

[Act 1995 No 97]



New South Wales

Government Pricing Tribunal Amendment Bill 1995

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Government Pricing Tribunal Act 1992*:

- to give the Tribunal a wider investigative brief (as to industry matters in general)
- to give the Tribunal certain specialised functions in relation to access regimes under the Competition Principles Agreement (under which the States, Territories and Commonwealth have agreed to certain steps to promote competition, including the promotion of access to infrastructure facilities)
- to call the Tribunal the Independent Pricing and Regulatory Tribunal in order to reflect the changes to its functions
- to change the Tribunal's membership.

* Amended in Committee—see table at end of volume.

Access regimes are schemes under which parties can obtain access to services provided by means of infrastructure facilities (facilities such as railways, powerlines and pipelines):

- that the parties do not themselves own, control or operate
- the duplication of which by those parties would not be economically feasible
- that will allow those parties to provide or distribute goods or services.

However, access regimes do not impinge on the law of intellectual property (for example, patent law and copyright law).

Outline of provisions

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

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

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the *Government Pricing Tribunal Act 1992*.

Clause 4 is a formal provision that gives effect to the Schedule that consequentially amends the *Statutory and Other Offices Remuneration Act 1975*.

Name and structure of Tribunal

Schedule 1 [1] amends the long title of the Act to reflect the proposed changes to the name and functions of the Tribunal.

Schedule 1 [2], [4], [5] and [6] amend sections 1,3 (definition of *Tribunal*), Part 2 (heading) and section 5 to reflect the change in the name of the Tribunal.

Schedule 1 [7] replaces section 6 (and **Schedule 1 [24]–[28]** amend Schedule 2 to the Act) to change the structure of the Tribunal, so that it will consist of 3 permanent members and any number of temporary members (all appointed by the Minister) and to broaden the expertise that may be represented by that membership. **Schedule 1 [23]** amends Schedule 2 to the Act to provide for an acting Chairperson to be appointed.

Schedule 2 consequentially amends the list of public offices in Schedule 2 to the *Statutory and Other Offices Remuneration Act 1975*.

Functions of Tribunal

Schedule 1 [8] replaces section 9 to broaden the scope of the arrangements that the Tribunal may make with other bodies in relation to its functions. For example, the proposed provision will permit the Tribunal not only to engage consultants but also to act as a consultant to other bodies. Other arrangements will also be encompassed. The Tribunal will be required to ensure that it does not let its acting for other bodies interfere with the exercise of its functions. The Tribunal will be able to charge on a commercial basis when it acts for other bodies.

Schedule 1 [9]–[12] amend Part 3 to extend the functions of the Tribunal, leaving the existing (comparatively narrow) price-determining function unchanged. They also make consequential amendments. The new functions are:

- (a) the investigation of industry matters in their widest sense, including pricing, competition and the preparation of guidelines on access regimes: proposed section 12A,
- (b) providing advice on proposed access agreements under public infrastructure access regimes: proposed section 12B,
- (c) the registration of access agreements under public infrastructure access regimes: proposed sections 12C and 12D.

Schedule 1 [3] amends section 3 to insert definitions of *access regime*, *Competition Principles Agreement* and *public infrastructure access regime*.

Schedule 1 [13]–[15] amend sections 14A and 15 to require the Tribunal to take into account the promotion of competition, demand management, social impact, and quality standards when the Tribunal exercises its existing (price-determining) functions and to record its consideration of those matters in its report.

Schedule 1 [16] amends section 18 to require government agencies to include reports on the implementation of previous Tribunal determinations and recommendations affecting the agencies when the agencies make later submissions to the Tribunal on similar matters.

Schedule 1 [17]–[19] amend sections 21 and 22, and insert proposed section 22A, to set out more clearly the powers of the Tribunal to require advance notice of submissions and to allow interested persons to see those submissions and other materials given to the Tribunal.

Schedule 1 [20] inserts proposed Part 4A to provide for the arbitration of access regime disputes (defined in proposed section 24A) that involve access to infrastructure facilities owned, controlled or operated by the public sector. The *Commercial Arbitration Act 1984* largely applies to such an arbitration (proposed section 24A (2)). The Tribunal may appoint arbitrators or itself act as arbitrator in such situations (proposed section 24B). Special provisions as to the powers and procedure of arbitrators are set out in proposed sections 24B and 24C, and the duty of arbitration parties to give effect to the determination of an arbitrator is stated in proposed section 24D. An arbitrator may terminate an arbitration that is vexatious or trivial (proposed section 24E).

Schedule 1 [21] amends section 29 (Regulations) to enable regulations to be made about fees, the procedure of the Tribunal and arbitration under proposed Part 4A.

Savings and transitional

Schedule 1 [22] and **[29]** insert savings and transitional provisions as a consequence of the above amendments.