

South Australia

PETROLEUM PRODUCTS REGULATION ACT 1995

An Act to regulate activities involving or related to petroleum products; to repeal the Business Franchise (Petroleum Products) Act 1979, the Motor Fuel Distribution Act 1973 and the Petroleum Shortages Act 1980; to make consequential amendments to the Environment Protection Act 1993; and for other purposes.

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 8 June 2000.

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.

PETROLEUM PRODUCTS REGULATION ACT 1995

being

Petroleum Products Regulation Act 1995 No. 30 of 1995
[Assented to 27 April 1995]¹

as amended by

Petroleum Products Regulation (Licence Fees and Subsidies) Amendment Act 1998 No. 29 of 1998 [Assented to 16 April 1998]²

District Court (Administrative and Disciplinary Division) Amendment Act 2000 No. 4 of 2000 [Assented to 20 April 2000]³

National Tax Reform (State Provisions) Act 2000 No. 21 of 2000 [Assented to 8 June 2000]

¹ Came into operation 1 July 1995: *Gaz.* 1 June 1995, p. 2529.

² Came into operation 1 May 1998: *Gaz.* 23 April 1998, p. 1926.

³ **Schedule 1 (cl. 29) came into operation 1 June 2000: *Gaz.* 18 May 2000, p. 2554.**

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix.

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The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Petroleum Products Regulation Act 1995*.

Commencement

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

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Interpretation

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

"**authorised officer**" means an authorised officer under Part 8;

"**bulk end user certificate**" or "**certificate**" means a bulk end user certificate under Part 2A;

"**Commissioner**" means the person for the time being holding or acting in the position of the Commissioner of State Taxation or a position of Deputy Commissioner of State Taxation and any other person performing any of the duties or functions of the Commissioner of State Taxation or a Deputy Commissioner of State Taxation;

"**Commonwealth customs duty**" means customs duty on petroleum products payable under the *Customs Tariff Act 1995* of the Commonwealth, or other legislation of the Commonwealth prescribed under this Act;

"**Commonwealth excise duty**" means excise duty on petroleum products payable under the *Excise Tariff Act 1921* of the Commonwealth, or other legislation of the Commonwealth prescribed under this Act;

"**condition**", in relation to a licence, certificate or permit, includes a limitation or restriction;

"**contravention**" includes failure to comply with a requirement;

"**conveyance**" of a petroleum product means movement of the product whether by vehicle, pipeline or any other means, and "**convey**" has a corresponding meaning;

"**corresponding law**" means a law of another State, or of a Territory, of the Commonwealth declared by regulation to be a corresponding law for the purposes of this Act;

"**dangerous situation**" means a situation involving petroleum products that—

- (a) is immediately endangering the safety or health of a person, or the safety of a person's property; or
- (b) is creating immediate risk of significant environmental harm;

"**development authorisation**" means a development authorisation within the meaning of the *Development Act 1993*;

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"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 a prescribed substance;

"eligible petroleum products" means petroleum products on which Commonwealth customs or excise duty has been paid or is payable but does not include petroleum products prepared by mixture of a petroleum product on which such duty has been paid or is payable with a petroleum product on which such duty has not been paid nor is payable;

"industrial pump" means a pump that—

- (a) is connected to a bulk tank having a capacity of not less than 2 001 litres; and
- (b) is installed at or in the vicinity of premises principally for the supply of petroleum products to the occupier of the premises and not principally for resale,

but does not include such a pump used principally in connection with—

- (c) the business of primary production as defined for the purposes of the *Land Tax Act 1936*; or
- (d) any prescribed activity;

"licence" means a licence under Part 2;

"licensee" means the holder of a licence under Part 2;

"liquefied petroleum gas" means a hydrocarbon fluid composed predominantly of any of the following hydrocarbons or mixtures of all or any of them:

- (a) propane (C_3H_8);
- (b) propylene (C_3H_6);
- (c) butane (C_4H_{10});
- (d) butylene (C_4H_8);

"motor spirit" means petrol or other petroleum or shale spirit having a closed-cup flash point of less than 23° Celsius when tested by the Abel method as set out in Part 1 of Australian Standard 2106 "Determination of the Flash Point of Flammable Liquids (Closed Cup)", but does not include—

- (a) solvents; or
- (b) special boiling point spirits; or
- (c) liquefied petroleum gas; or
- (d) any prescribed substance;

"period of restriction" means a period declared by proclamation under Part 5 to be a period of restriction (whether or not it is also a rationing period);

"permit" means a permit under Part 5;

"**permit holder**" means a person to whom a permit is issued under Part 5;

"**petroleum product**" means—

- (a) motor spirit; or
- (b) diesel fuel; or
- (c) liquefied petroleum gas; or
- (d) any other substance declared by regulation to be a petroleum product;

"**plant**" includes—

- (a) any machine, engine, equipment, container or device;
- (b) any component, fitting, pipe or accessory used in or in connection with any machine, engine, equipment, container or device;

"**premises**" includes any place or vehicle;

"**prescribed retail sale**" means a sale of a kind declared by regulation to be prescribed retail sales;

"**rationed petroleum product**" means a petroleum product of a kind declared by proclamation under Part 5 to be rationed petroleum products;

"**rationing period**" means a period of restriction declared by proclamation under Part 5 to be a rationing period;

"**record**" includes any book, document or writing and any other source of information compiled, recorded or stored by computer, microfilm or other process, or in any other manner or by any other means;

"**retail licence**" means a licence under Part 2 that authorises retail sales of petroleum products;

"**Retail Outlets Board**" means the Petroleum Products Retail Outlets Board established under schedule 1;

"**retail sale**" means a sale in a retail quantity for the purposes of use or consumption, and its correlatives and derivatives have corresponding meanings;

"**unleaded petrol**" means petrol that—

- (a) does not contain more than 0.013 grams of lead; and
- (b) does not contain more than 0.0013 grams of phosphorus,

per litre;

"**vehicle**" includes any kind of aircraft or vessel;

"**vending machine**" means a machine constructed to dispense petroleum products on the insertion into the machine of money or a token, card, disk or other object;

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"**wholesale**" means a sale other than a retail sale;

"**wholesale licence**" means a licence under Part 2 that authorises the sale of petroleum products by wholesale.

(2) In this Act, a reference to a Commonwealth Act includes a reference to—

- (a) that Commonwealth Act as amended and in force for the time being; and
- (b) an Act enacted in substitution for that Act.

Retail quantity

4A. (1) Subject to this section, for the purposes of this Act "**retail quantity**" in relation to petroleum products means a quantity not exceeding 3 000 litres or, if some other quantity is prescribed by regulation, that quantity.

(2) However, a quantity of petroleum products is not a retail quantity unless it is delivered at a fixed site by a metered pump into—

- (a) a running tank of a vehicle; or
- (b) a container that has a capacity of less than 250 litres.

(3) The regulations may prescribe different quantities for different types of petroleum products.

Bulk end user

4B. (1) For the purposes of this Act, a person is a "**bulk end user**" of petroleum products to the extent that petroleum products purchased by the person otherwise than in a retail quantity are used by that person.

(2) For the purposes of subsection (1), petroleum products are to be taken to be used by a person if—

- (a) the products are required for an enterprise being carried on by the person and as part of the enterprise are sold in retail quantities to, or are used by, an independent contractor, joint venturer or partner of the person; and
- (b) on delivery to the person the products do not require transportation before use by the independent contractor, joint venturer or partner; and
- (c) the products are supplied by the person to the independent contractor, joint venturer or partner in retail quantities.

(3) Subject to subsection (2), for the purposes of subsection (1), the regulations may prescribe circumstances in which petroleum products are, or are not, to be taken to be used by a person.

(4) Subject to subsection (2) and the regulations, for the purposes of subsection (1), petroleum products are not to be taken to be used by a person if they are sold by the person.

(5) For the purposes of this Act, a person sells petroleum products as a bulk end user if the person sells petroleum products as referred to in subsection (2)(a) or in a regulation made under subsection (3) for the purposes of subsection (1).

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Notional sale and purchase

4D. The regulations may declare that, for the purposes of a specified provision of this Act, a sale and purchase of petroleum products is to be taken to occur in specified circumstances where petroleum products are delivered or allocated for sale or consumption.

Division of State into zones

5. (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; and
- (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 zones 1 and 2.

(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.

Application of Act

6. (1) The Minister may, by notice published in the *Gazette*—

- (a) exempt a class of persons or petroleum products from the application of this Act or a specified provision of this Act unconditionally or subject to specified conditions; and
- (b) vary or revoke a notice under this subsection.

