

MOTOR SPIRIT AND SUBSTITUTE LIQUID FUELS ACT.

Act No. 31, 1941.

An Act to provide for the regulation of the sale of motor spirit and substitute liquid fuels; to amend the Gas and Electricity Act, 1935, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 10th April, 1941.]

George VI.
No. 31, 1941.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Motor Spirit and Substitute Liquid Fuels Act, 1941."

(2) This Act is divided into Parts as follows:—

PART I.—PRELIMINARY—S. 1.

Short title,
commencement
and division
into Parts.

PART

No. 31, 1941.

PART II.—MOTOR SPIRIT AND SUBSTITUTE LIQUID
FUELS—ss. 2-17.PART III.—AMENDMENT OF GAS AND ELECTRICITY
ACT, 1935, AS AMENDED BY SUBSEQUENT ACTS—
s. 18.

PART II.

MOTOR SPIRIT AND SUBSTITUTE LIQUID FUELS.

Commence-
ment and
construc-
tion.

2. (1) This Part of this Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

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

Definitions

3. (1) In this Part, unless the context or subject matter otherwise indicates or requires,—

“Benzole” means a refined spirit manufactured in Australia and derived from coal, and consisting essentially of benzene, suitable for blending with motor spirit for use in internal combustion engines.

“License” means a license issued under this Part.

“Mineral spirit” has the meaning given to that expression in the Inflammable Liquid Act, 1915, as amended by subsequent Acts.

“Motor spirit” means mineral spirit used or adapted or intended to be used for the propulsion of any motor vehicle, but does not include substitute liquid fuel.

The expression “Motor spirit” does not refer to or include motor spirit which is the subject of interstate trade or commerce within the meaning of section ninety-two of the Commonwealth Constitution while it is the subject of such trade or commerce but refers to and includes only such

such motor spirit as is for the time being part of the general mass of property in New South Wales which is completely under the power and control of the State of New South Wales. No. 31, 1941.

“Person” includes body of persons, corporate or unincorporate.

“Power alcohol” means anhydrous ethyl alcohol manufactured in Australia and methylated as prescribed by regulations made pursuant to subsection four of section fourteen of the Spirits Acts 1906-1935 of the Parliament of the Commonwealth of Australia.

“Prescribed” means prescribed by this Part or by the regulations.

“Regulations” means regulations made under this Part.

“Sell” includes barter or exchange or offer or attempt to sell or send forward or deliver for sale or cause or suffer or allow to be sold or offered for sale.

“Substitute liquid fuel” means benzole produced by gas companies in New South Wales and power alcohol and includes any other liquid suitable for blending with motor spirit for use in internal combustion engines which the Governor by proclamation in the Gazette declares to be a substitute liquid fuel.

(2) The Governor may, by proclamation published in the Gazette, declare any liquid (including benzole produced otherwise than by gas companies) which is manufactured or produced in Australia and which is suitable for blending with motor spirit for use in internal combustion engines to be a substitute liquid fuel. Power to proclaim substitute liquid fuel.

4. (1) Subject to this Part, from and after the expiration of one month after the commencement of this Act, no person shall, in New South Wales, either as principal or as agent, sell to any other person for delivery in New South Wales, any motor spirit which at the time of such sale is situate in New South Wales unless he is the holder of a license issued under this Part: Person selling motor spirit to be holder of license. cf. Act 24, Geo. V No. 11 (Q'ld.), ss. 3 and 8.

Provided that any person who buys motor spirit for the purposes of sale from a person who holds a license under

No. 31, 1941. under this Part shall be deemed to comply with the provisions of this section upon proof that the person from whom he buys such motor spirit is so licensed, and any such person shall, for the purposes of this Part and the regulations, be deemed to be a licensed person and the agent of the licensee accordingly.

(2) Any person who sells any motor spirit in contravention of the provisions of subsection one of this section shall be guilty of an offence, and shall be liable upon conviction to a penalty not exceeding fifty pounds or, for a second or subsequent offence, to a penalty not less than twenty pounds nor more than two hundred pounds.

Licenses.

5. (1) Application for a license or for the renewal of a license under this Part shall be in the prescribed form and shall contain such particulars as may be prescribed.

(2) Every such application shall be lodged with the Minister and shall be accompanied by the prescribed fee.

(3) Every license shall be issued by the Minister and shall, subject to this Part, remain in force for a period of one year from the date of its issue, and may be renewed from time to time for a like period.

(4) The Minister may refuse to issue a license to any person who was previously the holder of a license under this Part, but whose license has been cancelled.

