

**BUSINESS FRANCHISE LICENCES (PETROLEUM)
AMENDMENT ACT.**

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. 76, 1975.

An Act to provide for quarterly licences under the Business Franchise Licences (Petroleum) Act, 1974, instead of annual licences ; to increase the licence fees payable under that Act ; for these and other purposes to amend that Act. [Assented to, 1st December, 1975.]

BE

Business Franchise Licences (Petroleum) Amendment.

BE it enacted by the Queen's Most Excellent Majesty, by No. 76, 1975 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:—

1. This Act may be cited as the "Business Franchise Short title.
Licences (Petroleum) Amendment Act, 1975".

2. (1) Sections 1 and 3 and this section commence on Commence-
the date of assent to this Act. ment.

(2) Sections 4, 6 and 7 commence on 1st December,
1975.

(3) Section 5 commences on 2nd March, 1976.

3. The Business Franchise Licences (Petroleum) Act, Principal
1974, is in this Act referred to as the Principal Act. Act.

4. The Principal Act is amended in the manner specified Amendment
in Schedule 1. of Act No.
67, 1974.

5. The Principal Act is further amended in the manner Further
specified in Schedule 2. amendment
of Act No.
67, 1974.

6. (1) Notwithstanding section 2 (3), where a person Transitional
would be required to hold a licence under the Principal Act, provision.
as amended by this Act, in order to sell petroleum products
on or after 2nd March, 1976, section 5 shall, for the purpose
only of doing anything, or requiring anything to be done, for
the purpose of issuing that licence before 2nd March, 1976,
be deemed to have commenced on 1st December, 1975.

(2)

Business Franchise Licences (Petroleum) Amendment.

No. 76, 1975 (2) Subsection (1) has no operation in relation to any licence required to sell petroleum products after 1st December, 1975, and before 2nd March, 1976.

Validation. 7. Anything done before 1st December, 1975, that could lawfully have been done had the Principal Act, as amended by section 4, been in force when that thing was done is hereby validated.

Sec. 4.

SCHEDULE 1.

**AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES
(PETROLEUM) ACT, 1974.**

(1) Section 3 (1)—

After the definition of "petroleum products", insert :—

"premises" includes a place, a vehicle and a vessel;

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

(2) (a) Section 6 (1)—

Omit "The Commissioner shall", insert instead "Subject to section 6A, the Commissioner shall".

(b)

Business Franchise Licences (Petroleum) Amendment.

(b) Section 6 (2)—

No. 76, 1975

Omit section 6 (2), insert instead :—

(2) Except with the approval of the Commissioner, an application for a licence may not be made later than one month before the commencement of the period in respect of which the licence is applied for.

(3) Section 6A—

After section 6, insert :—

6A. Where a licensee (including a licensee holding a licence deemed by paragraph (b) to have been issued) furnishes to the Commissioner the particulars that would be required under section 6 (1) (b), and pays the fee that would be payable under section 6 (1) (c), if he applied for a further licence that, from the expiration of the licence pursuant to which he is a licensee, would confer authority under the same provision of section 6 as the expired licence—

(a) that licensee shall, if he has not applied for such a further licence, be deemed to have duly so applied; and

(b) the licence already held by the licensee shall be deemed to be such a further licence issued with effect from the expiration of the licence already held by the licensee unless, before that expiration, the Commissioner informs the licensee that the Commissioner refuses to issue the further licence for which the licensee has, or is by paragraph (a) deemed to have, applied.

(4)

*Business Franchise Licences (Petroleum) Amendment.*No. 76, 1975 (4) Section 7—

Omit section 7, insert instead :—

Certain
particulars
to be
furnished.

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

- (a) a person who is carrying on, or has carried on, or is or has been concerned in, a business of manufacturing, distributing, selling or purchasing petroleum products; or
- (b) a person who, as the 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 to the Commissioner, or to furnish to the Commissioner in writing, within such period as is specified in the instrument or such further period as the Commissioner may allow, such particulars with respect to those petroleum products, or any of them, as are so specified, not being particulars relating to a period after the date of the requirement, and that person shall comply with that requirement.

Penalty : \$5,000.

(2) A person is not guilty of an offence under subsection (1) if the court hearing the charge is satisfied—

- (a) that the defendant could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates; or
- (b) that the defendant complied with that requirement to the extent of his ability to do so.

(5)

Business Franchise Licences (Petroleum) Amendment.

(5) (a) Section 9 (1)—

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Omit "A reference in", insert instead "Subject to subsection (1A), a reference in".

(b) Section 9 (1A)—

After section 9 (1), insert—

(1A) A reference in this section, subsection (1) excepted, to the quantity of a petroleum product non-accountable does not include a reference to any quantity of a petroleum product that an applicant elects, with the consent of the Commissioner, not to treat as non-accountable and, where such an election is so made, the petroleum product to which the election relates is non-accountable in calculating the fee payable for any other licence.

