

SOUTH AUSTRALIA

BUSINESS FRANCHISE (PETROLEUM PRODUCTS) ACT, 1979

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 March 1993.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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BUSINESS FRANCHISE (PETROLEUM PRODUCTS) ACT, 1979

being

Business Franchise (Petroleum Products) Act, 1979,
No. 57 of 1979 [Assented to 16 August 1979]¹

as amended by

Business Franchise (Petroleum Products) Act Amendment Act, 1983, No. 57 of 1983 [Assented to 25 August 1983]
Statutes Amendment (Taxation) Act, 1987, No. 2 of 1987 [Assented to 5 March 1987]
Business Franchise (Petroleum Products) Act Amendment Act, 1987, No. 65 of 1987 [Assented to 29 October 1987]²
Business Franchise (Petroleum Products) Act Amendment Act, 1989, No. 3 of 1989 [Assented to 9 March 1989]³
Business Franchise (Petroleum Products) (Fees) Amendment Act 1992 No. 58 of 1992 [Assented to 29 October 1992]⁴
Statutes Amendment (Expiation of Offences) Act 1992 No. 71 of 1992 [Assented to 19 November 1992]⁵

¹ Came into operation 16 August 1979: *Gaz.* 16 August 1979, p. 386.

² Came into operation 1 November 1987: s. 2.

³ Came into operation 1 October 1989: s. 2.

⁴ Came into operation 1 November 1992: s. 2.

⁵ Came into operation 1 March 1993: *Gaz.* 18 February 1993, p. 600.

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix I.

An Act to provide for the licensing of persons who sell certain petroleum products in South Australia; to amend the Motor Fuel Distribution Act, 1973-1974; and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Business Franchise (Petroleum Products) Act, 1979*.

Commencement

2. This Act shall come into operation on a day to be fixed by proclamation.

Arrangement of Act

3. This Act is arranged as follows:—

PART I—PRELIMINARY.

PART II—ADMINISTRATION.

DIVISION I—THE COMMISSIONER.

DIVISION II—THE APPEAL TRIBUNAL.

DIVISION III—INSPECTORS.

PART III—LICENCES.

PART IV—OBJECTIONS AND APPEALS.

PART V—MISCELLANEOUS.

Interpretation

4. (1) In this Act, unless the contrary intention appears—

"the appointed day" means the day declared by proclamation to be the appointed day for the purposes of this Act:

"Class A licence" means a Class A licence under this Act:

"Class B licence" means a Class B licence under this Act:

"the Commissioner" means the Commissioner of Stamps and includes a Deputy Commissioner of Stamps and any other person performing any of the duties or functions of the Commissioner of Stamps or Deputy Commissioner of Stamps:

"the Commissioner of Stamps" means the person for the time being holding or acting in the office of Commissioner of Stamps under the *Stamp Duties Act, 1923-1978*:

"Consumer Price Index" means the Consumer Price Index (All Groups Index for Adelaide):

"dealing" in relation to petroleum products includes processing, distributing, selling or purchasing petroleum products:

3.

"Deputy Commissioner of Stamps" means the person for the time being holding or acting in the office of Deputy Commissioner of Stamps under the *Stamp Duties Act, 1923-1978*:

"diesel fuel" means a petroleum or shale product used or capable of being used in propelling a diesel engined road vehicle but does not include any prescribed substance:

"Inspector" means an inspector appointed under this Act:

"licence" means a Class A licence or a Class B licence under this Act:

"licensee" means the holder for the time being of a licence:

"motor spirit" means petrol or other petroleum or shale spirit having a flash point of less than 23° Celsius when tested in an Abel Pensky closed test apparatus but does not include—

- (a) aviation gasoline;
 - (b) solvents;
 - (c) special boiling point spirits;
 - (d) liquified petroleum gas;
- or
- (e) any prescribed substance:

"petroleum products" means motor spirit or diesel fuel:

"premises" includes any place, vehicle, ship, vessel or aircraft:

"record" includes book, account, deed, writing, or document and any other source of information compiled, recorded or stored in written form, or in microfilm, or by electronic process, or in any other manner or by any other means:

"relevant period", in relation to a Class A licence means the calendar month that is the last calendar month but one preceding the calendar month during which the licence, if granted, would be in force:

"the Tribunal" means the Business Franchise (Petroleum) Appeal Tribunal established under this Act:

"unleaded petrol" means petrol that does not contain more than—

- (a) 0.013 grams of lead;

4.

or

(b) 0.0013 grams of phosphorus,

per litre:

"vending machine" means any machine, device or contrivance that is constructed to dispense petroleum products upon the insertion in the machine, device or contrivance of money, or a token or similar object:

"voting share" has the meaning ascribed thereto in subsection (1) of section 5 of the *Companies Act, 1962-1979*.

(2) Where pursuant to a sale and purchase made outside the State petroleum products are delivered within the State, that sale and purchase shall for the purposes of this Act be deemed to have been made within the State.