(2) The Minister may, by notice in writing to a person—

- (a) exempt the person from the application of this Act or a specified provision of this Act unconditionally or subject to specified conditions; and
- (b) vary or revoke a notice under this subsection.

Non-derogation

7. (1) The provisions of this Act are in addition to and do not derogate from the provisions of any other Act.

(2) Subsection (1) does not limit the effect of any regulation made under Part 2 dispensing with a requirement for a licensee under this Act to hold a specified licence or other authority under some other specified Act.

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**PART 2
LICENCES**

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Requirement for licence

8. (1) A person must not—

- (a) keep petroleum products; or
- (b) sell petroleum products by retail sales; or
- (ba) sell petroleum products by wholesale; or
- (c) convey petroleum products; or
- (d) engage in an activity of a prescribed class involving or related to petroleum products,

unless authorised to do so under a licence.

Maximum penalty: \$10 000.

(1a) A licence is not required under subsection (1) for the sale of petroleum products as a bulk end user.

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(3) A prescribed retail sale of petroleum products is not authorised by a licence unless the sale is made from premises specified in the licence for that purpose.

Issue or renewal of licence

9. (1) The Minister may, on application by a person, issue or renew, or refuse to issue or renew, a licence under this Act.

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(3) The Minister may, if he or she thinks fit, renew a licence despite the fact that application for renewal of the licence was made after the end of the previous term of the licence.

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Licence term, etc.

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(2) Subject to this Act, a licence expires on the anniversary of the date of issue of the licence and may be renewed on application for successive terms of one year.

(3) A licence has effect, on issue or renewal, from the date specified in the licence for that purpose which may be earlier than the date of application for the issue or renewal of the licence.

(4) The holder of a licence may, at any time, by notice in writing to the Minister, surrender the licence, at which time the licence ceases to have effect.

(5) A licence is not transferable except by way of variation of the licence under section 12.

Conditions of licence

11. (1) The Minister may fix conditions of a licence.

(2) Without limiting subsection (1), licence conditions may include the following:

- (a) conditions requiring compliance with specified codes or standards (as in force at a specified time or as in force from time to time);
 - (b) conditions requiring the reporting of accidents;
 - (c) conditions for the protection of employee or public safety or health;
 - (d) conditions for the protection of the environment;
 - (e) conditions requiring the licensee to prepare and submit to the Minister assessments of the safety, health or environmental risks associated with the activity authorised under the licence;
 - (f) conditions limiting the premises that may be used under the licence;
 - (g) conditions limiting sales of petroleum products that may be authorised by the licence;
 - (ga) conditions regulating the price at which eligible petroleum products may be sold pursuant to a licence, being conditions imposed for the purpose of ensuring that the licensee does not recover from the purchaser (whether directly or indirectly) that part of the sale price of a quantity of eligible petroleum products that is an amount equal to the subsidy paid or payable under this Act in respect of that quantity for that sale;
 - (gb) conditions as to the terms that any contract for the sale of eligible petroleum products entered into between a licensee who is a manufacturer or importer of petroleum products and any purchaser must contain in relation to the time of payment for that component of the sale price of the petroleum products that is referable to the Commonwealth excise or customs duty paid or payable by the manufacturer or importer, as the case may be;
 - (h) conditions requiring the keeping of records and the provision of information;
 - (i) conditions authorised or fixed by Part 5 or 6 or the regulations.
- (3) If a code or standard is referred to in a licence condition—
- (a) a copy of the code or standard must be kept available for inspection, without charge and during normal office hours, at an office determined by the Minister; and
 - (b) evidence of the contents of the code or standard may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code or standard.

Variation of licence

12. (1) The Minister may, on application or at the Minister's own initiative, substitute, add, remove or vary a condition of a licence or otherwise vary a licence.

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(2) Without limiting subsection (1)—

(a) the Minister may vary a licence—

(i) by substituting another person as the licensee; or

(ii) in the case of a licence authorising prescribed retail sales of petroleum products from specified premises—by substituting, adding or removing premises as premises from which prescribed retail sales of petroleum products may be made under the licence;

(b) the Minister may vary a licence on the Minister's own initiative if satisfied that the licensee has contravened or failed to comply with this Act or that other sufficient cause exists.

(3) A licence may be varied—

(a) by endorsement of the licence; or

(b) by notice in writing to the licensee; or

(c) by a notice published under Part 5.

Form of application and licence fee

13. (1) An application for the issue, renewal or variation of a licence must be made to the Minister in a manner and form approved by the Minister and contain the information required by the Minister.

(2) An applicant must provide any further information that the Minister reasonably requires for the purposes of determining the application.

(3) An application may not be granted except on payment of the appropriate fee under the regulations.

Reference of matters to other persons or bodies

14. (1) Subject to this section—

(a) an application for the issue or variation of a licence; or

(b) an application for a development authorisation referred under the *Development Act 1993* to the Minister; or

(c) any other matter with respect to a licence,

must be referred by the Minister—

(d) to the Director under the *Dangerous Substances Act 1979*; and

(e) to the Environment Protection Authority under the *Environment Protection Act 1993*; and

(f) if the regulations so provide—to some other specified Minister or government agency,

for the recommendation of that person or body.

(2) A person or body referred to in subsection (1) may dispense with the requirement that a specified matter or class of matters be referred to it under that subsection.

(3) Subject to the regulations, the following must be referred by the Minister to the Retail Outlets Board for its recommendation:

- (a) an application for the issue or variation of a licence authorising prescribed retail sales of petroleum products;
- (b) an application for a development authorisation referred under the *Development Act 1993* to the Minister where the application is for a development that relates to premises from which prescribed retail sales of petroleum products are to be made;
- (c) any other matter with respect to a licence authorising prescribed retail sales of petroleum products.

(4) Except as otherwise determined by the Minister, a person or body must, when making a recommendation in respect of a matter referred to it under this section, give the Minister reasons in writing for the recommendation.

Criteria for decisions relating to licences, etc.

15. (1) This section applies to a decision by the Minister in respect of—

- (a) an application for the issue or variation of a licence; or
- (b) an application for a development authorisation referred under the *Development Act 1993* to the Minister; or
- (c) any other matter with respect to a licence.

(2) The Minister must take the following matters into account in making a decision to which this section applies:

- (a) the protection of employee and public safety and health; and
- (b) the protection of the environment; and
- (c) whether the premises and plant proposed to be used or in use by the applicant or licensee comply with this Act and other relevant laws; and
- (d) the applicant's or licensee's record of compliance with this Act and other relevant laws; and
- (e) in the case of a decision relating to prescribed retail sales of petroleum products—
 - (i) the suitability of the premises from which the prescribed retail sales are to be made; and
 - (ii) the number of other premises (if any) within a distance of three kilometres from which prescribed retail sales of petroleum products may be made; and
 - (iii) the need for facilities and services to be provided at the premises for the assistance of motorists in the event of vehicle breakdown; and

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- (iv) the extent to which the interests of retail customers for petroleum products will be served; and
 - (v) the extent to which fair and reasonable competition in the retail sale of petroleum products will be affected; and
 - (vi) any other matter relevant to the orderly provision of services in the area of prescribed retail sales of petroleum products; and
- (f) any recommendation of a person or body to which the matter has been referred under this Part; and
- (g) any other relevant matters.
- (3) If the Minister, in making a decision to which this section applies—
- (a) grants an application contrary to the recommendation of a person or body to which the matter had been referred under this Part; or
 - (b) refuses an application contrary to the unanimous recommendations of the persons or bodies to which the matter has been referred under this Part,

the Minister must—

- (c) give the reasons for the decision in writing at the time of making the decision; and
- (d) on application by a person to the Minister's office, provide the person with a copy of the written reasons; and
- (e) have a copy of the written reasons tabled in both Houses of Parliament within six sitting days after the making of the decision.

Avoidance of multiple licences

16. (1) The Governor may make regulations applicable to licensees under this Act dispensing with a requirement for a specified licence or other authority to be held under some other specified Act.

(2) A regulation under this section has effect according to its terms and despite the provisions of any other Act.

Offence relating to licence conditions

17. A licensee must not contravene or fail to comply with a condition of the licence (whether fixed by the Minister or by Part 5 or 6).

Maximum penalty: \$10 000.

Cancellation or suspension of licence

18. The Minister may, if satisfied that a licensee has contravened or failed to comply with this Act or that other sufficient cause exists, suspend or cancel the licence.

