

[Act 2000 No 60]



New South Wales

Independent Pricing and Regulatory Tribunal and Other Legislation Amendment Bill 2000

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to confer on the Independent Pricing and Regulatory Tribunal (the *Tribunal*) certain regulatory functions relating to electricity, gas and urban water utilities, and
- (b) to establish a complaints mechanism to deal with allegations of failures on the part of public authorities that are public trading agencies to comply with competitive neutrality principles in relation to their public trading activities, and
- (c) to make further provisions concerning the Tribunal's pricing determinations,

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

- and to enable the Tribunal to monitor compliance with pricing determinations,
and
- (d) to make other provisions of a minor, consequential or ancillary nature.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to Acts as set out in the Schedules to the proposed Act.

Regulation of utilities—Schedule 1

Schedule 1 makes a series of amendments that confer regulatory functions on the Tribunal in relation to electricity distributors, electricity retail suppliers, gas distributors, gas suppliers, the Hunter Water Corporation, the Sydney Water Corporation and the Sydney Catchment Authority.

These functions include:

- (a) the role of making or giving recommendations or advice to Ministers in connection with the grant, variation, transfer or cancellation of utilities' operating licences, licences or authorisations, and
- (b) monitoring and reporting on compliance with such instruments, and
- (c) imposing or recommending the imposition of penalties for contraventions of such instruments, and
- (d) licence auditing functions with respect to electricity and urban water utilities.

Minor, consequential and associated amendments are included. The more significant amendments are described below.

Utilities Licence Auditing Advisory Committee—Schedule 1.1 [1], [2]

A Utilities Licence Auditing Advisory Committee is proposed to be established under the *Independent Pricing and Regulatory Tribunal Act 1992*. Its function is to furnish advice to the Tribunal in connection with audits carried out under the licence auditing functions of the Tribunal. Its constitution is similar to that of the Sydney Water Corporation Licence Regulator. See sections 24FD and 24FE and Schedule 3A as proposed to be inserted in that Act.

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Recommendations and advice—Schedule 1.1 [1]

A role of the Tribunal under its regulatory functions is that of making recommendations or giving advice to relevant Ministers. The Bill provides for protocols to be established regarding the making or giving of any such recommendations or advice. See section 24FA as proposed to be inserted in the *Independent Pricing and Regulatory Tribunal Act 1992*.

Directions as to government policy—Schedule 1.1 [1]

When exercising its regulatory functions (but not its licence auditing functions), the Tribunal is obliged to comply with a specific direction of the relevant Minister or the Premier as to certified government policy. See section 24FB as proposed to be inserted in the *Independent Pricing and Regulatory Tribunal Act 1992*.

Imposition of penalties by Tribunal—Schedule 1.2 [8], [13]–[16], 1.3 [2]–[7], [10]–[15], 1.4 [2], 1.5 [2], 1.6 [5]

The Tribunal is authorised to impose monetary penalties not exceeding \$10,000 for contraventions of operating licences, licences and authorisations. Certain procedures and restrictions are established, and such penalties may be the subject of review by the Administrative Decisions Tribunal. Existing punitive powers are not affected by the Tribunal's new powers.

Licence Compliance Advisory Board—Schedule 1.2 [2]–[5], [7], [12]

The Licence Compliance Advisory Board established under the *Electricity Supply Act 1995* is proposed to be abolished. Its role under that Act is to be subsumed by the Tribunal.

Sydney Water Corporation Licence Regulator—Schedule 1.5 [4]–[11], [13], 1.6 [1], [4], [7]–[12]

The Sydney Water Corporation Licence Regulator established under the *Sydney Water Act 1994* is proposed to be abolished. Its role under that Act and the *Sydney Water Catchment Management Act 1998* is to be subsumed by the Tribunal.

Consumer matters under the Electricity Supply Act 1995 and the Gas Supply Act 1996—Schedule 1.2 [9], 1.3 [18]

Regulations regarding electricity customer consultative groups and standard form contracts will require consultation with the Minister for Fair Trading and the Tribunal before being made.

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Regulations regarding gas standard form contracts will require consultation with the Tribunal before being made. This requirement is additional to the requirement for consultation with the Minister for Fair Trading, as proposed by Schedule 3.2 [5].

Competitive neutrality—Schedule 2

The Competition Principles Agreement was made on 11 April 1995 by the Commonwealth, the Territories and the States. It requires, among other things, all government agencies undertaking significant business activities in markets to act in a competitively neutral way. An actual or potential competitor of a government business may wish to make a complaint if it perceives that it is being adversely affected or being denied a market opportunity because of a “government business” net competitive advantage resulting solely from its public sector ownership.

The Bill establishes a dual mechanism for dealing with competitive neutrality complaints against public trading agencies, involving the Tribunal and the State Contracts Control Board (set up under the *Public Sector Management Act 1988*). The Board will investigate complaints that a public authority has failed to comply with competitive neutrality principles in relation to tender bids made by the authority in response to an invitation for tenders. The Tribunal will deal with other competitive neutrality complaints. Complaints involving local councils and other local authorities will be dealt with by the Department of Local Government under other arrangements, except where the complaint also involves other public trading agencies.