(3) This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State, to the intent that, where any provision of this Act, or the application of any provision of this Act to any person or circumstances, is held invalid, the remainder of this Act and the application of the provision to other persons or circumstances is not affected.

(4) The presence on any premises of a vending machine from which petroleum products may be obtained shall be deemed to constitute conclusive evidence that the occupier of the premises has sold petroleum products by means of the machine unless a licensee is authorized by his licence to sell petroleum products by means of the machine.

(5) This Act binds the Crown.

(6) The Governor may by proclamation declare a day specified in the proclamation to be the appointed day for the purposes of this Act.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

Division of the State into zones

4a. (1) Subject to subsection (2), the State is divided into zones as follows:

(a) zone 1 is that part of the mainland of the State that lies within a radius of 50 kilometres from the General Post Office at Adelaide;

(b) zone 2 is that part of the mainland of the State (excluding Yorke Peninsula) that lies outside zone 1 but within a radius of 100 kilometres from the General Post Office at Adelaide;

and

(c) zone 3 consists of all parts of the State outside zone 1 and zone 2.

5.

(2) The Governor may, if satisfied that it is necessary to do so in order to achieve equity between vendors of petroleum products, make a regulation varying the boundaries of a zone to such extent as may be necessary for that purpose.

Membership of a group of petroleum vendors

5. (1) For the purposes of this Act, a person is a member of a group of petroleum vendors if—

(a) that person is one of the persons who constitute a group for the purposes of this Act;

(b) one or more members of the group sells, or intends to sell, petroleum products;

and

(c) there is not in force a determination under subsection (2) or (3) of this section by the Commissioner that that person is not a member of the group.

(2) The Commissioner may by writing under his hand determine that a person who would, but for the determination, be a member of a group for the purposes of this Act is not a member of the group of petroleum vendors if he is satisfied that that person has continuously carried on the business of selling petroleum products independently of the group and will continue to carry on that business independently of the group and is not subject to control by any other member of the group.

(3) The Commissioner may by writing under his hand determine that a person who would, but for the determination, be a member of a group for the purposes of this Act, is not a member of any group for the purposes of this Act if he is satisfied that the person is not, and has no intention of, selling petroleum products.

(4) A determination made under subsection (2) or (3) of this section shall come into force on the making thereof and shall continue in force until it is revoked by the Commissioner and notice of the revocation has been served on the person in respect of whom the determination was made.

(5) Notice of a determination under subsection (2) of this section shall be given by the Commissioner to the person in respect of whom the determination was made and to all the members of the group concerned.

(6) Notice of a determination under subsection (3) of this section shall be published in the *Gazette*.

(7) The Commissioner may at any time revoke a determination made under subsection (2) or (3) of this section.

(8) Notice of the revocation of a determination made under subsection (2) or (3) of this section shall be given by the Commissioner to the person in respect of whom the determination was made and all members of the group in respect of which the determination was made.

Grouping of corporations

6. For the purposes of this Act, corporations constitute a group if they are related to each other within the meaning of the *Companies Act, 1962-1979*.

Grouping where employees used in another business

7. For the purposes of this Act, if—

(a) an employee of an employer, or two or more employees of an employer, performs or perform duties solely or mainly for or in connection with a business carried on by that employer and another person or other persons or by another person or other persons;

or

(b) an employer has, in respect of the employment of, or the performance of duties by, one or more of his employees, an agreement, arrangement or undertaking (whether formal or informal, whether expressed or implied and whether or not the agreement, arrangement or undertaking includes provisions in respect of the supply of goods or services or goods and services) with another person or other persons relating to a business carried on by that other person or those other persons, whether alone or together with another person or other persons,

that employer and—

(c) each such other person;

or

(d) both or all of those other persons,

constitute a group.

Grouping of commonly controlled businesses

8. (1) A reference in this section to two businesses does not include a reference to two businesses both of which are owned by the same person, not being a trustee, or by the trustee or trustees of a trust.

(2) For the purposes of this Act, where the same person has, or the same persons have together, a controlling interest, as referred to in subsection (3) of this section, in each of two businesses, the persons who carry on those businesses constitute a group.

(3) For the purposes of subsection (2) of this section, the same person has, or the same persons have together, a controlling interest in each of two businesses if that person has, or those persons have together, a controlling interest under any of the following paragraphs in one of the businesses and a controlling interest under the same or another of the following paragraphs in the other business:—

(a) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation, if the directors, or a majority of the directors, or one or more of the directors, being a director or directors who is or are entitled to exercise a majority in voting power at meetings of the directors of the corporation, are or is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person or of those persons acting together;

7.