Cessation of prescribed retail sales under licence

19. If, without the Minister's approval, the business of making prescribed retail sales of petroleum products from premises specified in a licence for that purpose is not carried on for a continuous period of one month during the term of the licence, the licence ceases to authorise such sales to be made from the premises unless the Minister otherwise determines.

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**PART 2A
SUBSIDIES**

Entitlement to subsidy

20. (1) Subject to this section, the holder of a wholesale licence is entitled to a subsidy at the prescribed rate in respect of a quantity of eligible petroleum products sold by wholesale in accordance with the licence to the holder of a retail licence who purchased the petroleum products for sale pursuant to the retail licence.

(2) Subject to this section, a person who holds both a wholesale licence and a retail licence is entitled to a subsidy at the prescribed rate in respect of a quantity of eligible petroleum products sold pursuant to the retail licence.

(3) Subject to this section, the holder of a wholesale licence is entitled to a subsidy at the prescribed rate in respect of a quantity of eligible petroleum products other than diesel fuel sold in accordance with the licence to the holder of a bulk end user certificate.

(4) Subject to this section, the holder of a retail licence is entitled to a subsidy at the prescribed rate in respect of a quantity of eligible petroleum products purchased by the holder of the licence for retail sale pursuant to the licence if—

- (a) the petroleum products were sold to the holder of the licence by wholesale; and
- (b) the wholesaler has no entitlement to a subsidy under this Act in respect of the transaction.

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(6) Only one subsidy is payable (whether under this Act or a corresponding law) in respect of one quantity of eligible petroleum products.

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(8) The prescribed rate is—

- (a) in respect of eligible petroleum products sold for delivery to the purchaser in zone 2—
 - (i) in the case of leaded petrol—0.66 cents per litre;
 - (ii) in the case of unleaded petrol—0.82 cents per litre;
- (b) in respect of eligible petroleum products sold for delivery to the purchaser in zone 3—
 - (i) in the case of leaded petrol—3.17 cents per litre;
 - (ii) in the case of unleaded petrol—3.33 cents per litre;
 - (iii) in the case of diesel fuel sold for the propulsion of diesel engined road vehicles on roads—1.94 cents per litre.

(9) Subsection (8) may be amended by regulation for the purpose of altering the rate of subsidy under this section.

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Claim for subsidy

21. (1) A claim for a subsidy under this Part must be made to the Commissioner in a manner and form approved by the Commissioner and contain the information required by the Commissioner.

(2) A claimant must provide any further information that the Commissioner requires for the purposes of determining whether the claimant is entitled to a subsidy under this Part and the amount of subsidy payable to the claimant.

Payment of subsidy

22. (1) If the Commissioner is satisfied that—

- (a) a claim for a subsidy has been made in accordance with this Act; and
- (b) the claimant is entitled to a subsidy under this Act in respect of the sale or purchase of petroleum products to which the claim relates,

the Commissioner must pay the claimant an amount calculated at the prescribed rate in respect of the claim.

(2) This section, without further appropriation, is sufficient authority for making payments under subsection (1).

(3) A subsidy may, at the request of the person entitled to it, be paid to another person on his or her behalf.

Amounts recoverable by Commissioner

23. (1) The Commissioner may, by notice in writing, require a person to repay, within the period specified in the notice, a subsidy paid under this Act if satisfied that—

- (a) the subsidy was paid in consequence of an incorrect claim; or
- (b) a subsidy in respect of the quantity of petroleum products concerned has also been paid under a corresponding law; or
- (c) the person was not entitled to the subsidy under this Act for some other reason.

(2) If for any reason a subsidy under this Act is overpaid, the Commissioner may, by notice in writing, require the person who received the subsidy to repay to the Commissioner, within the period specified in the notice, the amount overpaid.

(3) The Commissioner may, by notice in writing, require the holder of a wholesale licence to pay to the Commissioner, within the period specified in the notice, an amount equal to the amount of a subsidy paid or payable under this Act in respect of a quantity of eligible petroleum products if the holder of the licence has sold the petroleum products in breach of a condition of the licence relating to the price at which the petroleum products may be sold.

(4) The Commissioner may, by notice in writing, require the holder of a retail licence to pay to the Commissioner, within the period specified in the notice, an amount equal to the amount of a subsidy paid or payable under this Act (whether to the holder of the retail licence or a wholesaler) in respect of a quantity of eligible petroleum products if the holder of the retail licence has sold the petroleum products in breach of a condition of the licence relating to the price at which the petroleum products may be sold.

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(5) The Commissioner may, by notice in writing, require a person who holds a retail licence to pay to the Commissioner, within the period specified in the notice, an amount equal to the amount of a subsidy paid or payable under this Act (whether to the holder of the retail licence or a wholesaler) in respect of a quantity of eligible petroleum products if, in breach of a condition of the licence, the holder of the licence—

- (a) has sold the petroleum products from premises other than premises specified in the licence; or
- (b) has sold the petroleum products otherwise than by retail; or
- (c) has failed to keep specified records in relation to the petroleum products.

(6) The Commissioner may, by notice in writing, require the holder of a bulk end user certificate to pay to the Commissioner, within the period specified in the notice, an amount equal to the amount of a subsidy paid or payable under this Act to a licensee in respect of a quantity of eligible petroleum products if the holder of the certificate has—

- (a) sold, used or dealt with the petroleum products; or
- (b) failed to keep specified records in relation to the petroleum products,

in breach of a condition of the certificate.

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(8) A person to whom a notice is given by the Commissioner under this section requiring repayment or payment of an amount, must, in addition, pay to the Commissioner, within the time specified in the notice, a penalty of an amount equal to the amount of the repayment or payment.

(9) The Commissioner may, on application, remit a penalty payable under subsection (8) if satisfied that proper cause exists for doing so.

(10) An amount payable to the Commissioner under this section may be recovered by the Commissioner, as a debt due to the Crown, in any court of competent jurisdiction.

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

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Bulk end user certificate

23A. (1) The Commissioner may, on application by a person, issue a bulk end user certificate if satisfied that the person will, during the period for which the certificate is to be in force, purchase eligible petroleum products for use as a bulk end user.

(2) A bulk end user certificate is subject to the following conditions:

- (a) a condition that the holder of the certificate must not sell petroleum products purchased pursuant to the certificate except as a bulk end user; and
- (b) a condition that petroleum products purchased pursuant to the certificate must only be used by the holder of the certificate as a bulk end user; and

- (c) a condition that the holder of the certificate must not permit another person to use the certificate to purchase petroleum products for a person other than the holder of the certificate; and
- (d) a condition that if the holder of the certificate becomes aware that another person has used the certificate to purchase petroleum products for a person other than the holder of the certificate, the holder must immediately give the Commissioner written notice of that fact; and
- (e) such conditions requiring the keeping of records and provision of information as the Commissioner thinks fit to impose; and
- (f) such other conditions as the Commissioner thinks fit to impose.

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Variation of certificate

23D. (1) The Commissioner may, on application or at the Commissioner's own initiative, substitute, add, remove or vary a condition of a certificate.

(2) A certificate may be varied by endorsement of the certificate or by notice in writing to the holder of the certificate.

Expiry of certificate, etc.

23E. (1) Subject to this Part, a certificate expires on the third anniversary of the date of issue of the certificate and may be renewed on application for successive terms of three years.

(2) The holder of a certificate may at any time surrender the certificate to the Commissioner, at which time the certificate ceases to have effect.

(3) A certificate is not transferable.

Form of application for issue, renewal or variation of certificate

23F. (1) An application for the issue, renewal or variation of a certificate must be made in a manner and form approved by the Commissioner and contain the information required by the Commissioner.

(2) An applicant must provide any further information that the Commissioner reasonably requires for the purposes of determining the application.

Form of certificate

23G. A certificate will be in a form determined by the Commissioner.

Offence relating to certificate conditions

23H. The holder of a certificate must not contravene or fail to comply with a condition of the certificate.

Maximum penalty: \$10 000.

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Cancellation of certificate, etc.

23I. (1) The Commissioner may, at any time by notice in writing to the holder of a certificate, cancel the certificate if satisfied that—

- (a) the holder obtained the certificate improperly; or
- (b) the holder has contravened, or failed to comply with, a condition of the certificate; or
- (c) the holder is no longer a bulk end user.

(2) The Commissioner may, in a notice under subsection (1), require the holder or former holder of the certificate to return or produce the certificate to the Commissioner within a specified period.

(3) A person who refuses or fails to comply with a requirement made under subsection (2) is guilty of an offence.

Maximum penalty: \$5 000.