Schedule 2.1 amends the *Independent Pricing and Regulatory Tribunal Act 1992*, and Schedule 2.2 amends the *Public Sector Management Act 1988*, to give effect to the scheme described above. Schedule 2.3 amends the *Freedom of Information Act 1989* to provide that the Tribunal and the Board are exempt bodies in connection with their complaint handling, investigative and reporting functions in relation to competitive neutrality.

Miscellaneous amendments—Schedule 3

Schedule 3 contains a number of miscellaneous amendments. They are described below.

Tribunal not subject to ministerial control—Schedule 3.1 [3]

Section 7 of the *Independent Pricing and Regulatory Tribunal Act 1992* is amended to make it clear that the Tribunal is not subject to the control or direction of any Minister, except where this is provided for by legislation.

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Delegation by Tribunal—Schedule 3.1 [5], [6]

Section 10 (2) of the *Independent Pricing and Regulatory Tribunal Act 1992* is amended to prevent the delegation of the Tribunal's function of making determinations and recommendations under any other Act (as well as that Act) to a committee that includes persons who are not members of the Tribunal.

Section 10 (3) is inserted into that Act to permit the Tribunal to delegate functions to officers of the Tribunal, other than functions of making or giving determinations, recommendations, advice or reports under any Act.

General contents of price determinations—Schedule 3.1 [13]

Section 13A of the *Independent Pricing and Regulatory Tribunal Act 1992* is replaced. Under the new section, the Tribunal will be able to make a "mixed" price determination by adopting both the mechanism of fixing the maximum price for a part or parts of a government monopoly service and the mechanism of setting the methodology for fixing the maximum price for another part or parts of the service, as well as by adopting either mechanism. The section continues the current preference for the direct fixing of the maximum price.

Revenue caps in price determinations—Schedule 3.1 [14]

Section 14A of the *Independent Pricing and Regulatory Tribunal Act 1992* is amended to make it clear that the Tribunal may make a price determination by reference to maximum revenue or to a maximum rate of increase or a minimum rate of decrease in maximum revenue.

Passing through of efficient cost of complying with a government directive—Schedule 3.1 [15]

Section 16A is proposed to be inserted in the *Independent Pricing and Regulatory Tribunal Act 1992* to enable the portfolio Minister for a government agency to direct the Tribunal to include in a price determination applicable to the agency an amount or factor that represents the efficient cost of complying with a government directive.

Monitoring of compliance with price determinations—Schedule 3.1 [24]

A new Part 3A is proposed to be inserted in the *Independent Pricing and Regulatory Tribunal Act 1992* to enable the Tribunal to monitor and report on the level of compliance by government agencies with applicable price determinations of the pricing for government monopoly services. Agencies will be able to be required to give information, documents and evidence to the Tribunal.

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Personal liability—Schedule 3.1 [26]

Section 26 of the *Independent Pricing and Regulatory Tribunal Act 1992* is replaced to make amendments by way of statute law revision.

Consumer matters under the Gas Supply Act 1996—Schedule 3.2 [4]–[6], 3.3

Proposed section 83A of the *Gas Supply Act 1996* gathers together regulation-making powers concerning the design, sale and safe use of gas appliances and associated matters. See Schedule 3.2 [6] (which inserts the new section), Schedule 3.2 [4] (which contains some current regulation-making powers being transferred to the new section), and Schedule 3.3 (which contains uncommenced regulation-making powers being transferred to the new section). It is proposed that the administration of the new section will be allocated to the Minister for Fair Trading.

Schedule 3.2 [5] inserts a provision requiring any proposed regulations relating to standard form contracts, the form and content of gas bills, debt collection procedures relating to unpaid gas bills, standards of service to gas customers and gas customer councils to be the subject of consultation with the Minister for Fair Trading.

Term for which operating licence for Hunter Water Corporation can be renewed—Schedule 3.4

Section 15 of the *Hunter Water Act 1991* is amended to increase from 3 to 5 years the maximum term for which the operating licence for the Hunter Water Corporation can be renewed on any one occasion. This will bring the Hunter Water Corporation into line with the Sydney Water Corporation and the Sydney Catchment Authority in this respect.

Savings and transitional provisions—Schedule 3.1 [27], [28]

Schedule 4 to the *Independent Pricing and Regulatory Tribunal Act 1992* is amended to enact savings and transitional provisions and to enable regulations to be made of a savings or transitional nature.

Arrangement of the provisions of the Independent Pricing and Regulatory Tribunal Act 1992—Schedule 3.1 [1], [4], [7]–[12], [16]–[23], [25]

With the proposed insertion of new provisions into the *Independent Pricing and Regulatory Tribunal Act 1992*, the opportunity has been taken to insert more division headings and to re-arrange some of its provisions. The overall structure of the amended Act would be as follows:

Part 1 Preliminary

Part 2 Tribunal

Part 3 Price determinations and other functions

Division 1 Pricing: investigations and reports

Division 2 Industry and other matters: investigations and reports

Division 3 Access regimes

Division 4 Investigations and reports: general

Division 5 Price determinations

Division 6 Publication of reports

Division 7 Investigations

Part 3A Price determinations: monitoring

Part 4A Access regimes: arbitration of disputes

Part 4B Regulation of utilities

Division 1 Regulatory functions

Division 2 Licence auditing functions

Part 4C Competitive neutrality

Division 1 Preliminary

Division 2 Complaints

Division 3 Investigations

Part 5 Miscellaneous

Schedules