- (b) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation that has a share capital, if that person or those persons acting together could (whether directly or indirectly) exercise, control the exercise of or substantially influence the exercise of, half or more than half of the voting power attached to voting shares issued by the corporation;
- (c) a person has, or persons have together, a controlling interest in a business, being a business carried on by a partnership, if that person or those persons—
 - (i) owns, or own together (whether beneficially or not) half or more than half of the capital of the partnership;or
 - (ii) is, or are together, entitled (whether beneficially or not) to half or more than half of the profits of the partnership;
- (d) a person has, or persons have together, a controlling interest in a business, being a business carried on under a trust, if that person (whether or not as the trustee of another trust) is the beneficiary, or those persons (whether or not as the trustees of another trust) are together the beneficiaries, in respect of half or more than half of the value of the interests in the trust firstmentioned in this paragraph;
- (e) a person has a controlling interest in a business if, whether or not he is a trustee of a trust, he is the sole owner of the business, or persons, being two or more trustees of a trust, have a controlling interest in a business if they are the owners of the business.

(4) Where a corporation has a controlling interest under subsection (3) of this section in a business, it shall be deemed to have a controlling interest in any other business in which another corporation that is related to it (within the meaning of the *Companies Act, 1962-1979*), has a controlling interest.

(5) Where—

- (a) a person has, or persons have together, a controlling interest under subsection (3) of this section in a business;

and

- (b) the person or persons who carry on that business has or have such a controlling interest in another business,

the person or persons referred to in paragraph (a) of this subsection shall be deemed to have a controlling interest in the business referred to in paragraph (b) of this subsection.

(6) Where—

- (a) a person is a beneficiary under a trust;

or

8.

(b) two or more persons together are beneficiaries under a trust,

in respect of half or more than half of the value of the interests in that trust and the trustee or trustees of that trust has or have under subsection (3) of this section a controlling interest in a business, that beneficiary or those beneficiaries shall, for the purposes of subsection (3) of this section, be deemed to have a controlling interest in that business.

Smaller groups subsumed into larger groups

9. (1) Notwithstanding any other provision of this Act (except subsection (2) of this section), where a person is, whether or not by virtue of this subsection, a member of two or more groups (each of which is in subsection (2) of this section referred to as a smaller group), all of the members of those groups constitute, for the purposes of this Act, one group.

(2) Except for the purpose of determining whether a group is constituted under subsection (1) of this section, a group which, but for this subsection, would be a smaller group ceases to be a group if its members are members of a group constituted under subsection (1) of this section.

Beneficiaries under discretionary trusts

10. A person who, as the result of the exercise of a power or discretion by the trustee of a discretionary trust or by any other person or by that trustee and any other person, may benefit under that trust shall be deemed, for the purposes of this Act, to be a beneficiary in respect of half or more than half of the value of the interests in that trust.

Application of other Acts not affected

11. The provisions of this Act are in addition to and do not derogate from the provisions of any other Act.

PART II

ADMINISTRATION

DIVISION I—THE COMMISSIONER

The Commissioner

12. (1) The Commissioner of Stamps shall have the general administration of this Act.

(2) The Commissioner of Stamps may, with the approval of the Minister controlling any Department of the Public Service of the State, on terms mutually arranged, make use of the services of an officer of that Department.

DIVISION II—THE APPEAL TRIBUNAL

Constitution of Appeal Tribunal

13. (1) The Governor may appoint a person to constitute the Business Franchise (Petroleum) Appeal Tribunal.

(2) The person appointed under subsection (1) of this section shall be appointed for a term of office of three years and on such terms and conditions as the Governor may determine and specifies in the instrument of his appointment and on the expiration of his term of office shall be eligible for re-appointment.

(3) The Governor may appoint a person to be the deputy of the person appointed under subsection (1) of this section and during any absence from or inability to perform the duties of his office on the part of that person the Tribunal shall be constituted of the deputy so appointed.

(4) A person appointed under subsection (1) or (3) of this section shall be entitled to receive such allowances and expenses as may from time to time be determined by the Governor.

The Registrar

14. (1) There shall be a Registrar of the Tribunal.

(2) The Registrar shall be appointed and shall hold office subject to, and in accordance with, the *Public Service Act, 1967-1978*.

(3) The office of Registrar of the Tribunal may be held in conjunction with any other office in the Public Service of the State.

DIVISION III—INSPECTORS

Inspectors

15. (1) The Commissioner may appoint any person to be an inspector for the purposes of this Act.

(2) An Inspector may hold his office in conjunction with any other office in the Public Service of the State.

(3) Each Inspector shall be furnished by the Commissioner with a certificate of his appointment.

Powers of an Inspector

16. (1) An Inspector may for the purposes of this Act at any time, with such assistants as he considers necessary—

- (a) enter and remain in any premises which, or which he reasonably suspects, are used for or in connection with the business of dealing with petroleum products or for the storage or custody of any record relating to the business of dealing with petroleum products;
- (ab) search the premises for records related to dealings with petroleum products;
- (b) request any person found in or on any premises which, or which he reasonably suspects, are used for or in connection with the business of dealing with petroleum products or for the storage or custody of any record relating to the business of dealing with petroleum products—
 - (i) to produce any record which relates to, or which the Inspector reasonably suspects relates to, the business of dealing with petroleum products and which at the time of the request is in the possession or under the control of that person;
 - (ii) to produce a statement, written in the English language, setting out the particulars contained in any such record that are not written or not written in the English language;

and

- (iii) to answer any question with respect to any such record or statement or the business of dealing with petroleum products;

or

- (c) inspect, or take copies of, or extracts or notes from, any record or statement referred to in this subsection.

