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12 November 2008

Dear Sir,

**2008 Review of Bus Fares: consideration of factors**

I refer to my initial letter, emailed on 29 October 2008, alerting you to the omission of the full ESD reference in the above review.

The key point is the omission by IPART of the legislative requirements - notably, how it is to maintain ESD, that is

“by appropriate pricing policies that take account of all the feasible options available to protect the environment”.

Our concerns are detailed in the attachment and summarized below.

It is our contention that IPART has:

- not communicated this part of its obligation in its fact sheet
- not disclosed how it referenced the relevant legislation in its request to the Ministry of Transport for a fare proposal
- misdirected stakeholders about preparing submissions to IPART
- insufficient material before it or the required state of mind to enable it to address appropriate pricing policies etc (including all feasible options available) before exercising its administrative power.

We also contend that the NSW Ministry of Transport has not addressed this part of its obligation. In relying on “consistency” as the rationale for a disproportionate increase in the cost of TravelPasses, we note that the Ministry fails to give any consideration to employer-based schemes for staff travelpasses by salary deduction - the current and potential uptake - in promoting environmentally sustainable commuting (and reducing traffic congestion). It has also failed to consider the public interest aspects of supporting employers offering these schemes - and State Transit’s plans to promote these schemes. While such schemes are small steps for ESD, they are nonetheless incremental contributions to reducing the reliance on motor vehicle travel to work - concerns of the SydneyCBD Mobility Forum NSW

Department of Premier & Cabinet, 31 October 2008 (cf *Massachusetts v EPA* 549 US 1 (2007) in Preston CJ NSW Land and Environment Court, *Climate Change litigation*, a paper presented to the Judicial Conference of Australia Colloquium., 11 October 2008).

We urge IPART to take notice of this omission in reaching its final decision for this review; in particular we recommend IPART to:

1. reject the NSW Ministry of Transport's proposal to reduce the discount on pre-paid tickets, TravelPasses and TravelTens for this review, the short term;
2. identify what would it mean to apply  
  
s14A(g) the need to maintain ecologically sustainable development (within the meaning of section 6 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,[our emphasis] over the coming year;
3. confer with interested stakeholders and research feasible options, as good practices on pricing policies (and ticketing) in other jurisdictions, that help to maintain ESD.

Yours sincerely,

Chloe Mason

For Action for Public Transport

### Attachment - Statement of concerns

1. First, the former Premier's approval to IPART to enter into an arrangement with the Ministry of Transport regarding the above review, referenced s 9(2) of the *Independent Pricing and Regulatory Tribunal Act 1992* ('the IPART Act').
2. It is our understanding that the IPART Act obliges IPART in setting the methodology for fixing prices to have regard to such matters as it considers appropriate and explicitly lists a number of matters (s14A), one of which is:  
  
14A(g) the need to maintain ecologically sustainable development (within the meaning of section 6 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,[our emphasis]
3. In making determinations and recommendations, it is also our understanding that IPART is to have regard to a number of factors, including the:

15(1) (f) the need to maintain ecologically sustainable development (within the meaning of section 6 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,[our emphasis]

4. Further, on reaching its determination or recommendation, the Act s15(2) also requires IPART to communicate its regard on the listed factors:

15 (2) In any report of a determination or recommendation made by the Tribunal under this Act, the Tribunal must indicate what regard it has had to the matters set out in subsection (1) in reaching that determination or recommendation.

5. The (former) Premier’s order for services from IPART referenced the *Passenger Transport Act 1990*. In making a determination of maximum fare pricing policy for regular bus services under that Act, IPART has obligations under s28J(5) as follows:
- (5) In making a determination under this section, the Tribunal is to consider the following matters:
    - (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 standards of service,
    - (c) the need for greater efficiency in the supply of services so as to reduce costs for the benefit of consumers and taxpayers,
    - (d) the need to maintain ecologically sustainable development (within the meaning of section 6 of the *Protection of the Environment Administration Act 1991*) by appropriate pricing policies that take account of all of the feasible options to protect the environment,
    - (e) the social impact of the determination,
    - (f) standards of quality, reliability and safety of the services concerned (whether those standards are specified by legislation, agreement or otherwise) and any suggested or actual changes to those standards,
    - (g) contractual arrangements prevailing in the industry,
    - (h) such other matters as the Tribunal considers relevant.
6. IPART published a “Fact Sheet” in which it described how it conducts the review and is “designed to help interested parties understand the process and put together submissions”. The Fact Sheet also explains that in making its decision IPART must consider a number of factors; the Fact Sheet states:

These factors are:

- the cost of providing the services
- the protection of consumers from abuses of monopoly power
- the need for greater efficiency in the supply of services
- the need to maintain ecologically sustainable development
- the social impact of the determination
- standards of quality, reliability and safety of the services
- contractual arrangements prevailing in the industry

□□ other matters IPART considers relevant.

The list above is a simplification of the provision in the IPART Act and the Passenger Transport Act. In particular, this simplified list has omitted the words following ESD, that are directed to how ESD is to be maintained.

7. The Fact Sheet explains that “as a starting point” it requested a fare proposal from the Ministry of Transport, and the Fact Sheet then summarizes the proposal. The Fact Sheet’s summary does not deal with each of the factors, so no mention is made as to whether the Ministry has addressed the provision on protection of the environment.
8. The Ministry of Transport’s proposal regarding *Metropolitan & Outer-Metropolitan Bus Services* does not address “appropriate pricing policies that take account of all of the feasible options to protect the environment” as a means of maintaining ESD. Its only reference to protection of the environment relates to procurement of new buses and management of the fleet.
9. Our concerns are:

9.1 that IPART has obscured its own obligations and thereby misdirected stakeholders about preparation of their submissions, and, quite possibly inadequately communicated the scope of the proposal IPART sought from the Ministry of Transport

9.2 that now that submissions are closed, IPART has no material before it addressing “appropriate pricing policies” and may continue to overlook this provision in the hearings and preparing its determination

9.3 that the Ministry’s proposal to disproportionately increase the cost of TravelPasses for the sake of “consistency” fails to consider the possibility that a policy to retain the level of discount could be a feasible option to protect the environment

9.4 that the consideration of the full ESD factor s28(J(5)(d) needs to be read as one of a number of factors under this Act, as well as IPART’s obligatory considerations under its own Act, s14A, for example

s14A(i) considerations of demand management (including levels of demand) and least cost planning.

9.5 the Ministry’s proposal implies that only by raising fares can bus priority measures on the road network be funded. While road-user charging may become appropriate, it is contrary to impose it on bus travelers whose travel is the most efficient use of the road asset. Secondly, other sources or revenue are collected for the purpose of improving infrastructure to encourage the use of public transport (*Parking Space Levy Act 1992, s3*); some people are concerned that these funds are being diverted to pay for car parking.

Overall, we hold the expectation that the power conferred upon IPART carries with it a concomitant of that power, the power to perform it.

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