

Office of the Regulator-General Bill

EXPLANATORY MEMORANDUM

The Bill provides for the establishment and general functions and powers of the Office of the Regulator-General, which will act as a general regulatory body for industries which are made subject to regulation in accordance with the Act. The Office will be established as a body corporate having objectives related to competitive market conduct and efficiency (Part 2). The Bill authorises the Office to undertake price regulation in regulated industries where the regulation is specified in other legislation or an Order in Council. The Office may also regulate quality standards, market conduct and administer licensing arrangements when authorised by relevant legislation or an Order in Council (Part 3). The Office may undertake inquiries for the purpose of its functions and a report of any inquiry will be required to be made available to the public (Part 4). Determinations by the Office may be enforced by an order of the Office, contravention of which is subject to a penalty, or which may be the subject of an application to the Supreme Court for an injunction. Appeals against determinations of the Office will be dealt with by a special appeal panel. Court proceedings are strictly limited (Part 5).

PART 1—PRELIMINARY

Clause 1 sets out the purpose of the Act.

Clause 2 provides for the commencement of the Act.

Clause 3 sets out the definitions for the Act.

Clause 4 provides for the Office to resolve any conflict between the objectives of this Act and objectives specified in other relevant legislation by performing its functions in the way it considers best achieves the objectives in the other relevant legislation, and states the intention that the Act should be interpreted and administered in accordance with government policy statements.

Clause 5 provides that the Act binds the Crown.

PART 2—OFFICE OF THE REGULATOR-GENERAL

Clause 6 establishes the Office of the Regulator-General as a body corporate.

Clause 7 sets out the general objectives of the Office.

Clause 8 sets out the general functions of the Office.

Clause 9 provides for the general powers of the Office.

Clause 10 enables statements of government policy, which must be implemented by the Office, to be declared by Order in Council.

Clause 11 provides for the Office not to be subject to direction or control of the Minister in making determinations or reports or conducting inquiries.

Clause 12 enables the Office to publish statements and guidelines as to its functions and powers.

Clause 13 constitutes the Office as the person appointed as Regulator-General.

Clause 14 prescribes the qualifications and terms of appointment of the Regulator-General by Order in Council.

Clause 15 prescribes the terms of tenure of office of the Regulator-General and makes provision for removal from office by the Parliament.

Clause 16 provides for an acting appointment as Regulator-General.

Clause 17 provides for Associate Regulators-General to be appointed by the Minister.

Clause 18 provides for tenure of office of an Associate Regulators-General and for the Minister to have power of removal at any time.

Clause 19 provides for the remuneration of the Regulator-General and Associate Regulators-General.

Clause 20 provides for the employment of staff of the Office under the **Public Sector Management Act 1992**.

Clause 21 authorises the Office to engage consultants.

Clause 22 enables the Office to delegate to an Associate Regulator-General or member of the staff any functions or powers other than powers relating to price regulation and the making of other determinations under Part 3.

Clause 23 requires the Regulator-General and any Associate Regulator-General to declare any pecuniary interest in a matter which he or she is considering (other than an interest arising out of the supply of goods or services on the same terms and conditions as are available to the public) and requires that where a declaration of pecuniary interest has been made no further part may be taken by that person in any decision unless the Minister otherwise directs.

PART 3—SPECIFIC POWERS

Clause 24 enables the Office to regulate prices for goods and services supplied in a regulated industry which are specified in relevant legislation or by Order in Council.

Clause 25 confers discretion on the Office in the manner of regulating prices after having regard to specific economic factors and any other factors the Office thinks relevant.

Clause 26 authorises the Office to exercise other powers relating to quality standards, licensing and market conduct where these are conferred either by other relevant legislation or by Order in Council.

Clause 27 requires the Office to include a statement of reasons to support any determination and requires the determination to be published in the Government Gazette (being the earliest date on which it can take effect) and a daily newspaper. A determination is binding on the regulated entities or on the regulated industry it specifies.

PART 4—ENQUIRIES AND REPORTS

Clause 28 authorises the Office to conduct an inquiry if it thinks it is necessary or desirable.

Clause 29 requires the Office to conduct an inquiry into any matter referred in writing by the Minister. Where the Minister makes a reference the Office must report to the Minister on the results of the inquiry.

Clause 30 requires the Office to publish notice of an inquiry in a daily newspaper and send the notice to the relevant regulated industries.

Clause 31 confers discretion on the Office as to the manner in which the inquiry is conducted and provides that the Office is not bound by the rules of evidence. The Office is required to hold at least one public hearing and may hold public seminars and establish working groups and task forces.

Clause 32 enables the Office to require a person to attend on summons to provide information and produce documents.

Clause 33 requires the Office to submit a copy of its final report on an inquiry to the Minister and requires the Minister to ensure that a copy of the report is available for public inspection within 30 days after he receives it.

Clause 34 enables the Office to deal with any other matter that it considers should be the subject of a report to the Minister either in the final report or a special report.

Clause 35 enables the Office to make orders for compliance where there is or is likely to be a contravention of a determination or conditions of a licence. The Office must not make a final order for compliance if an undertaking to comply has been received or would not be consistent with the objectives of the Act. The Office may make a provisional order without notice which has effect for 7 days but must not make a final order except on 28 days' notice and after giving the person concerned an opportunity to make a submission.

Clause 36 enables the Office to apply to the Supreme Court for an injunction or declaration in respect of a provisional or final order.

Clause 37 enables an aggrieved person to give notice of appeal against a determination on the ground of bias or misinterpretation of the facts within 7 days after the publication of the determination.

Clause 38 establishes an appeal panel for the hearing of an appeal constituted from a pool of persons appointed by the Governor in Council and requires the appeal to be heard and decided within 2 weeks of being lodged.

Clause 39 protects the Regulator-General and staff of the Office from personal liability for matters done in good faith in carrying out functions. Procedures will be prescribed in regulations.

Clause 40 excludes any right to bring proceedings in respect of a determination or order for compliance on grounds other than that there was no power to make the determination or order or that proper procedural requirements were not complied with.

Clause 41 specifies that it is the intention of section 32 (8) (which excludes civil proceedings for damage that may be suffered in respect of providing information or documents to an inquiry) and section 40 (which limits rights to bring proceedings relating to determinations and orders) to restrict the jurisdiction of the Supreme Court.

Clause 42 provides for service of documents on the Office.

Clause 43 provides power to make regulations for the purposes of the Act.