(6) Section 17—

Omit "accounts, records, books and documents" wherever occurring, insert instead "records".

(7) (a) Section 18 (2) (a)—

Omit section 18 (2) (a), insert instead :—

(a) enter and remain on any premises which are used, or which he reasonably suspects are used, for the manufacture, distribution, sale or purchase of petroleum products or which are used, or which he reasonably suspects are used, for the storage or custody of any records relating to the manufacture, distribution, sale or purchase of petroleum products;

(b)

Business Franchise Licences (Petroleum) Amendment.

No. 76, 1975

(b) Section 18 (2) (b)—

Omit section 18 (2) (b), insert instead :—

(b) request any person found in or upon those premises—

(i) to produce any record which relates to, or which the inspector reasonably suspects relates to, the manufacture, distribution, sale or purchase of petroleum products, or the production of a statement referred to in subparagraph (ii), and which at the time of the request is in the possession or under the control of that person;

(ii) to produce a statement, written in the English language, setting out the particulars contained in any such record that is not written or not written in the English language; and

(iii) to answer any question with respect to any such record or statement or the manufacture, distribution, sale or purchase of any petroleum products; and.

(c) Section 18 (2) (c)—

Omit section 18 (2) (c), insert instead :—

(c) take copies of, or extracts from, any such record.

(d) Section 18 (3) (b)—

After “power;”, insert “or”.

(e) Section 18 (3) (c)—

Omit “subsection (2) (c); or”, insert instead “subsection (2) (b).”.

(f)

Business Franchise Licences (Petroleum) Amendment.

(f) Section 18 (3) (d)—

No. 76, 1975

Omit section 18 (3) (d).

(g) Section 18 (4)—

Omit “(c) (ii)”, insert instead “(b) (iii)”.

(h) Section 18 (5)—

Omit “subsection (2) (c)”, insert instead “subsection (2) (b) (iii)”.

(i) Section 18 (5)—

After “subsection (3)”, insert “or section 20A”.

(j) Section 18 (6)—

Omit “subsection (2) (c) (ii)”, insert instead “subsection (2) (b) (iii)”.

(k) Section 18 (6)—

Omit “selling”, insert instead “manufacturing, distributing, selling or purchasing”.

(8) Section 20A—

After section 20, insert :—

20A. (1) A person shall not—

(a) make an application under this Act; or

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

False or misleading statements, etc.

that is false or misleading in a material particular.

(c)

Penalty:

Business Franchise Licences (Petroleum) Amendment.

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Penalty: \$500 or imprisonment for a term of three months, or both.

(2) A person shall not—

(a) in furnishing any information;

(b) in giving any notification; or

(c) in keeping any record,

pursuant to this Act, make a statement or representation that is false or misleading in a material particular.

Penalty: \$500 or imprisonment for a term of three months or both.

(3) It is a defence to a charge under subsection (1) or (2) if it is proved that, at the time the application, answer, statement or representation was made, the defendant had reasonable grounds to believe, and did believe, that it was neither false nor misleading.

Sec. 5.**SCHEDULE 2.****FURTHER AMENDMENTS TO THE BUSINESS FRANCHISE
LICENCES (PETROLEUM) ACT, 1974.**

(1) (a) Section 3 (1)—

After the definition of “premises”, insert :—

“quarter day” means the first day of March, the first day of June, the first day of September and the first day of December;

(b)

Business Franchise Licences (Petroleum) Amendment.**(b) Section 3 (1)—****No. 76, 1975**

Omit the definition of “relevant period”, insert instead :—

“relevant period” means, in relation to a licence, the period of three months that commenced six months before the quarter day that last preceded the date on and from which the licence takes effect;

“service station” means a place declared by the Commissioner under section 4A to be a service station;

(2) Section 4A—

After section 4, insert :—

4A. The Commissioner may, by order in writing, notify an applicant for, or the holder of, a licence referred to in section 6 (3) (b), (c), (e), (f) or (h) that a place specified in the order is a service station. Place may be declared to be service station.

(3) (a) Section 5 (2)—

Omit “the licence held by him as the place”, insert instead “a licence held by him as a place”.

(b) Section 5 (2A)—

After section 5 (2), insert :—

(2A) A person shall not, at a service station, carry on the business of selling petroleum products unless that service station is specified in a licence held by him for which the fee has been fixed under section 9 (10) or (10A).

Penalty: \$500 for every day on which the licensee carries on business.

(c)

Business Franchise Licences (Petroleum) Amendment.

No. 76, 1975

(c) Section 5 (3)—

Omit “the licence”, insert instead “a licence”.