(5) The Minister may refuse to renew the license of any person who has committed any breach of or who has neglected or failed to comply with any of the requirements of this Part.

Holder of license to purchase substitute liquid fuel in prescribed quantities.
cf. Act 24, Geo. V No. 11 (Qld.), ss. 6 and 7.

6. (1) The holder of every license shall during the currency thereof purchase and pay at the prescribed price for a quantity of each class or type of substitute liquid fuel not less than a quantity equal to a prescribed number of gallons for every one hundred gallons of motor spirit sold by him during the period of such currency.

The prescribed price shall be the price fixed as provided in section seven of this Act.

The regulations may prescribe different quantities in respect of different classes or types of substitute liquid fuel:

Provided

Provided that, in calculating for the purposes of this section the number of gallons of motor spirit sold by any holder of a license—

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- (a) account shall not be taken of sales of motor spirit produced in Australia from indigenous shale; and
- (b) subject to paragraph (a) of this proviso there shall be taken into account only those sales in respect of which a license is required to be held by him under section four of this Act:

Provided further, that in the case of any sale as agent by any holder of a license the provisions of this section shall be deemed to have been complied with as regards such sale upon proof that the principal is the holder of a license and has duly complied with the provisions of this section:

Provided also, that in the case of any sale of motor spirit by a non-licensed person which has been purchased by him from a licensed person, such non-licensed person shall be deemed to be the agent of the licensed person in respect of such sale.

(2) If the holder of a license commits any breach of or neglects or fails to comply with the requirements of subsection one of this section he shall be guilty of an offence.

(3) It shall be a sufficient defence to any proceedings under this section if the holder of the license proves—

- (a) that he was unable to obtain any substitute liquid fuel of the class or type referred to in the charge; or
- (b) that he was able to obtain only a specified quantity of substitute liquid fuel of the class or type referred to in the charge, and that he purchased such specified quantity of that substitute liquid fuel.

7. (1) Where a price for any class or type of substitute liquid fuel is fixed under and in accordance with regulations (in this section hereinafter referred to as the Commonwealth Regulations) made under the National Security Act 1939 of the Parliament of the Commonwealth

Prescribed price.

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No. 31, 1941. Commonwealth of Australia, the prescribed price for that class or type of substitute liquid fuel shall be the price for the time being so fixed.

(2) Subject to subsection one of this section, the following provisions shall apply to and in respect of the fixation of the prescribed price for benzole produced by a gas company:—

(a) The prescribed price for benzole produced by a gas company shall be fixed by a commission which shall be appointed in like manner as a board is appointed under section five of the Gas and Electricity Act, 1935, as amended by subsequent Acts.

(b) The Minister shall at the request in writing of a gas company and may at any time of his own motion constitute a commission to fix or vary the price of benzole produced by a gas company. The commission shall forthwith enquire into the matter and as soon as practicable publish its determination in the Gazette. Upon such publication the price so determined shall for the time being be the prescribed price for such benzole until varied in accordance with this section.

(c) Where a price for benzole produced in New South Wales by a gas company has been fixed under and in accordance with the Commonwealth Regulations but the control of the price of such benzole is terminated either by reason of the expiration of the National Security Act 1939 or for any other cause—

(i) the price in force under the Commonwealth Regulations immediately before the control was so terminated shall be the prescribed price until a price is fixed in accordance with the foregoing provisions of this subsection.

(ii) In making any determination of the price for such benzole after such control is terminated and before the first day of January one thousand nine hundred and fifty-seven, the commission shall vary the prescribed

prescribed price existing immediately before the date of publication of its determination to the extent necessary to take into account the following matters only:—

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- (a) Any increase or decrease in the amounts payable by the company concerned in respect of—
 - (i) labour and materials used in the recovery, rectification and distribution of benzole, and the repair and maintenance of plant used in connection therewith;
 - (ii) excise duty, Commonwealth and State taxation, and local government rates; and
- (b) any increase or decrease in the cost of producing gas which is attributable to the recovery of benzole.

(3) The provisions of section five and of the regulations made in relation to the matters referred to in paragraph (f) of subsection one of section eighty-five of the Gas and Electricity Act, 1935, as amended by subsequent Acts, shall mutatis mutandis apply to and in respect of a commission appointed under subsection two of this section.

(4) In any case to which the provisions of subsection one or subsection two of this section do not apply the prescribed price shall be a price fixed by or under the regulations made under this Part.

The regulations made under this Part may prescribe the basis or bases or method of determination as to what shall constitute the prescribed price.

8. (1) The holder of a license who purchases substitute liquid fuel pursuant to this Act shall sell such substitute liquid fuel as motor spirit and not otherwise.

