

SOUTH AUSTRALIA

MOTOR FUEL DISTRIBUTION ACT, 1973

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 October 1991.

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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MOTOR FUEL DISTRIBUTION ACT, 1973

being

Motor Fuel Distribution Act, 1973, No. 90 of 1973
[Assented to 13 December 1973]¹

as amended by

Motor Fuel Distribution Act Amendment Act, 1974, No. 64 of 1974 [Assented to 26 September 1974]
Business Franchise (Petroleum Products) Act, 1979, No. 57 of 1979 [Assented to 16 August 1979]²
Statutes Amendment (Administration of Courts and Tribunals) Act, 1981, No. 34 of 1981 [Assented to 19 March 1981]³
Motor Fuel Distribution Act Amendment Act, 1981, No. 96 of 1981 [Assented to 23 December 1981]

¹ Came into operation 1 July 1974: *Gaz.* 28 February 1974, p. 617.

² Came into operation 16 August 1979: *Gaz.* 16 August 1979, p. 386.

³ Came into operation 1 July 1981: *Gaz.* 25 June 1981, p. 1896.

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

An Act to regulate and control the distribution of motor fuel; to control the number and location of motor fuel retail outlets and for purposes incidental and related thereto 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 *Motor Fuel Distribution Act, 1973*.

Commencement

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

Division of Act

3. This Act is divided as follows:—

PART I—PRELIMINARY

PART II—ADMINISTRATION

DIVISION I—THE BOARD

DIVISION II—THE APPEAL TRIBUNAL

DIVISION III—INSPECTORS

PART III—LICENCES AND PERMITS, ETC.

DIVISION I—GENERAL

DIVISION II—LICENCES

DIVISION III—PERMITS

DIVISION IV—INVESTIGATION AND INQUIRY

PART IV—UNDESIRABLE ARRANGEMENTS

PART V—INDUSTRIAL PUMPS

PART VI—MISCELLANEOUS.

Interpretation

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

"holder" in relation to a prescribed interest, means the person in the name of whom that prescribed interest is recorded in the records of the Board pursuant to section 17a of this Act:

"Inspector" means an Inspector appointed under subsection (1) of section 24 of this Act and in office:

"legal practitioner" means a legal practitioner as defined for the purposes of the *Legal Practitioners Act, 1936-1972*:

"licence" means a licence granted under Division II of Part III of this Act:

"member", in relation to the Board, includes the person who is for the time being chairman of the Board and also includes any deputy of a member or deputy of the chairman of the Board while acting as such:

3.

"motor fuel" means—

(a) the substance commonly known as motor spirit;

and

(b) includes any other substance, capable of being used as fuel for an internal combustion engine or a compression ignition engine, for the time being prescribed as being motor fuel for the purposes of this Act:

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

"permit" means a permit granted under Division III of Part III of this Act:

"prescribed interest" in relation to premises means an interest in those premises recorded by the Board pursuant to section 17a of this Act as being a "prescribed interest":

"prescribed lessee" in relation to premises, means the lessee under a lease from the owner of those premises being a lease entered into before the commencement of the *Motor Fuel Distribution Act Amendment Act, 1974*, and includes the lessee under any renewal or extension of such a lease:

"retail sale" means a sale for the purposes of use or consumption and its correlatives and derivatives have a corresponding meaning:

"shop" means a shop as defined for the purposes of the *Industrial Code, 1967-1972*:

"the Appeal Tribunal" means the Motor Fuel Licensing Appeal Tribunal established under subsection (1) of section 20 of this Act:

"the Board" means the Motor Fuel Licensing Board established under subsection (1) of section 6 of this Act:

"the Secretary" means the secretary of the Board appointed under section 14 of this Act.

Application of certain Acts not affected

5. Nothing in this Act shall limit or restrict the application or effect of—

(a) the *Inflammable Liquids Act, 1961*;

or

(b) the *Industrial Code, 1967-1972*.

4.

PART II

ADMINISTRATION

DIVISION I—THE BOARD

The Board

6. (1) For the purposes of this Act, there shall be established a board by the name of the "Motor Fuel Licensing Board".

(2) The functions of the Board shall be—

- (a) to determine applications for the grant of licences or permits under this Act;
- (b) to determine applications under section 36 and section 45 of this Act;
- (c) to enquire into the conduct of any person engaged in or about the business undertaken from any premises in so far as that conduct touches on any matter or thing relating to the retail sale of motor fuel;
- (d) to examine any arrangement, as defined for the purposes of Part IV of this Act, that relates to the business carried on in the premises the subject of a licence or permit;

and

- (e) such other functions as are conferred or imposed on the Board by or under this Act,

and the Board shall have power to do all things necessary or incidental to the discharge of its functions.

Appointment and term of office of members of the Board

7. (1) The Board shall consist of three members appointed by the Governor.

(2) From amongst the members so appointed the Governor shall appoint one member to be the chairman of the Board.

(3) A member of the Board shall be appointed for such term of office, not exceeding five years, as the Governor determines and specifies in the instrument of his appointment and upon the expiration of his term of office a former member of the Board shall be eligible for re-appointment.

Deputy of member of the Board

8. (1) The Governor may, in relation to each member of the Board, appoint a person to be a deputy of that member and in the event of any incapacity or inability to act on the part of a member of the Board the deputy of that member so appointed may act in the place of that member and while so acting shall for all purposes be deemed to be a member of the Board.