(1a) An Inspector must not exercise force to break into premises or anything on premises unless authorized to do so by warrant issued by a magistrate.

(1b) A magistrate may issue such a warrant if satisfied that the warrant is reasonably required for the purposes of the administration or enforcement of this Act.

(2) A person shall not—

- (a) prevent or attempt to prevent an Inspector from exercising any power conferred on him by subsection (1) of this section;
- (b) hinder or obstruct any Inspector in the exercise of any such power;

or

- (c) fail to comply with a request of an Inspector under paragraph (b) of subsection (1) of this section.

Penalty: Two thousand dollars or imprisonment for three months, or both and in the case of any offence under paragraph (c) of this subsection an additional penalty not exceeding two hundred dollars for every day on which the offence continues.

(3) A person is not guilty of an offence under paragraph (c) of subsection (2) of this section by reason of his failure to answer any question if he proves to the satisfaction of the court that he did not know, and could not with reasonable diligence have ascertained, the answer to the question.

(4) An Inspector who intends to exercise any of the powers conferred on him by this section shall not refuse or fail, at the request of a person in relation to whom he intends to exercise those powers, to produce to that person his certificate of appointment.

Penalty: One hundred dollars.

(5) A person is not excused from answering any question if required to do so under subsection (1)(b) of this section on the ground that the answer might tend to incriminate him of an offence but the information furnished by him shall not be admissible against him in any criminal proceedings, except in proceedings for an offence under subsection (2) of this section.

PART III

LICENCES

Petroleum sellers to be licensed

17. (1) On or after the appointed day, a person shall not sell petroleum products (not being petroleum products purchased from the holder of a licence under a sale made in pursuance of that licence) unless he is the holder of a Class A licence.

Penalty: Two thousand dollars.

(2) On or after the appointed day, a person shall not sell petroleum products (being petroleum products purchased from the holder of a licence under a sale made in pursuance of that licence) unless he is the holder of a Class B licence.

Penalty: Two thousand dollars.

(3) Notwithstanding the foregoing provisions of this section, it shall be lawful—

(a) for the holder of a Class A licence to sell in pursuance of that licence petroleum products purchased from the holder of a Class A licence or a Class B licence;

and

(b) for the holder of a Class B licence to sell in pursuance of that licence petroleum products that were, before the appointed day, purchased from and delivered by a person who on that day becomes the holder of a Class A licence or a Class B licence.

(4) Nothing in this Act requires any person to hold a licence for the purpose of selling petroleum products manufactured by him to the holder of a Class A licence for the purposes of re-sale.

Fees

18. (1) The fees to be paid for licences under this Act shall be as follows:—

(a) for a Class A licence—\$50 plus—

(i) —

(A) 15.84 per cent of the value of motor spirit, other than unleaded petrol;

(B) 15.58 per cent of the value of unleaded petrol;

and

(C) 17.78 per cent of the value of diesel fuel,

sold by the applicant during the relevant period and destined for consumption in zone 1;

13.

- (ii) —
- (A) 11.78 per cent of the value of motor spirit, other than unleaded petrol;
 - (B) 11.52 per cent of the value of unleaded petrol;
- and
- (C) 13.82 per cent of the value of diesel fuel,
- sold by the applicant during the relevant period and destined for consumption in zone 2;

and

- (iii) —
- (A) 7.80 per cent of the value of motor spirit, other than unleaded petrol;
 - (B) 7.54 per cent of the value of unleaded petrol;
- and
- (C) 9.75 per cent of the value of diesel fuel,
- sold by the applicant during the relevant period and destined for consumption in zone 3;

(b) for a Class B licence—\$125.

(2) For the purposes of subsection (1)—

- (a) if the applicant for a Class A licence is, or was during the relevant period, a member of a group, all members of the group will be treated as applicants for the purpose of calculating the licence fee;
 - (b) petroleum products sold by an applicant will be taken to have been destined for consumption in zone 1 unless it is established to the Commissioner's satisfaction that they were destined for consumption in zone 2 or zone 3;
 - (c) petroleum products will be taken to be destined for consumption in zone 2 or zone 3 if and only if it is established to the Commissioner's satisfaction—
 - (i) that they were sold by retail, and delivered in pursuance of that sale, from a place of business in the relevant zone;
- or
- (ii) that they were delivered at a place of business within the relevant zone for the purpose of retail sale and delivery from that place of business;

- (d) the following amounts will be disregarded in calculating the fee for a Class A licence—
- (i) the value of petroleum products sold by the applicant (being at the time of the sale the holder of a Class A licence) to another holder of a Class A licence for the purpose of resale;
 - (ii) the value of petroleum products sold for delivery and consumption outside the State;
 - (iii) the value of diesel fuel sold for some purpose other than the propulsion of diesel engined road vehicles.