(d) Section 5 (4)—

Omit section 5 (4), insert instead :—

(4) Where the fee for a licence has been fixed under section 9 (10) or (10A) and, at the place specified in the licence, the licensee sells petroleum products to a purchaser who does not, at the time of sale, produce to that licensee a licence held by that purchaser, the sale shall, for the purposes of subsection (3) and of section 6 (3) (i) and (j), be deemed to be a sale to a person who is not a licensee.

(e) Section 5 (5)—

Omit section 5 (5), insert instead :—

(5) A person is not required to hold a licence if, were he required to hold a licence—

- (a) the quantity of each petroleum product prescribed for the purposes of this paragraph, or of each class of petroleum products so prescribed, to be taken into account in fixing the fee for the licence would not exceed the quantity of that petroleum product or, as the case may be, that class of petroleum products, that is prescribed for the purposes of this paragraph; and

(b)

Business Franchise Licences (Petroleum) Amendment.

- (b) the quantity of petroleum products that ^{No. 76, 1975} would be taken into account in assessing the fee for the licence other than those prescribed, or within a class prescribed, for the purposes of paragraph (a) would not exceed the quantity prescribed for the purposes of this paragraph.

(f) Section 5 (6)—

Omit section 5 (6).

(4) (a) Section 6 (1) (c)—

Omit section 6 (1) (c), insert instead :—

- (c) upon payment of the fee assessed by the Commissioner in accordance with section 9,

(b) Section 6 (3) (b)—

After “or”, insert “, subject to section 5 (2A),”.

(c) Section 6 (3) (c)—

Omit “and to”, insert instead “and, subject to section 5 (2A), to”.

(d) Section 6 (3) (e)—

After “or”, insert “, subject to section 5 (2A),”.

(e) Section 6 (3) (f)—

Omit “and to”, insert instead “and, subject to section 5 (2A), to”.

(f)

*Business Franchise Licences (Petroleum) Amendment.***No. 76, 1975**

(f) Section 6 (3) (h)—

After “or” where firstly occurring, insert “, subject to section 5 (2A),”.

(g) Section 6 (3) (h)—

Omit “or” where lastly occurring.

(h) Section 6 (3) (i)—

Omit “place.”, insert instead “place; or”.

(i) Section 6 (3) (j)—

After section 6 (3) (i), insert :—

(j) where the fee in respect of the licence is assessed under section 9 (10A), to carry on the business of selling petroleum products at the place specified in the licence and, at that place, to sell them only to persons who are not licensees, if he may otherwise lawfully do so at that place.

(j) Section 6 (4)—

Omit section 6 (4), insert instead :—

(4) A licence shall be in force—

(a) where it is not a licence deemed by section 6A to be a further licence, until—

(i) the quarter day that next succeeds the date specified in the licence as the date on which it commences; or

(ii)

Business Franchise Licences (Petroleum) Amendment.

- (ii) the date endorsed on an instrument of surrender relating to the licence pursuant to subsection (6),

whichever first occurs; or

- (b) where it is a licence deemed by section 6A to be a further licence, until—

- (i) the quarter day that next succeeds the expiration of the licence already held by the applicant; or

- (ii) the date endorsed on an instrument of surrender relating to the licence pursuant to subsection (6),

whichever first occurs.

- (5) (a) Section 9—

Omit "\$500" wherever occurring, insert instead "\$125".

- (b) Section 9—

Omit "10 per centum" wherever occurring, insert instead "15 per centum".

- (c) Section 9—

Omit "\$100" wherever occurring, insert instead "\$25".

- (d) Section 9 (3) (b)—

After "applicant", insert "otherwise than at a service station".

(e)

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No. 76, 1975

(e) Section 9 (4) (b)—

After “applicant”, insert “otherwise than at a service station”.

(f) Section 9 (6) (b)—

After “applicant”, insert “otherwise than at a service station”.

(g) Section 9 (7) (b)—

After “applicant”, insert “otherwise than at a service station”.

(h) Section 9 (9) (b)—

After “applicant”, insert “otherwise than at a service station”.

(i) Section 9 (10)—

Omit “the licence”, insert instead “a licence specifying that place and no other place”.

(j) Section 9 (10)—

After “sell” where firstly occurring, insert “at a specified place”.

(k) Section 9 (10)—

After “him and”, insert “at that place”.

(l)

Business Franchise Licences (Petroleum) Amendment.

(l) Section 9 (10) (a)—

No. 76, 1975

Omit "\$50", insert instead "\$12.50".

(m) Section 9 (10) (b)—

After "applicant", insert "at the specified place".

(n) Section 9 (10A)—

After section 9 (10), insert :—

(10A) Where the applicant for a licence—

- (a) also applies for, or is the holder of, a licence referred to in section 6 (3) (b), (c), (e), (f) or (h); and
- (b) proposes to sell petroleum products at a place that is a service station and, at that place, to sell them only to persons who are not licensees,

the fee payable for a licence specifying that place and no other place shall be—

(c) \$12.50; and

- (d) 15 per centum of the value of the quantity of petroleum products sold by the applicant at the specified place during the relevant period.