Licensee to sell substitute liquid fuel as motor spirit.

(2) If the holder of a license commits any breach of or fails to comply with the requirements of subsection one of this section, he shall be guilty of an offence.

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Cancellation
of license.
cf. Act 24
Geo. V No.
11 (Qld.),
s. 9.

9. If the Minister is satisfied that any holder of a license has failed to comply with the provisions of section six of this Act or is persistently acting in breach of any provision of this Part, he may give notice to such person of his intention to cancel the license of such person, giving his reasons for his decision.

The decision of the Minister to cancel any license shall not be carried into effect until the time for lodging an appeal against his decision has expired nor while any appeal against such decision is pending.

Appeal.

10. (1) Where the Minister gives notice under section nine of this Act of his intention to cancel a license or refuses pursuant to subsection five of section five of this Act to renew a license, the holder of the license or the person making the application, as the case may be, may appeal in accordance with the rules of court of the District Court to the District Court exercising jurisdiction in the district within which the place of business of such holder or person is situated.

(2) Every such appeal shall be in the nature of a re-hearing.

(3) Notice of appeal shall be given within thirty days after the receipt of the notice of intention to cancel the license or of the notification that the renewal of the license has been refused.

(4) (a) An appeal shall lie to the Supreme Court either by special case or upon notice of motion against any ruling, order, direction or decision of the District Court in point of law or upon the admission or rejection of any evidence.

(b) The provisions of Part VI of the District Courts Act, 1912-1936, shall, mutatis mutandis, extend to and in respect of any such appeal.

For the purposes of such extension the word "party" where used in that Part shall be deemed to include the Minister and the holder of the license or the person making the application for renewal of the license.

Inspection
of books,
etc.
cf. *Ibid.*
s. 10.

11. (1) Any person authorised in writing in that behalf by the Minister may from time to time inspect any books, accounts, registers, documents, or writings in the custody or control of a holder of a license, and may take notes, copies, or extracts thereof or therefrom.

(2)

(2) Any holder of a license or agent, or clerk, or servant of such holder— **No. 31, 1941.**

- (a) who neglects, obstructs, or refuses to produce for inspection to any person so authorised as aforesaid any books, accounts, registers, documents, or writings as aforesaid; or
- (b) who obstructs or refuses to allow any such person so authorised as aforesaid to take notes, copies, or extracts of or from any books, accounts, registers, documents, or writings as aforesaid; or
- (c) who refuses to answer any question of the person so authorised as aforesaid in relation to any books, accounts, registers, documents, or writings as aforesaid, or wilfully gives any untruthful answer to such question,

shall be guilty of an offence, and shall be liable on conviction to a penalty not exceeding one hundred pounds.

12. (1) Every person who either as principal or agent sells to any other person for delivery in New South Wales any motor spirit which at the time of such sale is situate in New South Wales shall keep proper books and accounts in which shall be recorded every such sale, and set forth with full particulars and in a manner that can be readily understood or as may be prescribed.

Person selling motor spirit to keep proper books. *cf. Act 24 Geo. V No. 11 (Qld.), s. 11.*

The Minister or any person authorised in writing in that behalf by the Minister may require any such person to alter his method of keeping his books if, in the opinion of the Minister or such authorised person, they are not kept in a satisfactory manner.

(2) Any person neglecting, refusing, or failing to comply with the provisions of subsection one of this section shall be guilty of an offence, and shall be liable on conviction to a penalty not exceeding one hundred pounds.

Penalty.

13. (1) The Minister shall enter in a register to be kept for the purpose a record of all licenses issued under this Part in which shall be entered particulars of the date of the grant, the duration and the date of the expiration or cancellation of each license and such other particulars (if any) as may be prescribed.

Record of licenses. *cf. Ibid. s. 12.*

No. 31, 1941. (2) A copy of any entry in such register purporting to be signed by the Minister shall be prima facie evidence of the truth of the matters stated in such copy.

Registered office.
cf. Act No. 7, 1937, s. 15.

14. (1) Every holder of a license shall have a registered office within New South Wales.

(2) All writs, summonses, notices and other documents required or authorised to be served on or given to the holder of a license shall be deemed to be duly served or given if left for him at his registered office.

(3) The address specified in the application for a license as the address at which the applicant proposes to carry on business shall, upon the grant of the license, be deemed to be the registered office of the holder of the license.

(4) Notice of any change in the situation of the registered office shall be lodged by the holder of the license, with the Minister within the prescribed time.

(5) If any holder of a license carries on business without complying with the requirements of this section he shall be liable to a penalty not exceeding five pounds for every day during which he so carries on business.