(2) The deputy of the chairman of the Board shall while so acting in the place of the chairman for all purposes be deemed to be chairman of the Board.

(3) No act done by the deputy of a member or the deputy of the chairman shall in any proceedings be questioned on the ground that the occasion for that act had not arisen or had ceased.

Removal of member of the Board

9. (1) The Governor may remove a member of the Board from office for—

(a) mental or physical incapacity;

(b) neglect of duty;

or

(c) dishonourable conduct.

(2) The office of a member of the Board shall become vacant if—

(a) he dies;

(b) his term of office expires;

(c) he resigns by written notice addressed to the Minister;

or

(d) he is removed from office by the Governor pursuant to subsection (1) of this section.

(3) Upon the office of a member of the Board becoming vacant, a person shall be appointed in accordance with this Act, to the vacant office, but where the office of a member of the Board becomes vacant before the expiration of the term for which he was appointed, a person appointed in his place shall be appointed only for the balance of term of his predecessor.

Allowances and expenses

10. The members of the Board shall be entitled to receive such allowances and expenses as may, from time to time, be determined by the Governor.

Validity of acts of Board, etc.

11. An act or proceeding of the Board shall not be invalid by reason only of a vacancy in its membership or any defect in the appointment of a member.

Quorum, etc.

12. (1) Any two members of the Board shall constitute a quorum at any meeting of the Board and any duly convened meeting at which a quorum is present shall be competent to transact any business of the Board and shall have and may discharge all the powers, duties and functions of the Board.

(2) A decision carried by the majority of the votes cast by the members present at a meeting of the Board shall be a decision of the Board.

(3) The procedure for the calling of meetings of the Board and the arranging of hearings before the Board and for the conduct of business at such meetings or hearings shall, subject to this Act, be as determined by the Board.

Chairman to preside at meetings, etc.

13. (1) The chairman of the Board shall preside at all meetings of the Board at which he is present and in his absence the deputy of the chairman shall, if he is present, so preside.

(2) In the absence of the chairman of the Board and the deputy of the chairman from the Board the members of the Board present shall, from amongst their own number, elect a member to preside at that meeting.

(3) The chairman, deputy of the chairman or member elected to preside at the meeting shall, in the event of an equality of votes, in addition to a deliberative vote have a second or casting vote.

Secretary of the Board

14. (1) There shall be a Secretary of the Board who shall be appointed and shall hold office subject to and in accordance with the *Public Service Act, 1967-1972*.

(2) The office of the Secretary may be held in conjunction with any other office in the public service of the State.

Board may conduct hearings

15. (1) For the purpose of the exercise of its powers and the performance of its functions the Board may conduct hearings.

(2) Subject to this Act, the Board shall conduct a hearing for the purposes of—

(a) determining any application for the grant of a licence or permit under this Act, other than such an application under section 29 or section 39 of this Act;

(b) determining any application under section 36 or section 45 of this Act;

(c) an inquiry under section 48 of this Act;

and

(d) any other prescribed matter.

(3) Except as is provided by this section it shall not be necessary for the Board to conduct a hearing for the purposes of the exercise of its powers or the discharge of its functions but nothing in this subsection shall be construed as limiting or restricting the power of the Board to conduct a hearing where it considers it necessary or desirable in the public interest so to do.

Hearings before the Board

16. (1) The Board shall give or cause to be given to any person who is a party to proceedings the subject of a hearing before the Board reasonable notice of the time and place at which it intends to conduct that hearing, and shall afford any such person a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses, and to make submissions to the Board.

7.

(2) If a person to whom notice has been given pursuant to subsection (1) of this section does not attend at the time and place fixed by the notice, the Board may hear and determine the proceedings in his absence.

(3) Any party to proceedings the subject of a hearing before the Board shall be entitled to appear personally or by a legal practitioner.

(4) An Inspector or any party at a hearing before the Board, may, by leave of the Board, be represented before the Board by a person other than a legal practitioner.

(5) A person, other than a legal practitioner, shall not demand or receive any fee or reward for representing a party at a hearing before the Board.

Penalty: Five hundred dollars.

(6) An Inspector may appear at any hearing before the Board.

(7) Every hearing before the Board shall be held in public and at such place as to the Board seems convenient having regard to the nature of the matters to be determined but where the Board considers it to be in the interests of the parties and in the public interest it may order that a hearing or any part of a hearing shall be held in private.

(8) Any hearing before the Board may in the discretion of the Board be adjourned from time to time or from place to place.

Summons, etc.

17. (1) In the exercise of its powers and the performance of its functions under this Act the Board may—

- (a) by summons signed on behalf of the Board by a member of the Board, or, at the direction of the Board, by the Secretary, require the attendance before the Board of any person;
- (b) by summons signed on behalf of the Board by a member of the Board or, at the direction of the Board, by the Secretary, require the production of any books, papers or documents;
- (c) inspect any books, papers or documents produced before it, and retain them for such reasonable period as it thinks fit, and make copies of any of them, or of any of their contents;
- (d) require any person to make oath or affirmation that he will truly answer all questions put to him by the Board relating to any matter being inquired into by the Board (which oath or affirmation may be administered by any member of the Board or by the Secretary);

or

- (e) require any person appearing before the Board to answer any relevant questions put to him by any member of the Board, or by any other person appearing before the Board.

8.