**PART 3
INDUSTRIAL PUMPS**

Industrial pumps not to be installed without approval

24. (1) A person must not install an industrial pump without the prior approval of the Minister.

Maximum penalty: \$10 000.

(2) The Minister must not grant approval for the installation of an industrial pump unless the Minister is satisfied that the amount of petroleum products that will be supplied to the occupier of the premises in relation to which it is proposed to install the pump will be not less than 6 800 litres a month.

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**PART 4
GENERAL SAFETY AND ENVIRONMENTAL DUTIES**

General duty

25. A licensee or other person must, in keeping, handling, conveying, using or disposing of petroleum products, take such precautions and exercise such care as is reasonable in the circumstances in order to—

- (a) avoid endangering the safety or health of another, or the safety of another's property; and
- (b) prevent risk of significant environmental harm.

Maximum penalty: In the case of a body corporate—\$50 000.
 In any other case—\$10 000 or imprisonment for 2 years, or both.

Duty in relation to plant

26. (1) This section applies to plant that is used, or that is reasonably expected to be used, in connection with petroleum products.

(2) For the purposes of this section, plant is in an environmentally sound condition if it is in a condition that does not give rise to a risk of significant environmental harm.

(3) A licensee or other person who is in charge of plant to which this section applies must—

- (a) take such precautions and exercise such care as is reasonable in the circumstances in order to ensure that the plant is in a safe and environmentally sound condition whenever it is used in connection with petroleum products; and
- (b) ensure that the plant is in a safe and environmentally sound condition when it is not in use.

(4) A licensee or other person who uses plant to which this section applies must—

- (a) ensure that the plant is in a safe and environmentally sound condition; and
- (b) take such precautions and exercise such care as is reasonable in the circumstances in order to—
 - (i) avoid endangering the safety or health of another, or the safety of another's property; and
 - (ii) prevent risk of significant environmental harm,

(whether during the use of the plant, or as a result of the use of the plant); and

(c) ensure that the plant is left in a safe and environmentally sound condition after use.

(5) A licensee or other person who performs, or supervises the performance of, work on, or in relation to, plant to which this section applies must take such precautions and exercise such care as is reasonable in the circumstances in order to—

- (a) avoid endangering the safety or health of another, or the safety of another's property; and

- (b) prevent risk of significant environmental harm,

(whether during the performance of the work, or as a result of the performance of the work).

(6) A licensee or other person must not misuse or damage any plant to which this section applies.

(7) A person who contravenes or fails to comply with a provision of this section is guilty of an offence.

Maximum penalty: In the case of a body corporate—\$50 000.
 In any other case—\$10 000 or imprisonment for 2 years, or both.

Improvement notices

27. (1) If an authorised officer is of the opinion that a person—

- (a) is contravening a provision of this Part or a condition of a licence; or
- (b) has contravened a provision of this Part or a condition of a licence in circumstances that make it—
 - (i) likely that the contravention will be repeated; or
 - (ii) reasonable to require that the contravention be remedied,

the authorised officer may issue an improvement notice requiring the person to remedy the matters occasioning the contravention.

(2) An improvement notice must—

- (a) state that the authorised officer is of the opinion that a person—
 - (i) is contravening a provision of this Part or a condition of a licence; or
 - (ii) has contravened a provision of this Part or a condition of a licence in circumstances that make it—
 - (A) likely that the contravention will be repeated; or
 - (B) reasonable to require that the contravention be remedied; and
- (b) state the grounds of the authorised officer's opinion; and
- (c) specify the provision of this Part or licence condition in respect of which that opinion is held.

(3) An authorised officer may—

- (a) include in an improvement notice directions as to the measures to be taken to remedy the contravention, or to avoid further such contravention;
- (b) specify in an improvement notice a day by which the matters referred to in the notice must be remedied.

(4) An authorised officer may vary or revoke an improvement notice issued under this section.

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(5) A person who contravenes or fails to comply with an improvement notice is guilty of an offence.

Maximum penalty: \$20 000.

Prohibition notices

28. (1) If an authorised officer is of the opinion that a dangerous situation exists, the authorised officer may issue to the person apparently in control of the activity giving rise to the danger or risk a prohibition notice prohibiting the carrying on of the activity until an authorised officer is satisfied that adequate measures have been taken to avert, eliminate or minimise the danger or risk.

(2) A prohibition notice must—

- (a) identify the activity giving rise to the danger or risk; and
- (b) state the grounds of the authorised officer's opinion.

(3) An authorised officer may include in a prohibition notice directions as to the measures to be taken to avert, eliminate or minimise the danger or risk to which the notice relates.

(4) An authorised officer may vary or revoke a prohibition notice issued under this section.

(5) Subject to this Act, a person who contravenes or fails to comply with a prohibition notice is guilty of an offence.

Maximum penalty: \$50 000.

Action on default

29. (1) If a person is required by an improvement notice or prohibition notice to take any specified measures and the person fails to comply with the notice, the authorised officer who issued the notice or any person authorised by him or her may—

- (a) after giving reasonable notice to the person required to take the measures, enter and take possession of any place (taking such measures as are reasonably necessary for the purpose); and
- (b) do, or cause to be done, such things as full and proper compliance with the notice may require.

(2) The Crown may recover the costs and expenses reasonably incurred by an authorised officer or other authorised person exercising powers under subsection (1) from the person who failed to comply with the notice, as a debt in a court of competent jurisdiction.

Action in emergency situations

30. (1) If an authorised officer considers on reasonable grounds that a dangerous situation exists and that there is insufficient time to issue a notice under this Part, the authorised officer may, after giving such notice (if any) as may be reasonable in the circumstances, take action or cause action to be taken as necessary to avert, eliminate or minimise the danger or risk.

(2) In the exercise of powers under this section, an authorised officer—

- (a) may at any time enter and take possession of any place (taking such measures as are reasonably necessary for the purpose); and

- (b) may be accompanied by such assistants as may be necessary or desirable in the circumstances.

(3) The Crown may recover the costs and expenses reasonably incurred by an authorised officer exercising the powers under this section from the person who caused the danger or risk, as a debt in a court of competent jurisdiction.

Cost recovery

31. (1) In this section—

"agency or instrumentality of the Crown" means any body corporate (other than a council) established for a public purpose by, or in accordance with, an Act;

"council" means a municipal or district council;

"government authority" means—

- (a) an administrative unit of the Public Service;
- (b) an agency or instrumentality of the Crown; or
- (c) a council;

"principal officer", in relation to a government authority, means—

- (a) in the case of an administrative unit of the Public Service—the chief executive officer of that unit;
- (b) in the case of an agency or instrumentality of the Crown—the chief executive officer of that agency or instrumentality or a person designated by the regulations as principal officer of that agency or instrumentality;
- (c) in the case of a council—the chief executive officer of that council.

(2) This section applies to any incident—

- (a) constituted of or arising from (whether wholly or in part) the escape of a petroleum product; or
- (b) that involves risk of the escape of a petroleum product.

(3) For the purposes of this section, the escape of a petroleum product includes—

- (a) a discharge of the petroleum product onto or into any land or water, or any structure or thing; or
- (b) the release of the petroleum product into the air.

(4) Where a government authority incurs costs or expenses as a result of the occurrence of an incident to which this section applies, any such costs or expenses reasonably incurred by the government authority are recoverable as a debt in a court of competent jurisdiction.

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(5) The costs or expenses may be recovered by—

- (a) in the case of costs or expenses incurred by a council—the council; or
- (b) in the case of costs or expenses incurred by an agency or instrumentality of the Crown—that agency or instrumentality, or the Crown; or
- (c) in any other case—the Crown.

(6) The recovery of costs or expenses incurred by one government authority as a result of the occurrence of an incident to which this section applies (including an award or judgment in relation to those costs or expenses) does not preclude the recovery of costs and expenses incurred by another government authority as a result of the occurrence of the incident.

(7) The costs or expenses may be recovered (jointly or severally) from—

- (a) the person who was the owner of the petroleum product at the time of the incident; or
- (b) the person who was in control or possession of the petroleum product at the time of the incident; or
- (c) the person who caused the incident.

(8) For the purposes of subsection (7)—

- (a) any petroleum product in the control or possession of an employee or agent while acting in the course of employment will be taken to be in the control or possession of the employer or principal; and
- (b) an act or omission of an employee or agent while acting in the course of employment will be taken to be the act or omission of the employer or principal,

unless it is proved that the incident is attributable to serious and wilful misconduct on the part of the employee or agent.