General penalty.

15. (1) Any person committing a breach of or neglecting or contravening or failing to comply with any of the provisions of this Part shall be guilty of an offence.

Any person guilty of an offence shall, where no other penalty is expressly provided, be liable on conviction to a penalty not exceeding two hundred pounds.

Corporations.
cf. Act No. 58, 1935, s. 106 (2).

(2) Where any act which by this Part is declared to be an offence and which is committed by a body corporate is proved to have been committed with the consent or approval of any director, manager, secretary or other officer of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of the offence, and he may be proceeded against and punished accordingly.

Recovery of penalties.

16. (1) Any penalty imposed by this Part or the regulations may be recovered in a summary manner in a court of petty sessions holden before a stipendiary or police magistrate.

(2)

(2) In any proceedings under or for the purposes of this Part or the regulations—

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Evidence.

- (a) the averment of the prosecutor that the defendant was not, at the time of the commission of the alleged offence, the holder of a license shall be deemed to be proved in the absence of proof to the contrary;
- (b) every entry in any book kept by or belonging to any person or found on the premises of any person shall be deemed, unless the contrary is shown, to have been made by or with the authority of such person.

17. (1) The Governor may make regulations not inconsistent with this Part prescribing all matters which by this Part are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Part.

Regulations.

(2) Without prejudice to the generality of subsection one of this section the Governor may make regulations for or with respect to—

- (a) applications for licenses and the form and manner thereof, and the form, terms, provisions, and conditions of the license and the fee payable therefor;
- (b) mode of proof of purchase by a person of motor spirit from a licensee, including any prescribed certificate or invoice to be furnished by licensees or other persons to persons buying motor spirit for sale;
- (c) forms of returns and of statistics to be made and furnished to the Minister, and the contents thereof; and the persons (whether licensees or not) by whom the same shall be made, and the time and mode of making and furnishing the same;
- (d) the form of any notice, order, or other document under this Part;
- (e) the manner of service of any notice, order, or other document under this Part, and the effect of service thereof in the prescribed manner.

(3) The regulations may impose a penalty not exceeding fifty pounds for any breach of the regulations.

(4)

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- (4) The regulations shall—
- (a) be published in the Gazette;
 - (b) take effect from the date of publication or from a later date to be specified in the regulations;
and
 - (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

PART III.**AMENDMENT OF GAS AND ELECTRICITY ACT, 1935, AS AMENDED BY SUBSEQUENT ACTS.**Amendment
of Act No.
42, 1935.Sec. 8.
(Deprecia-
tion.)New sec.
8A.Depreciation
—plant for
benzole.

18. (1) The Gas and Electricity Act, 1935, as amended by subsequent Acts, is amended—

- (a) by inserting at the end of section eight the words “In calculating the amount referred to in the foregoing provisions of this section the book values of plant utilised exclusively for the recovery and/or rectification of benzole shall not be taken into account”;
- (b) by inserting after section eight the following new section:—

8A. The directors of a gas company may, if they think fit, in any year charge against the revenue of the company derived from the recovery and/or rectification of benzole and not otherwise, as part of the expenditure on revenue account, such sums as they may determine and any sum so charged shall be applied in writing down the book values of plant utilised exclusively for the recovery and/or rectification of benzole or be carried to a depreciation reserve in respect of such plant;

(c)

(c) by inserting next after subsection two of section twelve the following new subsection:—

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Sec. 12.

(2A) A board constituted under subsection two of this section shall not, in the exercise of its functions under that subsection, take into account any of the following matters:—

(Standard price.)

- (a) revenue from the recovery and/or rectification of benzole;
- (b) interest on loans utilised for the purpose of installing, operating or maintaining plant for the recovery and/or rectification of benzole;
- (c) expenses incurred in the recovery and/or rectification of benzole;
- (d) contingencies associated with the recovery and/or rectification of benzole.

(2) The Gas and Electricity Act, 1935, as amended by subsequent Acts, is further amended by inserting in paragraph (a) of subsection one of section twenty-three the following words: "Provided further that where a gas company has notified the Minister, in writing, of its intention to instal and operate a plant for the recovery and/or rectification of benzole from gas to be supplied by such company, the Minister shall by notification published in the Gazette, vary the standard of heating power of the gas to be supplied by such company; any such variation may be made from time to time and may be made to take effect at such times and to such extent as the circumstances require."

Further amendment of Act No. 42, 1935. Sec. 23. (Heating power.)

(3) The Gas and Electricity Act, 1935, as amended by subsequent Acts and by this Act, may be cited as the Gas and Electricity Act, 1935-1941.

Citation.