(2) Subject to subsection (3) of this section, if any person—

- (a) who has been served with a summons to attend before the Board fails without reasonable excuse (proof of which shall lie upon him) to attend in obedience to the summons;
- (b) who has been served with a summons to produce any books, papers or documents, fails without reasonable excuse (proof of which shall lie upon him) to comply with the summons;
- (c) misbehaves himself before the Board, wilfully insults the Board or any member thereof, or interrupts the proceedings of the Board;

or

- (d) refuses to be sworn or to affirm, or to answer any relevant question, when required to do so by the Board,

he shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(3) A person shall not be obliged to answer a question put to him under this section if the answer to that question would tend to incriminate him, or to produce any books, papers or documents if their contents would tend to incriminate him.

(4) In the course of any hearing, the Board may—

- (a) receive in evidence any transcript of evidence in proceedings before a court and draw any conclusions of fact therefrom that it considers proper;

or

- (b) adopt, as in its discretion it considers proper, any findings, decision, or judgment of a court that may be relevant to the proceedings.

(5) In any hearing the Board shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms and, it shall not be bound by the rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

Prescribed interest

17a. (1) Where a person satisfies the Board in relation to any premises the subject of a licence or permit—

- (a) that he is the owner of any premises in respect of which a prescribed lessee is the holder of a licence or permit;
- (b) that he is the prescribed lessee in respect of any premises;

or

9.

- (c) that he has any interest in the premises arising under any lease, licence, agreement or arrangement entered into before the commencement of the *Motor Fuel Distribution Act Amendment Act, 1974*,

the Board shall cause that interest to be recorded in the name of that person as a prescribed interest in the records of the Board relating to those premises.

(2) The Secretary shall take such steps as are reasonably necessary to notify the holder of a prescribed interest in relation to premises of—

- (a) any notice in writing given to the Board pursuant to paragraph (a) of subsection (1) of section 34 of this Act in respect of those premises;
- (b) any failure to make application, in accordance with this Act, for renewal of the licence in respect of the premises;
- (c) any application to vary the licence pursuant to section 36 of this Act in respect of those premises;
- (d) any notice in writing given to the Board pursuant to paragraph (a) of subsection (1) of section 44 of this Act in respect of those premises;
- (e) any application to vary the permit pursuant to section 45 of this Act in respect of those premises;

or

- (f) any inquiry proposed to be undertaken pursuant to section 48 of this Act in relation to those premises.

Orders for costs

18. (1) The Board may, upon the determination of any matter, make such orders for costs as the Board considers just and reasonable.

(2) Where the Board makes an order for the payment of a fine or costs against a person the holder of a licence or permit under this Act, and the fine or costs is not, or are not, paid within the time fixed by the Board, the Board may suspend the licence or permit of that person until the fine or costs is or are paid, or for such period as the Board thinks fit.

Reasons for decision of Board

19. The Board shall upon application made to it by any party to proceedings at a hearing, within seven days after making any decision or order, give reason in writing for that decision or order to that party.

DIVISION II—THE APPEAL TRIBUNAL

Appeal Tribunal

20. (1) For the purposes of this Act there shall be established a tribunal by the name of the "Motor Fuel Licensing Appeal Tribunal".

(2) The Tribunal shall be constituted of a person who is a Judge as defined in the *Local and District Criminal Courts Act, 1926-1972*.

* * * * *

The Registrar

21. (1) There shall be a Registrar of the Tribunal who shall be appointed and shall hold office subject to and in accordance with the *Public Service Act, 1967-1972*.

(2) The office of the Registrar of the Tribunal may be held in conjunction with any other office in the public service of the State.

Appeal

22. (1) An appeal to the Appeal Tribunal may be had by—

- (a) an applicant whose application for a licence or permit under this Act has been refused by the Board, against that refusal;
- (b) an applicant whose application under section 36 or section 45 of this Act has been refused by the Board, against that refusal;
- (c) the holder of the permit against a determination of the Board referred to in paragraph (c) of subsection (1) of section 44 of this Act, in relation to that permit;
- (d) a person against whom costs have been awarded by the Board, against the award of those costs or any part of those costs;
- (e) a person against whom disciplinary action has been taken by the Board, against any act or decision of the Board in relation to the taking of that disciplinary action;

and

- (f) any prescribed person or person of a prescribed class against any prescribed decision or order of the Board or any decision or order of the Board of a prescribed class or kind.

(2) The appeal must be instituted within one month of the making of the decision or order appealed against, but the Appeal 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.

(3) The Appeal Tribunal may, on the hearing of the appeal, do one or more of the following, according to the nature of the case—

- (a) affirm, vary or quash the decision or order appealed against, or substitute, and make in addition, any decision or order that could have been made by the Board in the first instance;
- (b) remit the subject matter of the appeal to the Board for further hearing or consideration or for re-hearing;
- (c) make any further or other order as to costs or any other matter as the case requires.

(4) An order or decision of the Appeal Tribunal shall be final and without appeal.

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

When operation of order may be suspended

23. (1) Where an order has been made by the Board, and the Board, or the Appeal Tribunal, is satisfied that an appeal against the order has been instituted, it may suspend the operation of the order until the determination of the appeal.

(2) Where the Board has suspended the operation of an order under subsection (1) of this section, the Board may terminate the suspension, and where the Appeal Tribunal has suspended the operation of an order under subsection (1) of this section, the Appeal Tribunal may terminate the suspension.