* * * * *

(4) For the purpose of determining the fee for a Class A licence, the value of motor spirit and diesel fuel sold during a particular relevant period will be calculated by reference to a value per litre fixed by or under this Act and in force as at the commencement of the relevant period.

(5) For the purpose of determining the fee for a Class A licence—

- (a) the value of motor spirit (including unleaded petrol) sold during the relevant period commencing on 1 September 1992 or a later relevant period will be taken to be 56.43 cents (indexed) per litre or such other value as is fixed by regulation under subsection (7);
- (b) the value of diesel fuel sold during the relevant period commencing on 1 September 1992 or a later relevant period will be taken to be 56.43 cents (indexed) per litre or such other value as is fixed by regulation under subsection (7).

(6) As from 1 June 1993 and 1 June of each subsequent year the amounts designated as indexed amounts in subsection (5) are to be adjusted by dividing the Consumer Price Index for the March quarter of that year by the Consumer Price Index for the March quarter 1991, multiplying the quotient by 55 cents, and rounding the product to two decimal places.

(7) The Governor may, by regulation—

- (a) fix a value per litre for motor spirit (including unleaded petrol);
- (b) fix a value per litre for diesel fuel,

(but a value fixed under this subsection must not exceed a value representing, in the Minister's opinion, a reasonable average wholesale price for motor spirit or diesel fuel (as the case requires) in the State as at the date of the regulation).

(8) A value fixed by regulation under subsection (7) takes effect as from the commencement of a relevant period specified in the regulation, but if the regulation is disallowed or revoked the value reverts, as from the commencement of the relevant period in which the disallowance or revocation occurs, to what it would have been if no regulation had been made.

(9) Where—

(a) an application is made on behalf of the members of a group of petroleum vendors for a Class A licence;

and

(b) any member of the group referred to in paragraph (a) of this subsection was, at any time during the relevant period, a member of another group of petroleum vendors (any one or more of the members of which is not a member of the group referred to in paragraph (a) of this subsection),

the petroleum products sold by members of the firstmentioned group during that relevant period shall, for the purposes of subsection (1)(a) of this section, be deemed to have included any petroleum products sold by any of the members of the other group during that period unless the applicant satisfies the Commissioner that a fee for a Class A licence has been paid to the Commissioner after having been assessed in respect of the sale of petroleum products by the members of the other group during that relevant period.

(10) Where an application is made for a Class A licence and the applicant or the group of which he is a member did not carry on the business of the holder of a Class A licence during the whole of the relevant period, the fee payable in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard to the petroleum products that in the opinion of the Commissioner would have been sold if the applicant or the group had been carrying on that business during the whole of that period.

(11) Where an application is made for a Class A licence and the applicant or the group of which he is a member carried on the business of the holder of a Class A licence during the whole of the relevant period, but the Commissioner is of the opinion that he is unable for any reason accurately to assess the fee payable under this section, the fee payable in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case.

(12) A fee payable in respect of a licence under this section is payable by the persons by or on behalf of whom the application is made.

(13) The Commissioner may make an appropriate reduction in the fee for a class B licence if the licence is to be in force for less than 12 months.

Adjustment of fee

19. (1) Where, in the opinion of the Commissioner, the fee assessed in respect of a Class A licence was assessed incorrectly, the Commissioner may at any time reassess the fee in accordance with this Act.

(2) Where on a reassessment of a fee under subsection (1) of this section the fee is reduced, the amount overpaid shall be refunded by the Commissioner.

(3) Where upon a reassessment of a fee under subsection (1) of this section, the amount of the fee is increased, the Commissioner may recover as a debt, in any court of competent jurisdiction, the amount by which the fee is increased from the person to whom the licence was granted.

(4) Where the licence was held by two or more persons, they shall be jointly and severally liable to pay any amount recoverable under subsection (3) of this section.

Particulars of dealings with petroleum products

20. (1) The Commissioner may, by instrument in writing, require—

- (a) a person who is carrying on, or has carried on, or is or was concerned in, a business of dealing with petroleum products;
- (b) a person who, as agent or employee of a person referred to in paragraph (a) of this subsection, has or has had duties or provides or has provided services in connection with a business so referred to,

to furnish to the Commissioner in writing, within such period as is specified in the instrument or such further period as the Commissioner may allow—

- (c) a statement of such particulars with respect to the petroleum products or any of them, as are so specified, not being particulars relating to any period after the date of the requirement;

and

- (d) such statutory declarations or certificates as the Commissioner thinks fit verifying the accuracy of the statement.

(2) A person shall not fail to comply with any requirement made of him under subsection (1) of this section.

Penalty: Two thousand five hundred dollars.

