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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PRICES SURVEILLANCE BILL 1983

EXPLANATORY MEMORANDUM

(Circulated by the Authority of the
Treasurer, the Hon P.J. Keating, M.P.)

OUTLINE

The purpose of the Bill is to give effect to the Government's commitment to establish a Prices Surveillance Authority as part of the Prices and Incomes Accord.

The Bill provides a capacity for price surveillance and inquiry to be exercised selectively, at the discretion of the Minister. Declared companies and Commonwealth authorities are required by the Bill to give prior notice to the Authority before increasing the prices of notified goods or services and to wait a statutory period before implementing the increase. The Authority, at the direction of the Minister or with his approval, may inquire into prices charged by any person subject to the Act and is able to conduct general price inquiries not necessarily tied to the justification of prices.

Penalties apply for failure to observe the notification procedures, or for increasing prices during the course of an inquiry without approval from the Authority, but not for failure to comply with a finding of the Authority.

The Petroleum Products Pricing Act 1981 is repealed by this Act.

NOTES ON CLAUSES

PART I - PRELIMINARY

- Clause 1 Short title.
- Clause 2 Commencement date to be fixed by Proclamation.
- Clause 3 Defines a number of terms used in the Bill. The interpretation given to the terms "Commonwealth authority", "goods", "services", "price" and "supply" is intended to leave the ambit of the Act wide. Exports fall outside that ambit, as do supplies for which a price is not charged. Any other supply can be removed by regulation from the ambit of the Act.
- Clause 4 Defines the application of the Act which, broadly, extends to the supply of any goods or services by the corporate sector or by Commonwealth authorities but not by State, Northern Territory or Norfolk Island authorities.
- Clause 5 Defines the extent to which the Act binds the Crown.

PART II - CONSTITUTION OF PRICES SURVEILLANCE AUTHORITY

- Clause 6 Establishes the Prices Surveillance Authority which is to consist of a Chairman and 3 other members appointed by the Governor-General. Members may be appointed full-time or part-time.
- Clause 7 Members may be appointed for periods not exceeding 5 years but not beyond age 65.
- Clause 8 States the terms and conditions of appointment. Remuneration and allowance are to be determined by the Remuneration Tribunal. The Chairman has control over travel by the members.
- Clause 9 Provides for leave of absence to full-time members.
- Clause 10 Restricts outside employment by full-time members.
- Clause 11 Provides for acting appointments to the office of Chairman or member.
- Clause 12 Allows appointment of associate members for the duration of particular inquiries.

Clause 13 Provides for disclosure of pecuniary interests by the Chairman and members of the Authority. Members who have a conflict of interest in relation to notices given to the Authority under paragraph 22(2)(a), or in relation to inquiries to be held or being held, are not to exercise their powers unless they have informed the persons concerned of the interest. The report on such an inquiry must also disclose the interest.

Clause 14 Members and associate members may resign by writing to the Governor-General or the Minister respectively.

Clause 15 States the conditions under which appointments must be terminated or may be terminated.

Clause 16 Governs the procedures to apply at meetings of the Authority.

PART III - FUNCTIONS OF AUTHORITY

Clause 17 States the functions of the Authority, which are to consider price notices and to hold price inquiries and to report to the Minister on those inquiries. The Authority is to hold such inquiries as it is required by the Minister and

may, with the approval of the Minister, hold such other inquiries as it thinks fit. In exercising its powers and performing its functions the Authority is required, subject to any directions under Section 20, to have particular regard to:

- (a) the need to maintain investment and employment, including the influence of profitability on investment and employment;
- (b) the need to discourage a person who is in a position substantially to influence a market for goods or services from taking advantage of that power in setting prices; and
- (c) the need to discourage cost increases arising from increases in wages and changes in conditions of employment inconsistent with principles established by relevant industrial tribunals.

Clause 18 States the powers of the Minister in relation to inquiries. The Minister may require the Authority to hold an inquiry and may approve the holding of an inquiry, which can be into any matter specified in a notice. The relevant instrument is to specify the goods or services to be covered and whether the inquiry is to be held in relation to particular persons, in which case the instrument may specify the persons; if it does not, the Authority is to determine the persons and the Chairman is to notify the Minister accordingly. Sub-clause (4) empowers the Minister to direct the

Authority as to the holding of the inquiry or the matters to be taken into consideration.

Sub-clause (5) requires the Minister to specify the period in which the inquiry is to be completed and the report submitted, and requires the Authority to meet that timetable. Sub-clause (6) provides for an extension of time to be given to the Authority.