DIVISION III—INSPECTORS

Inspectors

24. (1) The Governor 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 Minister with a certificate of his appointment.

Powers of Inspector

25. (1) An Inspector may at any time, with such assistants as he considers necessary, without any warrant other than this section—

(a) enter any premises for the purposes of ascertaining whether or not the provisions of this Act are being complied with;

(b) for that purpose, question any person he finds in or upon those premises;

and

(c) for that purpose, require the production of any book or document relating to any activity being carried on in those premises and may inspect and take copies of any such book or document.

(2) Where an Inspector puts a question to a person through an interpreter that question shall, for the purposes of this section, be deemed to have been put to that person by that Inspector and an answer to that question given by that person to that interpreter shall be deemed to have been given by that person to that Inspector.

(3) Subject to subsection (4) of this section, a person shall not without lawful excuse (proof of which shall lie upon him)—

(a) hinder or obstruct an Inspector in the exercise of any power conferred on him by this section;

12.

(b) refuse an Inspector entrance to any premises referred to in subsection (1) of this section;

(c) refuse or fail to answer truthfully any question put to him under subsection (1) of this section by an Inspector;

or

(d) fail to comply with a requirement made under subsection (1) of this section by an Inspector.

Penalty: Two hundred dollars.

(4) A person shall not be obliged to answer any question put to him by an Inspector unless he has first been informed by the Inspector that he is obliged to answer questions put to him pursuant to this Act and has further been so informed that he is not obliged to answer any such question if the answer to that question would tend to incriminate him.

(5) A person shall not be obliged to produce any book or document if the contents of that book or document would tend to incriminate him.

(6) 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 the certificate of appointment furnished him under subsection (3) of section 24 of this Act.

Penalty: Fifty dollars.

(7) In this section—

"premises" means any premises, place, vehicle, ship, vessel or aircraft the subject of, or proposed to be the subject of, a licence or permit and includes any other premises, place, vehicle, ship, vessel or aircraft entry upon which would, in the opinion of an Inspector, be reasonably likely to afford evidence as to whether or not the provisions of this Act are being complied with.

PART III

LICENCES AND PERMITS, ETC.

DIVISION I—GENERAL

Appointed day

26. (1) The Governor may by proclamation fix a day to be the appointed day for the purposes of this Part.

(2) In this Part, "the appointed day" means the day fixed by proclamation pursuant to subsection (1) of this section.

Prohibition of certain retail sales of motor fuel

27. (1) On or after the first day of January, 1975, a person shall not sell motor fuel by retail from any premises unless those premises are the subject of a licence or permit.

Penalty: Two hundred dollars.

Default Penalty: Twenty dollars.

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

(a) a sale by retail does not include such a sale of motor fuel—

(i) by or on behalf of a person to his employee or to a person who is engaged under a contract of service with that first mentioned person;

(ii) where a delivery in consequence of such a sale is in quantities of 200 litres or more;

or

(iii) of a prescribed class or kind of sales;

and

(b) a sale by means of a device commonly known as a "coin operated self service pump" shall be deemed to be a sale by retail by the owner of that device.

DIVISION II—LICENCES

Certain existing establishments may be licensed, etc.

28. (1) Any premises, being a shop to which this section applies, from which the business of selling motor fuel by retail to the public generally was carried on at any time during the month of December, 1972, may, subject to this Act, become the subject of a licence.

(2) This section applies to any shop the main or principal business of which was the selling of motor fuel by retail to the public generally where that business was not predominately the selling of motor fuel in quantities of 200 litres or more.

Grant of licence in respect of certain existing premises

29. (1) Where the owner of premises referred to in subsection (1) of section 28 of this Act makes application for the grant of a licence in respect of those premises before the expiration of the third month next following the appointed day and in the manner provided for by this Act, the Board, on being satisfied—

(a) that those premises are premises referred to in that subsection;

and

(b) that, at the time at which it received the application, those premises were a shop the main or principal business of which was the selling of motor fuel by retail to the public generally and that business was not predominately the selling of motor fuel in quantities of 200 litres or more and that business had been carried on continuously since the month of December, 1972,

shall grant to that owner a licence in respect of those premises.

(1a) Where a person satisfies the Board—

(a) that he is the prescribed lessee of premises referred to in subsection (1) of section 28 of this Act;

and

(b) the owner of those premises has failed to make application for the grant of a licence in respect of those premises before the expiration of the third month next following the appointed day,

then subsection (1) of this section shall apply and have effect in all respects as if—

(c) for the word "owner" wherever occurring in that subsection, there was substituted the passage "prescribed lessee";

and

(d) for the passage "third month" in that subsection there was substituted the passage "fifth month".

(2) In this section—

"owner" in relation to premises means the person who is the owner of those premises at the time the application referred to in subsection (1) of this section was made whether or not that person was the owner of those premises at any time during the month of December, 1972.

Grant of licence generally

30. (1) Subject to this Act, where the owner of premises to which this section applies makes application for the grant of a licence in respect of those premises in the manner provided for by this Act, the Board may grant to that owner a licence in respect of those premises.

(1a) Where a person satisfies the Board—

(a) that he is the prescribed lessee of premises to which this section applies;

and

(b) the owner of those premises has, after a request being made by the person so to do, failed to make application for the grant of a licence in respect of those premises,

then subsection (1) of this section shall apply and have effect in all respects as if for the word "owner" wherever occurring in that subsection there was substituted the passage "prescribed lessee".