(3) A person is not guilty of an offence under subsection (2) of this section if the court hearing the charges is satisfied—

- (a) that the defendant could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates;

or

- (b) that the defendant complied with that requirement to the extent of his ability to do so.

Licences

21. (1) The Commissioner upon—

- (a) application made in a form approved by him for a licence;
- (b) receipt of the particulars, if any, required by him;

and

- (c) payment of the fee assessed by the Commissioner in accordance with this Act in the case of a Class A licence, or the fee fixed by this Act in the case of a Class B licence,

may grant or refuse to grant the licence to the applicant.

(2) Where an applicant for a Class A licence is a member of a group of petroleum vendors the application must be made on behalf of all members of the group.

(3) Where an application for a Class A licence is made on behalf of the members of a group, and a licence is granted upon that application, the names of all the members of the group shall be inserted in the licence and they shall be regarded as joint holders of the licence.

(4) The Commissioner shall, on the grant of a Class B licence, cause the premises which are to be used for, or in connection with, the business in respect of which the licence is granted to be specified in the licence and shall, upon receipt at any time of a request by the holder of the licence in a form approved by the Commissioner and payment of the prescribed fee (if any) alter the specification in accordance with the request.

(5) A holder of a Class B licence shall not carry on the business of selling petroleum products except at the premises for the time being specified in the licence pursuant to subsection (4) of this section.

Penalty: Two hundred and fifty dollars.

(6) A licence shall be in force on and from the date specified in the licence as the date on which the licence shall come into force.

(7) An application for a licence may not be made earlier than two months before the commencement of the period in respect of which the licence is applied for.

(8) Where the Commissioner refuses to grant a licence he shall, in writing, inform the applicant of the reasons for the refusal and refund to the applicant any fee paid by the applicant and referred to in subsection (1) of this section.

Term of licence

22. (1) A Class A licence shall expire, subject to this Act, at the end of the calendar month in which it came into force.

(2) A Class B licence shall expire, subject to this Act, on the day preceding the next anniversary of the appointed day occurring after the grant of the licence.

Surrender of licence

23. The holder of a Class B licence may, at any time, by notice in writing to the Commissioner, surrender his licence, and the licence shall thereupon cease to be in force.

Register of licences

24. (1) The Commissioner shall cause a register to be kept of the holders of Class A licences and the holders of Class B licences.

(2) The register shall be available at the office of the Commissioner for inspection by members of the public during ordinary office hours.

Invoices, statements of accounts and receipts to be endorsed

25. (1) A holder of a Class A licence shall endorse on every invoice, statement of account and receipt issued by him for or in relation to the sale of petroleum products the words "Licensed petroleum wholesaler".

Penalty: Five hundred dollars.

(2) A person who is not the holder of a Class A licence shall not issue an invoice, statement of account or receipt for or in relation to the sale of petroleum products which is endorsed with the words "Licensed petroleum wholesaler" or words of similar effect.

Penalty: One thousand dollars.

(3) Subsection (1) of this section shall come into operation on the first day of July, 1980.

Records to be kept

26. (1) A person who carries on the business of dealing with petroleum products shall keep such accounts, records, books and documents as may be prescribed containing such particulars as may be prescribed relating to petroleum products and shall preserve each of those accounts, records, books and documents for a period of five years after the last entry was made in it.

Penalty: One thousand dollars.

Expiation fee: Division 8 fee.

(2) This section shall not apply so as to require the preservation of any accounts, records, books or documents—

(a) in respect of which the Commissioner has notified the person carrying on the business that preservation is not required;

or

(b) of a company which has gone into liquidation and which has been finally dissolved.

PART IV

OBJECTIONS AND APPEALS

Appeal

27. (1) Subject to this Act, an appeal to the Tribunal may be instituted by—

(a) an applicant for a licence against a refusal by the Commissioner to grant the licence under this Act;

or

(b) a licensee against the assessment or reassessment of a fee in respect of his licence.

(2) Subject to this Act, the procedure for the hearing and determination of an appeal shall be as determined by the Tribunal.

Appeals other than appeals against assessment

28. (1) An appeal against a refusal by the Commissioner to grant a licence must be instituted within one month of the refusal, but the Tribunal may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal should be so instituted.

(2) The Tribunal may, on the hearing of an appeal against a refusal to grant a licence, do one or more of the following, according to the nature of the case—

(a) affirm the decision appealed against, or quash the decision and substitute any decision that could have been made by the Commissioner in the first instance;

(b) remit the subject matter of the appeal to the Commissioner for further consideration;

(c) make any further or other order as to any other matter that the case requires.

Objection to and appeal against assessment or reassessment

29. (1) A person who is liable to pay a fee assessed or reassessed under this Act may, if he believes the fee to be excessive, object to the Commissioner against the assessment or reassessment on the ground that it was not properly made in accordance with this Act.

(2) The Commissioner shall, as soon as practicable, determine the objection and serve on the objector notice of his determination.