(9) Costs and expenses are not recoverable against a person who establishes—

- (a) that the incident was due to the act or default of another person, or to some cause beyond the person's control; and
- (b) that he or she could not by the exercise of reasonable diligence have prevented the occurrence of the incident; and
- (c) that the incident is not attributable to an act or omission of a person who was an employee or agent of his or hers at the time when the incident occurred (unless it is proved that the incident is attributable to serious and wilful misconduct on the part of the employee or agent).

(10) This section does not exclude or derogate from any right to recover an amount in respect of costs or expenses that exists apart from this section but the Crown or a government authority is not entitled to recover, in respect of the same costs or expenses, an amount under this section and an amount in proceedings founded on rights that exist apart from this section.

(11) For the purposes of this section, a body that forms part, or is established for the purposes, of an agency or instrumentality of the Crown is not to be regarded as itself constituting a separate agency or instrumentality.

(12) In any proceedings under this section, a document apparently signed by the principal officer of the relevant government authority certifying as to the incurring of costs or expenses as a result of the occurrence of an incident to which this section applies, and as to the amount of those costs or expenses, constitutes proof, in the absence of proof to the contrary, of the matters so certified.

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**PART 5
PERIODS OF RESTRICTION AND RATIONING**

DIVISION 1—INTERPRETATION

Interpretation

32. In this Part, unless the contrary intention appears—

"sale" includes—

- (a) barter or exchange;
- (b) offer or agreement to sell, barter or exchange;
- (c) delivery in pursuance of sale, barter or exchange,

and "sell" and "purchase" have corresponding meanings.

DIVISION 2—DECLARATION OF PERIODS OF RESTRICTION AND RATIONING

Declaration of periods of restriction and rationing

33. (1) If, in the opinion of the Governor, circumstances have arisen, or are likely to arise, that have caused, or are likely to cause, shortages of petroleum products in the State, the Governor may—

- (a) by proclamation, declare a period (commencing on the date of the proclamation, or some specified later date, and extending for not more than seven days) to be a period of restriction; and
- (b) if the Governor thinks fit, by the same or a subsequent proclamation—
 - (i) declare that the period of restriction will, as from its commencement, or some specified later date, be a rationing period; and
 - (ii) declare petroleum products of specified kinds to be rationed petroleum products.

(2) The Governor may, by proclamation—

- (a) extend a period of restriction for successive periods (each not to exceed seven days) but not so that the total period exceeds 28 days; or
- (b) extend a period of restriction by such other period or periods as may be authorised by a resolution of both Houses of Parliament; or
- (c) vary or revoke a declaration under subsection (1)(b); or
- (d) revoke a proclamation under this section.

(3) A period of restriction that has been declared to be a rationing period continues to be a rationing period during any extension of the period of restriction unless the declaration by virtue of which it became a rationing period is revoked.

(4) Where a period of restriction expires, no subsequent period may be declared to be a period of restriction unless—

- (a) that subsequent period commences 14 days or more after the expiration of the former period of restriction; or
- (b) the declaration is authorised by a resolution of both Houses of Parliament.

DIVISION 3—CONTROLS DURING PERIODS OF RESTRICTION

Controls during periods of restriction

34. (1) The Minister may, if of the opinion that it is in the public interest to do so—

- (a) fix conditions of licences; and
- (b) issue directions,

that apply during a period of restriction in relation to petroleum products.

(2) Without limiting the effect of subsection (1), licence conditions or directions may fix maximum prices in relation to classes of sales of petroleum products.

(3) Licence conditions or directions under this section may relate to petroleum products generally, or to petroleum products of a specified kind.

(4) Licence conditions under this section—

- (a) may apply to—
 - (i) a particular licence; or
 - (ii) a particular class of licences; and
- (b) if applying to a class of licences—may be fixed by notice published in the *Gazette* or in a newspaper circulating generally throughout the State.

(5) Directions under this section—

- (a) may apply to—
 - (i) a particular person; or
 - (ii) a particular class of persons; or
 - (iii) the public generally; and
- (b) if applying to—
 - (i) a particular person—may be issued by notice in writing to the person; or
 - (ii) a particular class of persons or the public generally—may be issued by notice published in the *Gazette* or in a newspaper circulating generally throughout the State.

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(6) A person to whom a direction is issued under this section must not contravene or fail to comply with the direction.

Maximum penalty: \$10 000.

(7) A licence condition or direction under this section—

(a) does not operate after the end of the period of restriction in relation to which it was fixed or issued; and

(b) may be varied or revoked by the Minister in the manner in which it was fixed or issued.

(8) The Minister may, if of the opinion that it is just to do so, compensate a licensee or person who has incurred expenses in complying with a condition or direction under this section.

DIVISION 4—CONTROLS DURING RATIONING PERIODS

Controls during rationing periods

35. (1) During a rationing period a person must not sell rationed petroleum products except to a permit holder.

Maximum penalty: \$10 000.

(2) During a rationing period a person must not purchase rationed petroleum products unless the person is a permit holder.

Maximum penalty: \$10 000.

(3) This section does not apply to the sale of rationed petroleum products to, or the purchase of rationed petroleum products by, a person in the ordinary course of carrying on a business of selling petroleum products.

Permits

36. (1) The Minister may, if satisfied that it is in the public interest to do so, issue a permit to any person.

(2) The Minister may fix conditions of a permit as the Minister thinks fit.

(3) Without limiting the effect of subsection (2), permit conditions may limit the quantity or value of rationed petroleum products that may be purchased under the permit—

(a) by reference to stipulated maxima; or

(b) by reference to coupons to be given by the permit holder on purchasing rationed petroleum products; or

(c) by any other means of limitation.

(4) It is a condition of a permit that the permit holder must carry the permit at all times when driving a motor vehicle to which petroleum products have been supplied under the permit.

(5) A permit holder must not contravene or fail to comply with a condition of the permit.

Maximum penalty: \$10 000.

(6) The Minister may by notice in writing served on a permit holder cancel the permit.

(7) On cancellation of a permit, the former permit holder must return the permit to the Minister or a person nominated by the Minister.

Maximum penalty: \$10 000.

(8) A permit is not transferable.

DIVISION 5—LIMIT ON PROCEEDINGS AGAINST MINISTER

Limit on proceedings against Minister

37. Except as provided by Part 9, no proceedings can be instituted against the Minister to compel the Minister to take, or to refrain from taking, any action under this Part.

DIVISION 6—CONSERVATION OF PETROLEUM PRODUCTS

Publication of desirable principles for conserving petroleum

38. (1) The Minister may publish, by notice in the *Gazette* and in a newspaper circulating generally throughout the State, principles that the public should, in the Minister's opinion, be encouraged to observe in relation to the conservation of petroleum products during a period of restriction.

(2) If, during a period of restriction, a person, by conforming with principles published under subsection (1), commits a breach of a policy of insurance, that breach is, for the purpose of determining the rights of that person under the policy, to be disregarded.

Special consideration to be given to those living in country areas

39. In exercising powers under this Part, the Minister must give special consideration to the needs of those living in country areas of this State.

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**PART 6
CORRECT MEASUREMENTS**

Correct measurements

40. (1) A licensee or other person who uses for trade in petroleum products a measuring instrument that is incorrect or unjust is guilty of an offence.

Maximum penalty: \$20 000.

(2) It is a condition of a licence authorising the sale of petroleum products that the licensee must comply with the requirements of the *Trade Measurements Act 1993*.

(3) For the purposes of this section—

(a) "**measuring instrument**" has the same meaning as in the *National Measurement Act 1960* of the Commonwealth as amended and in force for the time being;

(b) a person uses a measuring instrument for trade if the person uses it, has it in possession for use, or makes it available for use, to make a measurement for the purpose of determining the consideration in respect of a transaction.

PART 7
SALE OF PETROLEUM PRODUCTS TO CHILDREN

Sale of petroleum products to children

41. (1) A licensee or other person must not sell a petroleum product to a child under the age of 16 years.

Maximum penalty: \$5 000.

(2) If a person, acting at the request of a child under the age of 16 years, purchases a petroleum product on behalf of the child for the purpose of inhalation, the person is guilty of an offence.

Maximum penalty: \$5 000.

(3) An authorised officer may confiscate a petroleum product that is in the possession of a child under the age of 16 years if the officer has reason to suspect that the child has the product for the purpose of inhalation.

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**PART 8
AUTHORISED OFFICERS**

Appointment of authorised officers

42. (1) The Minister may appoint persons to be authorised officers for the purposes of this Act.

(2) An appointment may be made subject to conditions specified in the instrument of appointment.