(2) In determining whether or not to grant a licence in response to an application under subsection (1) of this section the Board shall have regard to—

(a) the suitability of the premises, proposed to be the subject of a licence, to be the subject of a licence;

(b) the number of premises the subject of a licence within the distance of three kilometres of the premises proposed to be the subject of the licence;

(c) the possibility that the premises proposed to be the subject of the licence can become the subject of a licence by means of a variation of an existing licence;

(d) the extent to which there will be provided in relation to the premises, proposed to be the subject of a licence, facilities for the repair and maintenance of motor vehicles;

(e) the extent to which the interests of retail customers for motor fuel will be served;

(f) the extent to which fair and reasonable competition within the industry of retail selling of motor fuel will be affected;

(g) whether or not the applicant himself intends to carry on business in the premises proposed to be the subject of a licence;

and

(h) such other matters as the Board thinks proper or as may be prescribed.

(3) This section applies to premises—

(a) not being premises referred to in subsection (1) of section 28 of this Act in respect of which an application for the grant of a licence has been made under section 29 of this Act;

and

- (b) being premises that are proposed will comprise a shop the main or principal business of which will be the selling of motor fuel by retail to the public generally where that business will not be predominately the selling of motor fuel in quantities of 200 litres or more.

Application for licence

31. Every application for the grant or renewal of a licence shall—

- (a) be in the prescribed form;
- (b) set out the prescribed particulars;

* * * * *

and

- (d) be forwarded to the Secretary of the Board.

Form of licence

32. A licence shall be in the prescribed form and shall set out—

- (a) the name, address and description of the person to whom the licence is granted;
- (b) the day on which the licence is to come into force;
- (c) a description of the premises in respect of which the licence is granted;

and

- (d) such limitations, restrictions and conditions to which the licence is subject as may be prescribed.

Penalty for non-compliance with limitation, restriction or condition

33. A person shall not in relation to a licence or to premises the subject of a licence refuse or fail to comply with a limitation, restriction or condition to which that licence is expressed to be subject.

Penalty: Two hundred dollars.

Default Penalty: Twenty dollars.

Expiry of licence

34. (1) A licence shall cease to have effect and the premises to which it related shall cease to be the subject of a licence if—

- (a) the holder thereof, by notice in writing to the Board, surrenders the licence and the Board by writing accepts that surrender;
- (b) without the approval of the Board the business of retail selling of motor fuel is not carried on in the premises to which the licence relates for a continuous period of one month or more;

or

(c) the licence expires and is not renewed.

(1a) The Board shall not accept the surrender of a licence under subsection (1) of this section unless it is satisfied that that acceptance will not prejudice the prescribed interest of any holder thereof.

(2) If a licence is suspended by the Board the licence shall cease to have effect and the premises to which it relates shall cease to be the subject of a licence during the period of that suspension.

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.

Variation of licence

36. (1) Upon application by or on behalf of the holder of a licence made in the manner provided for by this section, the Board may vary that licence—

(a) by substituting another holder of the licence in place of the applicant holder;

or

(b) by substituting for the premises to which the licence is expressed to relate, other premises.

(2) In determining whether or not to grant an application—

(a) relating to substitution referred to in paragraph (a) of subsection (1) of this section the Board shall have regard to the matter referred to in paragraphs (e) and (f) of subsection (2) of section 30 of this Act;

and

(b) relating to a substitution referred to in paragraph (b) of subsection (1) of this section, the Board shall have regard to the matters referred to in paragraphs (a), (b), (d), (e) and (f) of subsection (2) of section 30 of this Act,

and in either case the Board shall have regard to such other matters as the Board thinks proper including, without limiting the generality thereof, the prescribed interest of any holder thereof, or as may be prescribed.

(3) An application under this section shall be in the prescribed form, contain the prescribed particulars and be forwarded to the Secretary to the Board.

(4) Notwithstanding anything in section 15 of this Act the Board may hear and determine *ex parte* any application relating to a substitution referred to in paragraph (a) of subsection (1) of this section if in all the circumstances it thinks it proper so to do.

Holder of licence who is prescribed lessee

36a. Where pursuant to sections 29 or 30 of this Act a licence in respect of premises was granted to a prescribed lessee, that licence shall on the expiration or earlier termination of the lease pursuant to which the prescribed lessee was such a prescribed lessee (or as the case requires, on the expiration or earlier termination of the last renewal or extension of that lease) by force of this section be varied by substituting the owner of the premises for the holder of the licence at the time of that expiration or termination.

Certain premises not to be the subject of application

37. (1) Where the Board has—

(a) refused an application for the grant of a licence under section 30 of this Act in respect of premises;

or

(b) refused an application for the variation of a licence relating to a substitution referred to in paragraph (b) of subsection (1) of section 36 of this Act in relation to premises that were not immediately before that application the subject of a licence under this Act,

then no further application of a kind referred to in paragraph (a) or (b) of this subsection in relation to those premises shall be made, without the prior written approval of the Board, until the expiration of the period of three years next following the date of the application referred to in paragraphs (a) or (b) of this subsection that related to those premises.

(2) The Board shall not give an approval referred to in subsection (1) of this section unless it is satisfied that there exist special circumstances that would justify it so giving its approval.