(3) If the objector is not satisfied with the determination of the Commissioner on his objection or if within one month after the objection was lodged the Commissioner has not given a determination with respect to the objection, the objector may appeal to the Tribunal against the assessment or reassessment of the fee on the ground referred to in subsection (1) of this section.

(4) An appeal under subsection (3) of this section may be lodged—

(a) where the objector is not satisfied with the determination of the Commissioner on his objection, within one month after his being notified by the Commissioner of that determination;

or

- (b) where the Commissioner has not, within one month after the objection was lodged, given a determination with respect to the objection, within two months after the objection was lodged.

(5) The Tribunal shall hear and determine the appeal and assess the fee payable and the provisions of this Act apply to the Tribunal's assessment of that fee in the same way as they apply to the assessment of fees by the Commissioner.

(6) Where, on an objection or appeal made under this section, the Commissioner or the Tribunal upholds the objection or appeal, in whole or in part the Commissioner shall, where the whole of the fee as determined on the objection or appeal has been paid, refund any amount overpaid to the person who paid the whole of the fee as originally assessed.

Appeal to Local Court against decision of Tribunal

30. (1) Subject to this section, an appeal to a Local Court of full jurisdiction against any decision or order of the Tribunal may be instituted by any person who was a party to the proceedings in which the decision or order was made.

(2) An appeal under this section must be instituted within one month of the making of the decision or order appealed against, but the Local Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal should be so instituted.

(3) The Local Court may, on the hearing of an appeal under this section do one or more of the following, according to the nature of the case—

- (a) affirm the decision or order appealed against;
- (b) quash the decision or order appealed against and substitute any decision or order that could have been made by the Tribunal;
- (c) make any further or other order as to any other matter that the case requires.

(4) No appeal shall lie against a decision or order of the Local Court.

PART V

MISCELLANEOUS

Manner in which moneys collected under this Act are to be dealt with

31. (1) The moneys collected by way of licence fees under this Act shall be paid into the General Revenue of the State.

(2) The Treasurer shall, out of the moneys referred to in subsection (1), make monthly contributions to the Highways Fund.

(3) This section is sufficient authority for the appropriation, from the General Revenue, of the contributions referred to in subsection (2).

(4) The contributions referred to in subsection (2) must be such as to amount in aggregate, for each financial year, to no less than the amount paid into the Highways Fund, out of moneys collected under this Act, in respect of the 1982-1983 financial year.

Secrecy

32. A person shall not divulge or communicate information acquired in, or in connection with, the administration of this Act, except—

- (a) with the consent of the person from whom the information was obtained;
 - (b) in connection with the administration of this Act;
 - (c) to—
 - (i) the Commonwealth Commissioner of Taxation;or
 - (ii) an officer of this or another State, or of a Territory, employed in the administration of laws relating to taxation;
 - (d) to the Commissioner for Corporate Affairs;
- or
- (e) for the purposes of legal proceedings under this Act.

Penalty: \$10 000.

False or misleading statements

33. (1) A person shall not—

- (a) make or deliver an application or other document under this Act;

or

- (b) make an answer whether orally or in writing to a question put to him pursuant to this Act by the Commissioner or the Tribunal,

that is to his knowledge false or misleading in a material particular.

Penalty: Five thousand dollars.

(2) A person shall not—

- (a) in furnishing any information;
- (b) in giving any notification;

or

- (c) in keeping any record,

pursuant to this Act, make or cause to be made any statement or representation that is to his knowledge false or misleading in a material particular.

Penalty: Five thousand dollars.

Additional assessment

34. (1) Where an applicant for a licence has made a false statement in or in relation to his application and the Commissioner believes that the false statement resulted in the fee paid for the licence being less than the fee that should have been paid, the Commissioner may make an assessment of the additional amount that, in his judgment, should have been paid.

(2) Where a person is assessed to pay an additional amount under subsection (1) of this section he shall pay the amount so assessed to the Commissioner within thirty days of the receipt of the assessment.

(3) The Commissioner may recover in any court of competent jurisdiction any amount payable under an assessment made in subsection (1) of this section as a debt due to the Crown.

Recovery of unpaid fees from unlicensed persons

35. (1) Where a person was required by this Act to hold a licence in respect of any period, but did not do so, the person shall pay to the Commissioner an amount equal to the licence fee that would have been payable if he had been licensed.

(2) The Commissioner may assess the amount payable under this section.

(3) Notice of the assessment under this section shall be served on the person against whom the assessment was made.

(4) Any amount assessed under this section may be recovered by the Commissioner, as a debt, in any court of competent jurisdiction.

(5) Proceedings may not be commenced under subsection (4) of this section until—

- (a) if the person does not object to the assessment—the expiration of one month after service of notice of the assessment under subsection (3) of this section;
 - (b) if the person objects to the assessment but does not appeal against the assessment—the expiration of the period during which an appeal could have been made;
- or
- (c) if the person appeals against the assessment—the appeal is determined.