(3) The Minister may, at any time, revoke an appointment or vary, revoke or add a condition of an appointment.

(4) All members of the police force and authorised officers under the *Taxation Administration Act 1996* are authorised officers for the purposes of this Act.

Identification of authorised officers

43. (1) An authorised officer, other than a member of the police force, must be issued with an identity card—

- (a) containing the person's name and a photograph of the person; and
- (b) stating that the person is an authorised officer for the purposes of this Act.

(2) Where the powers of an authorised officer have been limited by conditions under this Part, the identity card issued to the authorised officer must contain a statement of the limitation on the officer's powers.

(3) An authorised officer must, at the request of a person in relation to whom the authorised officer intends to exercise any powers under this Act, produce for the inspection of the person—

- (a) in the case of an authorised officer who is a member of the police force and is not in uniform—his or her certificate of authority; or
- (b) in the case of an authorised officer who is not a member of the police force—his or her identity card.

Powers of authorised officers

44. (1) Subject to this Part, an authorised officer may—

- (a) enter and remain on premises and inspect premises for any reasonable purpose connected with the administration or enforcement of this Act;
- (b) with the authority of a warrant issued under this Part or in circumstances in which the authorised officer reasonably believes that immediate action is required, use reasonable force to break into or open any part of, or anything in or on premises;
- (c) give directions with respect to the stopping or movement of a vehicle as reasonably required in connection with the administration or enforcement of this Act;
- (d) require a person to produce a record, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process, as reasonably required in connection with the administration or enforcement of this Act;

- (e) examine, copy or take extracts from a record, or require a person to provide a copy of a record, as reasonably required in connection with the administration or enforcement of this Act;
- (f) remove and retain a record for so long as is reasonably necessary for the purpose of making a copy of the record;
- (g) take photographs, films, audio, video or other recordings as reasonably required in connection with the administration or enforcement of this Act;
- (h) examine or test any plant or other thing for the purpose of determining whether a provision of this Act is being or has been complied with, or cause or require it to be so examined or tested, or seize it or require its production for such examination or testing;
- (i) take samples of a substance or thing from premises for analysis as reasonably required in connection with the administration or enforcement of this Act;
- (j) require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, a contravention of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity;
- (k) require a person who the authorised officer reasonably suspects has knowledge of matters in respect of which information is reasonably required for the administration or enforcement of this Act to answer questions in relation to those matters;
- (l) require a person holding or required to hold a licence, certificate or permit to produce it for inspection;
- (m) give directions reasonably required in connection with the exercise of a power conferred by this subsection or otherwise in connection with the administration or enforcement of this Act.

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

(3) In the exercise of powers under this Act an authorised officer may be assisted by such persons as he or she considers necessary in the circumstances.

(4) An authorised officer may require an occupier of any place or a person apparently in charge of any plant, equipment, vehicle or other thing to give to the authorised officer or a person assisting the authorised officer such assistance as is reasonably required by the authorised officer for the effective exercise of powers conferred by this Act.

Offence to hinder, etc., authorised officers

45. A person who—

- (a) hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of powers conferred by this Act; or
- (b) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or
- (c) refuses or fails to comply with a requirement or direction of an authorised officer under this Part; or

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(d) when required by an authorised officer under this Part to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or

(e) falsely represents, by words or conduct, that he or she is an authorised officer,

is guilty of an offence.

Maximum penalty: \$5 000.

Self-incrimination

46. (1) It is not an excuse for a person to refuse or fail to answer a question or to produce, or provide a copy of, a record or information as required under this Part on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

(2) If compliance by a person with a requirement to answer a question or to produce, or provide a copy of, a record or information might tend to incriminate the person or make the person liable to a penalty, then—

(a) in the case of a person who is required to produce, or provide a copy of, a record or information—the fact of production, or provision of a copy of, the record or the information (as distinct from the contents of the record or the information); or

(b) in any other case—the answer given in compliance with the requirement,

is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings under this Act).

**PART 9
APPEALS**

Appeals

47. (1) An appeal to the Administrative and Disciplinary Division of the District Court may be made—

- (a) by an applicant for the issue, renewal or variation of a licence against a decision by the Minister to refuse to issue, renew or vary the licence; or
- (ab) by an applicant for the issue, renewal or variation of a certificate against a decision by the Commissioner to refuse to issue, renew or vary the certificate; or
- (b) by an applicant for the issue of a permit against a decision by the Minister to refuse to issue the permit; or
- (c) by a licensee against a decision by the Minister to vary, suspend or cancel the licence; or
- (ca) by a certificate holder against a decision by the Commissioner to vary or cancel the certificate; or
- (d) by a permit holder against a decision by the Minister to cancel the permit; or
- (e) by a claimant for a subsidy under this Act against a decision by the Commissioner on the claim; or
- (ea) by a person to whom the Commissioner has given notice under section 23 requiring the payment or repayment of an amount to the Commissioner against the decision to issue the notice; or
- (f) by a person to whom an improvement notice or a prohibition notice has been issued under Part 4 against the decision to issue the notice.

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(3) If the Minister or Commissioner does not give reasons in writing for a decision of the Minister or Commissioner referred to in subsection (1) when the decision is made, the Minister or Commissioner must do so on request made by the applicant, licensee or certificate or permit holder within one month of the making of the decision.

(4) An appeal against a decision by the Commissioner on a claim for a subsidy or a decision by the Commissioner to issue a notice under section 23 may only be instituted if the appellant has lodged an objection to the decision with the Commissioner and—

- (a) the Commissioner has served on the person notice of the determination of the objection and the person is not satisfied with that determination; or
- (b) the Commissioner has not, within one month of the lodging of the objection, given a determination with respect to the objection.

(5) An appeal must be instituted—

- (a) in the case of an appeal against a decision of the Minister or a decision of the Commissioner (other than a decision of a kind referred to in subsection (4))—

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- (i) within one month of the making of the decision being appealed against; or
 - (ii) if a request for reasons in writing for the decision has been made under subsection (3)—within one month of the receipt of the reasons in writing; or
- (b) in the case of an appeal against a decision of the Commissioner of a kind referred to in subsection (4)—
- (i) within one month of receipt of notice of determination of the objection; or
 - (ii) if the Commissioner has not given a determination as referred to in subsection (4)—within two months of the lodging of the objection; or
- (c) in the case of an appeal against a decision to issue an improvement notice or a prohibition notice under Part 4—within 14 days of receipt of the notice.

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- (7) A decision to—
- (a) vary, suspend or cancel a licence; or
 - (b) vary or cancel a certificate; or
 - (c) cancel a permit; or
 - (d) issue a notice under section 23; or
 - (e) issue an improvement notice under Part 4,

is suspended pending determination of an appeal against the decision.

(8) Nothing prevents a prohibition notice from being stayed or varied under Part 6 Division 2 of the *District Court Act 1991*.

* * * * *

**PART 11
MISCELLANEOUS**

Delegation

49. (1) The Minister may delegate any of the Minister's powers or functions under this Act to—

- (a) another Minister; or
- (b) the Commissioner; or
- (c) any person or body.

(2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

(3) A delegation under this section—

- (a) must be by instrument in writing; and
- (b) may be absolute or conditional; and
- (c) does not derogate from the power of the delegator to act in any matter; and
- (d) is revocable at will by the delegator.

Register

50. (1) The Minister must cause a register to be kept of—

- (a) licensees under Part 2; and
- (b) holders of bulk end user certificates.

(2) The register must be kept available for public inspection at a place approved by the Minister during ordinary office hours.

Particulars of dealings with petroleum products

51. (1) The Minister or the Commissioner may, by notice in writing, require—

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

to furnish in writing, within the period specified in the notice or such further period as the Minister or Commissioner may allow, such information with respect to those petroleum products as is specified in the notice, not being information relating to any period after the date of the requirement.

(2) A person who fails to comply with a requirement under subsection (1) is guilty of an offence.

Maximum penalty: \$5 000.

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Records to be kept of bulk transport of petroleum products

52. Where a quantity of petroleum products other than a retail quantity is being transported in the State by road in a vehicle (whether with or without any other goods), the person transporting the petroleum products must, while so transporting them, carry in the vehicle at all times a record containing the prescribed particulars.

Maximum penalty: \$2 500.
Expiation fee: \$200.

Records to be kept

53. (1) A person who carries on a business involving or related to petroleum products must keep accounts, invoices, receipts, records, books and documents as required by the Minister from time to time by notice published in the *Gazette* for a period of five years after the last entry is made in any of the accounts, invoices, receipts, records, books or documents.