DIVISION III—PERMITS

Certain existing establishments may become the subject of a permit

38. (1) Any premises, being a shop to which this section applies, from which the business of selling motor fuel by retail to the public generally was carried on at any time during the month immediately preceding the thirty-first day of December, 1972, may, subject to this Act, become the subject of a permit.

(2) This section applies to any shop the main or principal business of which was not the selling of motor fuel by retail to the public generally where such selling of motor fuel by retail was not predominately the selling of motor fuel in quantities of 200 litres or more.

Grant of permit in respect of certain existing premises

39. (1) Where the owner of premises referred to in subsection (1) of section 38 of this Act makes application for the grant of a permit in respect of those premises before the expiration of the third month next following the appointed day and in the manner provided for by this Act, the Board, on being satisfied—

(a) that those premises are premises referred to in that subsection;

and

(b) that, at the time at which it received the application, those premises were a shop selling motor fuel by retail to the public generally the main or principal business of which was not the selling of motor fuel by retail to the public generally and such selling of motor fuel by retail was not predominately the selling of motor fuel in quantities of 200 litres or more and that the selling of motor fuel by retail had been carried on from that shop continuously since the month of December, 1972,

shall grant to that owner a permit in respect of those premises.

(1a) Where a person satisfies the Board—

(a) that he is the prescribed lessee of premises referred to in subsection (1) of section 38 of this Act;

and

(b) the owner of those premises has failed to make application for the grant of a permit in respect of those premises before the expiration of the third month next following the appointed day,

then subsection (1) of this section shall apply and have effect in all respects as if—

(c) for the word "owner" wherever occurring in that subsection, there was substituted the passage "prescribed lessee";

and

(d) for the passage "third month" in that subsection there was substituted the passage "fifth month".

(2) In this section—

"owner" in relation to premises means the person who is the owner of those premises at the time the application referred to in subsection (1) of this section was made whether or not that person was the owner of those premises at any time during the month of December, 1972.

Grant of permit generally

40. (1) Subject to this Act, where the owner of premises to which this section applies makes application for the grant of a permit in respect of those premises in the manner provided for by this Act, the Board may grant to that owner a permit in respect of those premises.

(1a) Where a person satisfies the Board—

(a) that he is the prescribed lessee of premises to which this section applies;

and

(b) the owner of those premises has, after a request being made by the person so to do, failed to make application for the grant of a permit in respect of those premises,

then subsection (1) of this section shall apply and have effect in all respects as if for the word "owner" wherever occurring in that subsection there was substituted the passage "prescribed lessee".

(2) In determining whether or not to grant a permit in response to an application under subsection (1) of this section the Board shall have regard to—

(a) the suitability of the premises, proposed to be the subject of a permit, to be the subject of a permit;

(b) the number of premises the subject of a licence or permit within a distance of ten kilometres of the premises proposed to be the subject of the permit;

(c) the possibility that the premises proposed to be the subject of a permit can become the subject of a permit by means of the variation of an existing permit;

(d) the extent to which the interests of retail customers for motor fuel will be served;

(e) the extent to which fair and reasonable competition within the industry of retail selling of motor fuel will be affected;

and

(f) such other matters as the Board thinks proper or as may be prescribed.

(3) This section applies to premises—

(a) not being premises referred to in subsection (1) of section 38 of this Act in respect of which an application for the grant of a permit has been made under section 39 of this Act;

and

(b) being premises that consist of or are proposed to consist of a shop the main or principal business of which is not the selling of motor fuel by retail to the public generally and where such selling of motor fuel by retail was not the selling of motor fuel in quantities of 200 litres or more.

Application for permit

41. Every application for a permit shall—

(a) be in the prescribed form;

- (b) set out the prescribed particulars;

* * * * *

and

- (d) be forwarded to the Secretary of the Board.

Form of permit

42. A permit shall be in the prescribed form and shall set out—

- (a) the name, address and description of the person to whom the permit is granted;
- (b) the day on which the permit is to come into force;
- (c) a description of the premises in respect of which the permit is granted;

and

- (d) such limitations, restrictions and conditions to which the permit is subject as may be prescribed.

Penalty for non-compliance with limitation, restriction or condition

43. A person shall not in relation to a permit or to premises the subject of a permit refuse or fail to comply with a limitation, restriction or condition to which that permit is expressed to be subject.

Penalty: Two hundred dollars.

Default Penalty: Twenty dollars.

Expiry of permit

44. (1) A permit shall cease to have effect and the premises to which it related shall cease to be the subject of a permit if—

- (a) the holder thereof, by notice in writing to the Board, surrenders the permit and the Board by writing accepts that surrender;
- (b) without the approval of the Board the business of retail selling of motor fuel is not carried on in the premises to which the permit relates for a continuous period of one month or more;

or

- (c) the Board by notice in writing served by post on the holder of the permit, determines that the main or principal business carried on from the premises the subject of a permit is that of selling motor fuel by retail to the public generally.

(1a) The Board shall not accept the surrender of a permit under subsection (1) of this section unless it is satisfied that acceptance will not prejudice the prescribed interest of any holder thereof.

(2) If a permit is suspended by the Board the permit shall cease to have effect and the premises to which it relates shall cease to be the subject of a permit during the period of that suspension.

Variations of permit

45. (1) Upon application by or on behalf of the holder of a permit made in the manner provided for by this section, the Board may vary that permit—

(a) by substituting another holder of the permit in place of the applicant holder;

or

(b) by substituting for the premises to which the permit is expressed to relate, other premises being premises situated not more than five kilometres distant from the first mentioned premises.