(6) A certificate purporting to be signed by the Commissioner and stating that a specified amount is the amount assessed under this section in respect of a specified person is admissible in proceedings for the recovery of that amount and shall, in the absence of proof to the contrary, be proof of the assessment.

Evidence

36. In any proceedings for an offence against this Act an allegation in the complaint that—

- (a) a person is an Inspector;

or

- (b) a person named therein was or was not the holder of a licence at the time mentioned therein,

shall, in the absence of proof to the contrary, be deemed to be proved.

Summary procedure

37. (1) Proceedings in respect of offences under this Act shall be disposed of summarily.

(2) Proceedings for an offence against this Act may be commenced at any time within two years after the day on which the offence is alleged to have been committed.

Offences by bodies corporate

38. Where a person convicted of an offence against this Act is a body corporate, every director and the manager of that body corporate shall be guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless he proves that he could not, by the exercise of reasonable diligence, have prevented the commission of the offence by the body corporate.

Service of documents and notices

39. Any document to be delivered or any notice to be given to any person under this Act may be delivered or given by post.

Regulations

40. (1) The Governor may make such regulations as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1) of this section those regulations may—

(a) provide for and require the making of returns relating to sales, purchases, or stocks of, or dealings with, petroleum products;

and

(b) impose a penalty not exceeding two hundred dollars for a breach of a regulation.

Amendment of Motor Fuel Distribution Act, 1973-1974

41. (1) The *Motor Fuel Distribution Act, 1973-1974*, is amended—

(a) by striking out paragraph (b) of subsection (2) of section 17a and inserting in lieu thereof the following paragraph:—

(b) any failure to make application, in accordance with this Act, for renewal of the licence in respect of the premises;

(b) by inserting in section 31 after the passage "application for" the passage "the grant or renewal of";

(c) by striking out paragraph (c) of section 31;

(d) by striking out paragraph (c) of subsection (1) of section 34 and inserting in lieu thereof the following paragraph:—

(c) the licence expires and is not renewed;

(e) by striking out section 35 and inserting in lieu thereof the following section:—

Renewal of licence

35. (1) A licence shall, subject to this Act, expire on the day being the anniversary of the appointed day next occurring after the grant of the licence or the last renewal of the licence, as the case may be.

(2) The Board shall grant a renewal of a licence upon application made in accordance with this Act before the expiry of the licence.

(3) The Board may grant a renewal of a licence notwithstanding that application for the renewal is made out of time.

(f) by striking out from subsection (3) of section 36 the passage "and be accompanied by the prescribed fee";

(g) by striking out paragraph (c) of section 41;

(h) by striking out from subsection (3) of section 45 the passage "and be accompanied by the prescribed fee";

and

25.

(i) by striking out paragraph (b) of subsection (2) of section 64.

(2) The *Motor Fuel Distribution Act, 1973-1974*, as amended by subsection (1) of this section, may be cited as the *Motor Fuel Distribution Act, 1973-1979*.

APPENDIX 1**LEGISLATIVE HISTORY**

(entries in bold type indicate amendments incorporated since the last reprint)

Transitional Provisions

*(Transitional provision from the Business Franchise (Petroleum Products)
(Fees) Amendment Act 1992, s. 5)*

5. (1) The amendments made by section 4(a) and (c) of this Act apply in relation to any Class A licence in force under the principal Act on or after 1 November 1992 (including any such licence issued before that date).

(2) The amendments made by section 4(b) of this Act apply in relation to any Class B licence that comes into force on or after 1 October 1993.

(3) Any regulation made under section 18(5) of the principal Act before the commencement of this Act is revoked.

Legislative History

Section 4:	definition of "Consumer Price Index" inserted by 58, 1992, s. 3(a) definition of "unleaded petrol" inserted by 58, 1992, s. 3(b)
Section 4a:	inserted by 65, 1987, s. 3
Section 15(1):	amended by 65, 1987, s. 4
Section 16(1):	amended by 65, 1987, s. 5(a), (b)
Section 16(1a) and (1b):	inserted by 65, 1987, s. 5(c)
Section 16(5):	amended by 65, 1987, s. 5(d)
Section 18(1):	amended by 57, 1983, s. 2; 65, 1987, s. 6(a); 3, 1989, s. 3; 58, 1992, s. 4(a), (b)
Section 18(2):	substituted by 65, 1987, s. 6(b)
Section 18(3):	repealed by 65, 1987, s. 6(b)
Section 18(4) :	substituted by 65, 1987, s. 6(c)
Section 18(5) - (8):	substituted by 65, 1987, s. 6(c); 58, 1992, s. 4(c)
Section 18(13):	inserted by 65, 1987, s. 6(d)
Section 26(1):	amended by 71, 1992, s. 3(1) (Sched.)
Section 31:	substituted by 57, 1983, s. 3
Section 32:	substituted by 2, 1987, s. 2

APPENDIX 2**DIVISIONAL PENALTIES AND EXPIATION FEES**

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28a of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

Note: This appendix is provided for convenience of reference only.