Maximum penalty: \$2 500.
Expiation fee: \$200.

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

- (a) in respect of which the Minister has notified the person carrying on the business that preservation is not required; or
- (b) of a body corporate that has gone into liquidation and been finally dissolved.

(3) A person who purchases petroleum products pursuant to a certificate must keep invoices, receipts, records, books and documents as required by the Minister from time to time by notice published in the *Gazette* for a period of five years after the last entry is made in any of the records, receipts, books or documents.

Maximum penalty: \$2 500.
Expiation fee: \$200.

(4) The Minister—

- (a) must, as soon as practicable after the end of the period of 12 months from the commencement of subsection (3), have an inquiry and report made as to the costs to businesses during that period of 12 months of compliance with the requirements of that subsection; and
- (b) must, within 12 sitting days after receiving the report, have copies of the report laid before both Houses of Parliament.

Falsely claiming to hold licence, certificate or permit, etc.

53A. A person must not falsely claim or purport to be the holder of a licence, certificate or permit.

Maximum penalty: \$10 000.

False or misleading information

54. A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information furnished, or record kept, under this Act.

Maximum penalty: \$5 000.

Statutory declarations

55. Where a person is required by or under this Act to furnish information to the Minister or the Commissioner, the Minister or the Commissioner may require that the information be verified by statutory declaration and, in that event, the person will not be taken to have furnished the information as required unless it has been verified in accordance with the requirements of the Minister or the Commissioner.

Confidentiality

56. A person must not divulge any information relating to information obtained (whether by that person or some other person) in the administration of this Act except—

- (a) as authorised by or under this Act; or
- (b) with the consent of the person from whom the information was obtained or to whom the information relates; or
- (c) in connection with the administration or enforcement of this Act or a corresponding law; or
- (d) 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; or
 - (iii) the Comptroller-General of the Australian Customs Service; or
- (e) for the purpose of any legal proceedings arising out of the administration or enforcement of this Act or a corresponding law.

Maximum penalty: \$10 000.

General defence

57. It is a defence to a charge of an offence against this Act if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

Immunity from personal liability

58. (1) No personal liability attaches to an authorised officer or any other person engaged in the administration of this Act for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under this Act.

(2) A liability that would, but for subsection (1), lie against a person, lies instead against the Crown.

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Offences by bodies corporate

59. If a body corporate is guilty of an offence against this Act, each director of the body corporate is, subject to the general defence under this Part, guilty of an offence and liable to the same penalty as may be imposed for the principal offence.

Continuing offence

60. (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—

- (a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and
- (b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.

(2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

Prosecutions

61. (1) Proceedings for an offence against this Act must be commenced—

- (a) in the case of an expiable offence—within the time limits prescribed for expiable offences by the *Summary Procedure Act 1921*;
- (b) in any other case—within two years after the date on which the offence is alleged to have been committed or, with the authorisation of the Minister, at a later time within five years after that date.

(2) A prosecution for an offence against this Act cannot be commenced except with the consent of the Minister.

(3) In any proceedings, an apparently genuine document purporting to be a certificate of the Minister, certifying authorisation of, or consent to, a prosecution for an offence against this Act will be accepted, in the absence of proof to the contrary, as proof of the authorisation or consent.

Evidence

62. (1) In any proceedings for an offence against this Act, an apparently genuine document purporting to be a certificate of the Minister certifying—

- (a) that a person is an authorised officer or was an authorised officer at a specified date; or
- (b) that a person was or was not the holder of a licence of a specified kind at a specified date; or
- (c) that a person was or was not the holder of a permit at a specified date; or
- (ca) that a person was or was not the holder of a certificate of a specified kind at a specified date; or
- (d) that a specified period is or was a period of restriction or a rationing period; or

- (e) that a specified substance—
 - (i) is or was a petroleum product of a specified kind; or
 - (ii) was, on a specified date, a rationed petroleum product,

constitutes proof of the matters so certified in the absence of proof to the contrary.

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

Service

63. (1) A notice, order or other document to be given to or served on a person under this Act may be given or served—

- (a) by delivering it personally to the person or an agent of the person; or
- (b) by leaving it for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
- (c) by posting it to the person or agent of the person at the person's or agent's last known place of residence or business.

(2) Without limiting the effect of subsection (1), a notice, order or other document required or authorised to be given to or served on a person may—

- (a) if the person is the holder of a licence or a permit under this Act—given to or served on the person—
 - (i) by posting it to the person at the address last provided by the person for that purpose; or
 - (ii) by transmitting it to the person by facsimile transmission to the number last provided by the person for that purpose; or
- (b) if the person is a body corporate—be given to or served on the person in accordance with section 220 of the *Corporations Law*.

Regulations

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

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

- (a) prescribe matters required or authorised to be prescribed under this Act;
- (b) provide for and require the making of returns relating to dealings with petroleum products;
- (c) provide for the keeping of records under this Act;

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(d) fix fees (which may vary according to different factors) to be paid in respect of any matter under this Act and regulate the payment, recovery, waiver or reduction of such fees;

(e) impose a penalty not exceeding \$2 500 for a breach of a regulation.

(2a) The Governor may make regulations authorising specified powers conferred by or under this Act to be exercised for the purposes of the administration or enforcement of a corresponding law.

(3) The regulations may incorporate or operate by reference to a specified code or standard as in force at a specified time or as in force from time to time.

(4) If a code or standard is referred to or incorporated in the regulations—

(a) a copy of the code or standard must be kept available for inspection by members of the public, without charge and during normal office hours, at an office determined by the Minister; and

(b) evidence of the contents of the code or standard may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code or standard.

SCHEDULE 1

Petroleum Products Retail Outlets Board

Establishment

1. The *Petroleum Products Retail Outlets Board* is established.

Function

2. (1) The Retail Outlets Board has the function of making recommendations to the Minister in respect of matters referred to the Board under Part 2 and any function delegated to the Board by the Minister.

(2) In making a recommendation to the Minister in respect of a matter referred to it under Part 2, the Retail Outlets Board must take into account the matters that the Minister is specifically required by that Part to take into account in making a decision relating to prescribed sales of petroleum products.

Powers

3. (1) For the purpose of performing its functions, the Retail Outlets Board may—

- (a) inform itself as to any matter before the Board in such manner as the Board thinks fit; and
- (b) invite interested persons to make written or oral submissions in relation to any matter before the Board; and
- (c) if the Board requires information in respect of a matter before it—by notice in writing served on a person, require the person—
 - (i) to furnish specified information in writing; or
 - (ii) to attend before the Board and answer truthfully relevant questions put to him or her by the Board; and
- (d) direct an authorised officer (not being a member of the police force or an authorised officer under the *Taxation Administration Act 1996*) to conduct an investigation; and
- (e) obtain expert or technical advice from a person on such terms and conditions as the Board thinks fit.

(2) A person must not fail to comply with a requirement of the Retail Outlets Board under subclause (1)(c).

Maximum penalty: \$2 500.

(3) An authorised officer may exercise his or her powers under Part 8 as reasonably required for an investigation directed by the Board.

Membership

4. (1) The Retail Outlets Board is to consist of three members appointed by the Governor.

(2) One member will be appointed by the Governor to chair meetings of the Retail Outlets Board.

(3) The Governor may appoint a person to be the deputy of a member and the deputy may perform or exercise the functions and powers of that member in the member's absence.

(4) A member's appointment will be for a term, not exceeding five years, specified in the instrument of appointment and such a member will, at the expiration of a term of appointment, be eligible for reappointment.

- (5) The Governor may remove a member from office for—

- (a) misconduct; or
- (b) neglect of duty; or

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- (c) incapacity to carry out satisfactorily the duties of office; or
 - (d) failure to carry out satisfactorily the duties of office.
- (6) The office of a member of the Retail Outlets Board becomes vacant if the member—
- (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice addressed to the Minister; or
 - (d) is removed from office by the Governor under subclause (5).

(7) On the office of a member of the Retail Outlets Board becoming vacant, a person must be appointed under this clause to the vacant office.

Remuneration

5. The members of the Retail Outlets Board are entitled to receive such allowances and expenses as may, from time to time, be determined by the Governor.

Vacancies or defects in appointment of members

6. An act or proceeding of the Retail Outlets Board is not invalid by reason only of a vacancy in its membership or any defect in the appointment of a member.

Proceedings

7. (1) A quorum of the Retail Outlets Board consists of two members.

(2) The member appointed to chair the Retail Outlets Board will preside at meetings of the Board at which that member is present.