Clause 19 Requires the Authority to give reasonable notice in the Gazette and in the Press of its inquiries and, where the inquiry is to be held in relation to particular persons, notice is to be given to the persons. Where an extension of time is given to the Authority for completion of an inquiry in relation to particular persons, notice of that extension is to be given to the persons involved.

Clause 20 Empowers the Minister to direct the Authority to give special consideration to particular matters in exercising its powers and performing its functions, and requires the Authority to comply with such a direction. The purpose of this provision is to ensure that the operations of the Authority remain within the framework of Government policy.

Clause 21 This clause provides for the relevant declarations to be made which activate the notification procedures in Clause 22. The clause enables price surveillance to be exercised selectively at the discretion of the Minister or by the Authority with the approval of the Minister.

The exemption provision in clause 21 is to assist in reducing the administrative cost of the notification procedures by enabling minor categories of supply which would otherwise be caught up within a class of notified goods or services to be exempted from the notification requirements.

Clause 22 This clause is central to the operation of the Act and sets out the notification requirements which apply to declared persons. A penalty of \$10,000 may be incurred for failure to comply with those requirements. The circumstances in which prices must be notified to the Authority by a declared person supplying notified goods or services are where that person proposes to:

- (a) increase prices in a locality beyond the highest price previously charged in that locality;
- (b) supply a new locality at a price higher than previously charged elsewhere in Australia; or

- (c) supply particular goods or services for the first time in Australia on the proposed terms and conditions.

The requirements to be met before the goods or services can be supplied on the proposed basis are that:

- (a) the person has given a notice to the Authority stating the proposed prices, terms and conditions of supply;
- (b) either -
 - (i) the prescribed period has expired;
 - (ii) the Authority has notified the person that it has no objection to the proposed basis of supply; or
 - (iii) the Authority has served a notice on the person nominating a lower price, and the person has within 7 days given a notice to the Authority agreeing not to exceed that lower price.
- (c) the terms and conditions of supply are the same as or substantially similar to the proposed terms; and

- (d) the price charged does not exceed the proposed price, or the lower price nominated by the Authority where the person has agreed as in (iii) to accept that price;

Sub-clause (3) releases exempt supplies from the notification requirements.

Sub-clause (4) entitles a person to substitute a lower price for one originally proposed in a notice to the Authority.

Sub-clause (5) defines the prescribed period for the purpose of Section 22 as being 21 days subject to sub-sections (6) and (7).

Sub-clause (6) enables the prescribed period to be extended beyond 21 days with the consent of the notifying person.

Sub-clause (7) provides that, where the Authority has served a notice on the person under sub-paragraph 22(2)(b)(iii), ie. a notice nominating a price lower than proposed by the person, the prescribed period is increased by 14 days beyond the normal 21 days or such longer period as may have been agreed with the person.

Clause 23 Requires the Authority to keep a register of, and to publish, the outcomes of its consideration of notices given under paragraph 22(2)(a). This provision makes appropriate details of the Authority's operations available to the public in cases where price notices are dealt with outside of public inquiry. The relevant details are to be entered in the register, which is to be available for inspection by the public, after the prescribed time for dealing with a notice has elapsed. The relevant Gazette notice is to be published within 3 months after the prescribed time has elapsed.

Clause 24 Prohibits persons taken to inquiry from increasing the prices of goods or services covered by the inquiry before the prescribed day, or from supplying a new locality at a price higher than they have previously charged elsewhere in Australia, or from supplying the goods or services on terms and conditions substantially different from those previously applying. A penalty of \$10,000 applies to a breach of this provision. The prescribed day is the fourteenth day after whichever is the earlier of the following:

- (a) the day on which the person receives a copy of the report; or

(b) the last day of the period within which the Authority is required to complete the inquiry and submit its report.

There is, however, provision in the following clause for interim price increases to be granted.

Clause 25 Empowers the Authority to grant interim price increases to persons taken to inquiry, on its own initiative or on the application of those persons. Sub-clause (2) allows persons taken to inquiry to charge the price permitted by the Authority, without breach of Section 24.

Clause 26 Requires the Authority to publish the reports on its inquiries and, in the case of inquiries held into prices charged by particular persons, to send a copy of the report to the person or persons covered by the inquiry on the same day as the Authority submits its report to the Minister.

Clause 27 Persons taken to inquiry must notify the Authority, within 14 days of receiving the report on the inquiry, the price they are supplying or propose to supply the goods or services covered by the inquiry. The Authority has 14 days in which to make the particulars available to the public. A penalty of \$1,000 applies to persons who fail to comply with this provision.

Clause 28 Provides for withdrawal of notices served on a person by the Authority.

