Government Pricing Tribunal Act 1992 No. 39*

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**SCHEDULE 1—GOVERNMENT AGENCIES FOR WHICH TRIBUNAL HAS  
STANDING REFERENCE**

(Sec. 11)

Electricity Commission

Sydney Electricity

Water Board

Hunter Water Corporation Limited

Water supply authorities constituted under the Water Supply Authorities Act 1987

County councils established for the supply of water or electricity

Administrator of the South-west Tablelands Water Supply

Administrator of the Fish River Water Supply

State Rail Authority

State Transit Authority

Roads and Traffic Authority

Department of Housing

**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.



*Government Pricing Tribunal Act 1992 No. 39*

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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 5 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; or
- (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.

*Government Pricing Tribunal Act 1992 No. 39*

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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; or
- (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.

*Government Pricing Tribunal Act 1992 No. 39*

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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 Act 1992 No. 39*

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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. 30)

**Defamation Act 1974 No. 18**

Insert in appropriate order:

**Matters arising under the Government Pricing Tribunal Act 1992**

17M. (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.

*Government Pricing Tribunal Act 1992 No. 39*

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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 1992 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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[*Minister's second reading speech made in—  
Legislative Assembly on 5 March 1992  
Legislative Council on 5 May 1992*]