(3) If the member appointed to chair the Retail Outlets Board is absent from a meeting of the Board, a member chosen by the members present at the meeting will preside at the meeting.

(4) A decision carried by a majority of the votes cast by members at a meeting is a decision of the Retail Outlets Board.

(5) Each member present at a meeting of the Retail Outlets Board has one vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.

(6) The Retail Outlets Board must have accurate minutes kept of its proceedings and make them available to all members of the Board.

(7) Subject to this clause, the Retail Outlets Board may determine its own procedures.

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SCHEDULE 3

Repeal and Transitional Provisions

Repeal

1. The following Acts are repealed:

- (a) *Business Franchise (Petroleum Products) Act 1979*;
- (b) *Motor Fuel Distribution Act 1973*;
- (c) *Petroleum Shortages Act 1980*.

Licensing

2. (1) Subject to this clause, a Class B licence in force under the *Business Franchise (Petroleum Products) Act 1979* immediately before the commencement of this Act will be taken to be an annual licence under this Act authorising the sale of petroleum products purchased from another person who sold the products under the authority of a licence under this Act.

(2) An annual licence referred to in subclause (1) does not authorise prescribed retail sales of petroleum products from premises unless a licence or permit in force under the *Motor Fuel Distribution Act 1973* immediately before the commencement of this Act authorised the sale of petroleum products from the premises, in which case, the premises will be taken to be specified in the annual licence.

(3) A licence to keep dangerous substances that are petroleum products in force under the *Dangerous Substances Act 1979* immediately before the commencement of this Act will be taken to be an annual licence under this Act authorising the keeping of those petroleum products and, if the same person holds such a licence and a licence referred to in subclause (1), the licences may, on renewal under this Act, be consolidated into one licence.

(4) The date on which a licence referred to in subclause (1) or (3) next expires after the commencement of this Act will be taken to be a date specified by the Minister by notice in writing to the licensee and such a licence may be subsequently renewed as an annual licence under this Act for successive terms of one year.

(5) The Minister may adjust the fee for the renewal of a licence referred to in subclause (1) or (3) next occurring after the commencement of this Act to take into account any variation (resulting from notification by the Minister of a new expiry date under subclause (4)) of the term for which the licence would have continued in force if this Act had not been enacted.

(6) An approval of the Motor Fuel Distribution Board for the installation of an industrial pump under Part 5 of the *Motor Fuel Distribution Act 1973* will be taken to be an approval of the Minister for such an installation under Part 3 of this Act.

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SCHEDULE 4

Consequential Amendments to Environment Protection Act 1993

The *Environment Protection Act 1993* is amended—

- (a) by inserting after paragraph (i) of section 24(1) the following paragraph:
 - (j) any money paid into the Fund under any other Act.;
- (b) by inserting after paragraph (e) of section 24(4) the following paragraph:
 - (f) towards the costs of administration of this Act.

APPENDIX

LEGISLATIVE HISTORY

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

Section 3:	repealed by 29, 1998, s. 3
Section 4(1):	definition of "annual licence" repealed by 29, 1998, s. 4(a) definitions of "bulk end user certificate" and "certificate" inserted by 29, 1998, s. 4(b); repealed and definition of "bulk end user certificate" or "certificate" inserted in their place by 21, 2000, s. 14(a) definition of "Commissioner" amended by 29, 1998, s. 4(c) definitions of "Commonwealth customs duty" and "Commonwealth excise duty" inserted by 29, 1998, s. 4(d) definition of "condition" amended by 29, 1998, s. 4(e) definition of "Consumer Price Index" repealed by 29, 1998, s. 4(f) definition of "corresponding law" inserted by 29, 1998, s. 4(g) definition of "eligible petroleum products" inserted by 29, 1998, s. 4(h) definitions of "Environment Protection Fund" and "Highways Fund" repealed by 29, 1998, s. 4(i) definition of "licence" amended by 29, 1998, s. 4(j) definitions of "member of a group" and "monthly licence" repealed by 29, 1998, s. 4(k) definition of "off-road diesel fuel user certificate" inserted by 29, 1998, s. 4(l); repealed by 21, 2000, s. 14(b) definition of "relevant period" repealed by 29, 1998, s. 4(m) definition of "retail licence" inserted by 29, 1998, s. 4(m) definition of "retail sale" amended by 29, 1998, s. 4(n) definition of "voting share" repealed by 29, 1998, s. 4(o) definitions of "wholesale" and "wholesale licence" inserted by 29, 1998, s. 4(o)
Section 4(2):	substituted by 29, 1998, s. 4(p)
Sections 4A and 4B:	inserted by 29, 1998, s. 5
Section 4C:	inserted by 29, 1998, s. 5; repealed by 21, 2000, s. 15
Section 4D:	inserted by 29, 1998, s. 5
Part 2 Division 1 heading:	repealed by 29, 1998, s. 6
Section 8(1):	amended by 29, 1998, s. 7(a)
Section 8(1a):	inserted by 29, 1998, s. 7(b)
Section 8(2):	repealed by 29, 1998, s. 7(c)
Section 9(2):	repealed by 29, 1998, s. 8(a)
Section 9(3):	amended by 29, 1998, s. 8(b)
Section 9(4) and (5):	repealed by 29, 1998, s. 8(c)
Section 10(1):	repealed by 29, 1998, s. 9(a)
Section 10(2):	amended by 29, 1998, s. 9(b)
Section 10(4):	amended by 29, 1998, s. 9(c)
Section 10(5):	inserted by 29, 1998, s. 9(d)
Section 11(2):	amended by 29, 1998, s. 10
Section 13(3):	inserted by 29, 1998, s. 11
	Division 2 of Part 2 comprising ss. 20 - 23 and heading repealed by 29, 1998, s. 12
	Part 2A comprising ss. 20 - 23I and heading inserted by 29, 1998, s. 13
Section 20(3):	substituted by 21, 2000, s. 16(a)
Section 20(5):	repealed by 21, 2000, s. 16(b)

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Section 20(7):	repealed by 21, 2000, s. 16(c)
Section 20(8):	substituted by 21, 2000, s. 16(d)
Section 20(10):	repealed by 21, 2000, s. 16(e)
Section 23(7):	repealed by 21, 2000, s. 17(a)
Section 23(12):	repealed by 21, 2000, s. 17(b)
Sections 23B and 23C:	repealed by 21, 2000, s. 18
Section 23F(1):	amended by 21, 2000, s. 19
Section 23I(1):	substituted by 21, 2000, s. 20
Section 35(1):	substituted by 29, 1998, s. 14(a)
Section 35(3):	amended by 29, 1998, s. 14(b)
Section 42(4):	amended by 29, 1998, s. 15
Section 44(1):	amended by 29, 1998, s. 16
Section 47(1):	amended by 29, 1998, s. 17(a)-(c)
Section 47(2):	repealed by 4, 2000, s. 9(1) (Sched. 1 cl. 29(a))
Section 47(3):	amended by 29, 1998, s. 17(d), (e)
Section 47(4):	amended by 29, 1998, s. 17(f)
Section 47(5):	amended by 29, 1998, s. 17(g), (h)
Section 47(6):	repealed by 4, 2000, s. 9(1) (Sched. 1 cl. 29(b))
Section 47(7):	substituted by 29, 1998, s. 17(i)
Section 47(8):	substituted by 4, 2000, s. 9(1) (Sched. 1 cl. 29(c))
Section 47(9):	repealed by 4, 2000, s. 9(1) (Sched. 1 cl. 29(d))
Section 47(10):	repealed by 4, 2000, s. 9(1) (Sched. 1 cl. 29(e))
Section 47(11):	repealed by 4, 2000, s. 9(1) (Sched. 1 cl. 29(f))

Part 10 comprising s. 48 and heading repealed by 29, 1998, s. 18

Section 50(1):	substituted by 29, 1998, s. 19; amended by 21, 2000, s. 21
Section 52:	substituted by 29, 1998, s. 20
Section 53(1) and (2):	amended by 29, 1998, s. 21(a)
Section 53(3) and (4):	inserted by 29, 1998, s. 21(b)
Section 53A:	inserted by 29, 1998, s. 22
Section 56:	amended by 29, 1998, s. 23
Section 61(1):	substituted by 29, 1998, s. 24
Section 62:	amended by 29, 1998, s. 25
Section 64(2a):	inserted by 29, 1998, s. 26
Schedule 1	
Clause 3(1):	amended by 29, 1998, s. 27
Schedule 2:	repealed by 29, 1998, s. 28