Clause 29 Enables the Authority to delegate to a single member the task of dealing with notices given by persons under paragraph 22 (2)(a), but does not prevent the performance or exercise by the Authority of the function and powers delegated. This provision enables notices to be processed within the prescribed period particularly where the Authority may have difficulty in meeting as a body.

Clause 30 Provides for the Authority to sit in Divisions for the purpose of specified inquiries and reports. The Chairman has the power to constitute a Division and to revoke or amend the relevant determination. At a meeting of a Division constituted by 3 or more members, 2 members form a quorum.

Clause 31 Governs the procedure to be followed at inquiries. Subject to any direction given to the Authority by the Minister, inquiries are to be held in public. Sub-clause (2) provides, however, for confidential evidence to be taken in private at the Authority's discretion. Sub-clause (3) permits evidence to be given by witnesses in the

form of a written statement and sub-clause (4) permits the Authority to take written submissions at its discretion. Sub-sections (5) and (6) provide that, subject to the Act, a direction from the Minister or from the Chairman, the procedure at inquiries is within the discretion of the presiding member, and that the Authority is not bound by the rules of evidence.

Clause 32 Empowers the Authority to require persons to furnish information or produce documents relevant to:

- consideration of notices given under paragraph 22(2)(a);
- an inquiry that is being held in relation to the person; or
- the supply of goods or services by the person.

Sub-clause (2) provides a penalty of \$1,000 for failure to comply with a notice from the Authority under this section, or for knowingly furnishing false or misleading information. Sub-clause (3) provides that, subject to Section 33 and where information or documents obtained under this section are relevant to an inquiry that is being held, the Authority is to make the information or documents available to the public as it thinks fit.

- Clause 33 Provides for protection of confidential information given at inquiries or furnished in accordance with Section 32. Where a person claims that disclosure of particular information so given or furnished would damage the competitive position of the person, and the Authority accepts the claim and is not of the opinion that disclosure is necessary in the public interest, it is required to take all reasonable steps to ensure that the relevant information is not, without the consent of the person, disclosed other than to a member or associate member or to staff who receive the relevant information in the course of their duties.
- Clause 34 Empowers the Authority to take evidence on oath or affirmation, and empowers the Chairman to summons a person.
- Clause 35 Provides a penalty of \$1,000 for failure to answer a summons.
- Clause 36 Provides a penalty of \$1,000 for refusal or failure to be sworn or to answer a question as required, or to produce a document as required.
- Clause 37 Protects members in the performance of their duties and witnesses appearing at inquiries against civil or criminal proceedings.

Clause 38 Permits the Authority and its staff to inspect relevant documents and make copies or take extracts from them, and permits the Authority to retain documents for a reasonable period.

Clause 39 Provides for payment of allowances to witnesses.

PART IV - MISCELLANEOUS

Clause 40 Deals with prosecutions. These shall be instituted only in the Federal Court and only with the consent in writing of the Minister.

Clause 41 Staff of the Authority are to be employed under the Public Service Act 1922. The Chairman has the powers of a Permanent Head in relation to staff of the Authority, and has control over their use by members.

Clause 42 Permits the Authority to engage consultants.

Clause 43 Imposes secrecy on members and staff of the Authority, consultants engaged by it, and officers of the Department with respect to information or documents obtained in the course of their duties under or in connection with the Act, other than information or documents made available to the public by the Authority pursuant to the Act. A

penalty of \$1,000 applies to breach of this provision. Sub-clause (2) protects such information and documents from having to be produced to a court. The intention of this provision is to protect the security of information and documents furnished to the Authority by persons subject to the Act.

Clause 44 Requires the Authority to prepare and furnish to the Minister an annual report on its operations and the results of its operations. The report is to be tabled in Parliament.

Clause 45 Permits regulations to be made under the Act.

PART V - REPEAL OF PETROLEUM PRODUCTS PRICING ACT 1981

Clause 46 Defines terms used for the purpose of Part V.

Clause 47 Repeals the Petroleum Products Pricing Act 1981.

Clause 48 Requires a final report on the operations of the Petroleum Products Pricing Authority to be prepared and tabled in Parliament.

Clause 49 Provides for a transfer of funds from the Petroleum Products Pricing Authority to the Prices Surveillance Authority.

Clause 50 Requires records of the Petroleum Products Pricing Authority and the former Prices Justification Tribunal to be transferred to the Prices Surveillance Authority.

Clause 51 Continues the obligation of secrecy imposed by Section 36 of the Petroleum Products Pricing Act on persons to whom that section applied, but does not prohibit the transfer of records to the Authority as required by Section 50, or communication of information to members and staff of the Authority or to officers of the Department.