(2) In determining whether or not to grant an application—

(a) relating to a substitution referred to in paragraph (a) of subsection (1) of this section the Board shall have regard to the matter referred to in paragraphs (d) and (e) of subsection (2) of section 40 of this Act;

and

(b) relating to a substitution referred to in paragraph (b) of subsection (1) of this section, the Board shall have regard to the matters referred to in paragraphs (a), (b), (d) and (e) of subsection (2) of section 40 of this Act,

and in either case the Board shall have regard to such other matters as the Board thinks proper including, without limiting the generality thereof, the prescribed interest of any holder thereof, or as may be prescribed.

(3) An application under this section shall be in the prescribed form, contain the prescribed particulars and be forwarded to the Secretary to the Board.

(4) Notwithstanding anything in section 15 of this Act the Board may hear and determine *ex parte* any application relating to a substitution referred to in paragraph (a) of subsection (1) of this section if in all the circumstances it thinks it proper so to do.

When owner of premises substituted for holder of permit who is prescribed lessee

45a. Where pursuant to sections 39 or 40 of this Act a permit in respect of premises was granted to a prescribed lessee, that permit shall on the expiration or earlier termination of the lease pursuant to which the prescribed lessee was such a prescribed lessee (or as the case requires, on the expiration or earlier termination of the last renewal or extension of that lease) by force of this section be varied by substituting the owner of the premises for the holder of the permit at the time of that expiration or termination.

Certain premises not to be the subject of application

46. (1) Where the Board has—

(a) refused an application for the grant of a permit under section 40 of this Act in respect of premises;

or

- (b) refused an application for the variation of a permit relating to a substitution referred to in paragraph (b) of subsection (1) of section 45 of this Act in relation to premises that were not immediately before that application the subject of a permit under this Act,

then no further application of a kind referred to in paragraph (a) or (b) of this subsection in relation to those premises shall be made, without the prior written approval of the Board, until the expiration of the period of three years next following the date of the application referred to in paragraphs (a) or (b) of this subsection that related to those premises.

(2) The Board shall not give an approval referred to in subsection (1) of this section unless it is satisfied that there exist special circumstances that would justify it so giving its approval.

DIVISION IV—INVESTIGATION AND INQUIRY

Inspector's powers of investigation

47. An Inspector may and shall at the direction of the Board make any investigation that he or the Board considers necessary or expedient for the purposes of considering any application under this Act or any other matter before the Board.

Inquiries

48. (1) The Board may, upon application of an Inspector or other person, or of its own motion inquire into the conduct of any person engaged in or about the business undertaken from any premises the subject of a licence or permit under this Act, in so far as that conduct touches on any matter or thing relating to the retail selling of motor fuel.

(2) If, after conducting an inquiry under subsection (1) of this section, the Board is satisfied that proper cause exists for disciplinary action, the Board may do any one or more of the following:—

- (a) reprimand the person in relation to whose conduct the inquiry was held;
- (b) impose a fine not exceeding five hundred dollars on that person;

and

- (c) suspend or cancel any licence or permit held under this Act.

(3) There shall be proper cause for disciplinary action if—

- (a) a licence or permit under this Act was improperly obtained;
- (b) the holder of a licence or permit under this Act or any person acting with the authority or upon the instructions of a holder of such a licence or permit has, in the course of any dealings relating to a matter authorized by that licence or permit, by act or omission—
- (i) contravened any law;

or

24.

- (ii) refused or failed to comply with any limitation, restriction or condition prescribed in relation to that licence or permit;

or

- (c) any other cause exists that, in the opinion of the Board, renders the holder of a licence or permit under this Act unfit to hold a licence or permit under this Act.

PART IV

UNDESIRABLE ARRANGEMENTS

Definitions

49. In this Part—

"arrangement" means any contract, agreement or arrangement whether or not in writing and whether express or implied:

"undesirable arrangement" means any arrangement that is for the time being declared by regulation under this Act to be an undesirable arrangement and includes any arrangement that on the face of it has substantially the same effect as the arrangement first mentioned.

Declaration of undesirable arrangements

50. Without limiting the generality of the power to make regulations and in addition to any such power elsewhere conferred by this Act, the Governor may make regulations declaring any arrangement not being an arrangement for the time being an approved arrangement under section 52 of this Act, that relates to or affects the business being carried on in the premises the subject of a licence or permit under this Act to be an undesirable arrangement where the Governor, having received the advice of the Board, is of the opinion that the carrying out of or giving effect to such an arrangement is or is likely to be—

(a) not in the economic interests of any retail seller of motor fuel;

or

(b) not in the public interest.

Undesirable arrangements void

51. (1) Any undesirable arrangement shall, notwithstanding any Act or law to the contrary, be void and of no effect.

(2) Nothing in subsection (1) of this section shall be held or construed as affecting the validity, efficacy or enforceability of any arrangement entered into before that arrangement became an undesirable arrangement.

Approved arrangements

52. The Board may by writing under the hand of the Secretary approve any arrangement or any arrangement of a class as an approved arrangement and may, on giving not less than six months' notice of its intention so to do, revoke any such approval and upon the day of that revocation that arrangement shall cease to be an approved arrangement.

PART V

INDUSTRIAL PUMPS

Definition of "industrial pump"

53. (1) In this Part—

"industrial pump" means a pump, connected to a bulk tank having a capacity of not less than 2 001 litres and installed at or in the vicinity of any premises principally for the supply of motor fuel to the occupier of those premises where that supply is not principally for the purposes of the re-sale of that motor fuel by that occupier but does not include such a pump used principally or mainly in connection with—

(a) the business of primary production as defined for the purposes of the *Land Tax Act, 1936-1972*;

or

(b) any activity for the time being declared under subsection (2) of this section to be an activity for the purposes of this subsection.

(2) The Minister may, by notice published in the *Gazette*, declare any activity to be an activity for the purposes of subsection (1) of this section and may by notice published in a like manner amend or revoke any such declaration.

Industrial pumps not to be installed without approval of Board

54. On and after the commencement of this Act, a person shall not install an industrial pump unless the installation of that industrial pump has the prior written approval of the Board.

Penalty: One thousand dollars.

Circumstances in which Board may approve applications

55. The Board shall not grant its approval in writing for the installation of an industrial pump unless it is satisfied that the amount of motor fuel that will be supplied to the occupier of the premises in relation to which it is proposed to install that pump will be not less than 6 800 litres of motor fuel a month.

PART VI

MISCELLANEOUS

Annual report by Board

56. (1) As soon as practicable after the thirtieth day of December in each year the Chairman of the Board shall present a report to the Minister on its activities during the year.

(2) A report under subsection (1) of this section, shall so far as possible be prepared in such a manner as not to disclose the state of business of any particular seller, or supplier of motor fuel.

(3) The Minister shall cause every report of the Board made in accordance with subsection (1) of this section to be laid before each House of Parliament within fourteen days of his receipt thereof if Parliament is then in session or if Parliament is not then in session within fourteen days of the commencement of the next session of Parliament.

Evidentiary

57. For the purposes of this Act and of any proceedings thereunder a statement certified by the Secretary that at a particular time—

(a) a person was or was not the holder of a licence or permit under this Act;

or

(b) particular premises were or were not the subject of a licence or permit under this Act,

shall be conclusive evidence of that fact.

Protection for members of the Board

58. No liability shall attach to—

(a) the Board;

(b) any member of the Board;

(c) any Inspector;

or

(d) the Secretary or any person acting at the direction of the Board,

for an act or omission by it or him done in good faith for the purpose or purported purposes of exercising or performing any power, function or duty conferred on it or him by or under this Act.

Liability of certain persons

59. A member of the Board, Inspector, Secretary or other person shall not improperly make use of or improperly divulge any information, matter or thing that comes to his knowledge in the exercise or performance of any power, function or duty under this Act.

Penalty: Two hundred dollars.

Money for purposes of Act

60. The moneys required for the purposes of this Act shall be paid out of moneys provided by Parliament for the purpose.

Summary procedure

61. Proceedings in respect of offences under this Act shall be disposed of summarily.

Default penalties

62. (1) Wherein, or at the foot of, any section or part of a section of this Act there appears the expression "Default Penalty", it shall indicate that any person who is convicted of an offence against this Act in relation to that section or part shall be guilty of a further offence against this Act if the offence continues after he is so convicted and liable to an additional penalty for each day during which the offence so continues of not more than the amount expressed in the section or part as the amount of the default penalty.

(2) Where any offence is committed by a person by reason of his failure to comply with any provision, of this Act by or under which he is required or directed to do anything within a particular period, that offence, for the purposes of subsection (1) of this section shall be deemed to continue so long as the thing so required or directed to be done by him remains undone, notwithstanding that such period has elapsed.

Offences by bodies corporate

63. Where a person convicted of an offence against this Act is a body corporate, every person concerned in the management of that body corporate may be convicted of the like offence unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

Regulations

64. (1) In addition to the other powers to make regulations conferred by this Act, the Governor may make such regulations as are necessary or expedient for the purposes of giving effect to the provisions and objects of this Act.

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

(a) prescribe all matters required or authorized to be prescribed under this Act and such other matters as are necessary or convenient for carrying out the objects of this Act;

* * * * *

(c) provide for the making of returns by prescribed persons and for the information to be disclosed in those returns;

(d) provide for the keeping of records by prescribed persons relating to prescribed matters;

and

(e) provide for and prescribe penalties not exceeding in each case, two hundred dollars, for the breach of any provision of a regulation.

APPENDIX

Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 7 of The Public General Acts of South Australia 1837-1975 at page 411.

| | |
|----------------------|---|
| Section 17a(2): | amended by 57, 1979, s. 41(1)(a) |
| Section 20(2): | amended by 34, 1981, s. 64(a) |
| Section 20(3) - (5): | repealed by 34, 1981, s. 64(b) |
| Section 31: | amended by 57, 1979, s. 41(1)(b) |
| Section 31(c): | repealed by 57, 1979, s. 41(1)(c) |
| Section 34(1): | amended by 57, 1979, s. 41(1)(d) |
| Section 35: | substituted by 57, 1979, s. 41(1)(e) |
| Section 36(3): | amended by 57, 1979, s. 41(1)(f) |
| Section 41(c): | repealed by 57, 1979, s. 41(1)(g) |
| Section 45(3): | amended by 57, 1979, s. 41(1)(h) |
| Section 53(1): | definition of "industrial pump" amended by 96, 1981, s. 2 |
| Section 64(2)(b): | repealed by 57, 1979, s. 41(1)(i) |