(o)

Business Franchise Licences (Petroleum) Amendment.

No. 76, 1975

(o) Section 9 (12)—

Omit “period of twelve months ended the thirtieth day of June next preceding the second day of March which next precedes the day on which the licence if granted would commence to be in force”, insert instead “relevant period”.

(p) Section 9 (12)—

After “manner”, insert “or at the place”.

(q) Section 9 (12) (a)—

After “carrying on”, insert “, under the authority of the licence applied for,”.

(r) Section 9 (12) (b)—

Omit “(9) and (10)”, insert instead “(9), (10) and (10A)”.

(s) Section 9 (12)—

After “subsection (10)”, insert “or (10A)”.

(t) Section 9 (13) (c)—

Omit “(9) or (10)”, insert instead “(9), (10) or (10A)”.

(u) Section 9 (13) (e)—

Omit “(9) and (10)”, insert instead “(9), (10) and (10A)”.

(v)

Business Franchise Licences (Petroleum) Amendment.

(v) Section 9 (13)—

No. 76, 1975

After "subsection (10)", insert "or (10A)".

(w) Section (9) (14)—

Omit "(9) and (10)", insert instead "(9), (10) and (10A)".

(x) Section 9 (15)—

Omit "(9) and (10)", insert instead "(9), (10) and (10A)".

(y) Section 9 (16), (17)—

Omit section 9 (16), insert instead :—

(16) Notwithstanding any other provision of this section—

(a) where a licence is to be in force for a period of one month or less, the amount of the fee that, but for this subsection, would be payable shall be reduced by two-thirds; and

(b) where a licence is to be in force for a period of more than one month but not more than two months, the amount of the fee that, but for this subsection, would be payable shall be reduced by one-third,

if the applicant for the licence has not previously contravened a provision of section 5.

(17) The Commissioner shall not, in assessing a fee under subsection (12), have regard to any particulars furnished pursuant to a requirement under section 7.

(d)

(6)

Business Franchise Licences (Petroleum) Amendment.

No. 76, 1975 (6) (a) Section 10—

Omit “average retail price”, insert instead “prices”.

(b) Section 10—

After “during” where secondly occurring, insert “the month of June that last preceded”.

(7) Section 12—

Omit section 12.

(8) (a) Section 14 (1)—

Omit “or, where he has made an election under section 12 (1), the first instalment of that fee,”.

(b) Section 14 (8)—

Omit section 14 (8), insert instead :—

(8) Where, on an objection or appeal made under this section, the Commissioner or Tribunal upholds the objection or appeal wholly or in part, the Commissioner shall refund any amount overpaid to the person who paid the fee originally assessed.

(c) Section 14 (9)—

Omit section 14 (9).

(9) (a) Section 15 (1)—

After “(10),”, insert “(10A),”.

(b)

Business Franchise Licences (Petroleum) Amendment.**(b) Section 15 (2)—****No. 76, 1975**

Omit "subsections (3) and (4)", insert instead
"subsection (3)".

(c) Section 15 (4)—

Omit section 15 (4).

(d) Section 15 (5)—

Omit "subsections (6) and (7)", insert instead
"subsection (6)".

(e) Section 15 (6) (b)—

Omit "held the licence,", insert instead "held the
licence."

(f) Section 15 (6)—

Omit "unless, in respect of that additional amount
or any part of that additional amount so due
and payable by that person or any of those
persons, approval has been given under
subsection (7) for the payment of that amount
or part by instalments."

(g) Section 15 (7)—

Omit section 15 (7).

(h) Section 15 (10)—

Omit "or (7)".

Business Franchise Licences (Petroleum) Amendment.

No. 76, 1975 (10) (a) Section 16 (2A)—

After section 16 (2), insert :—

(2A) Where the fee for a licence was assessed under section 9 (10) and the Commissioner is satisfied that—

- (a) the licensee is no longer in lawful occupation of the place specified in the licence as the place at which the sale of petroleum products is authorised;
- (b) some other person is in lawful occupation of that place; and
- (c) the licensee has failed or refused, and continues to fail or refuse, to join in a request referred to in subsection (1),

the Commissioner may, upon a request being made by that other person in a form approved by the Commissioner and on payment of a fee of ten dollars, enter in his records a transfer of the licence to that other person with effect from a day specified in the request.

(b) Section 16 (3)—

After “subsection (1)”, insert “or (2A)”.

(c) Section 16 (4)—

After “subsection (1)”, insert “or (2A)”.

(d) Section 16 (5)—

After “subsection (1)”, insert “or (2A)”.

(e)

Business Franchise Licences (Petroleum) Amendment.

(e) Section 16—

No. 76, 1975

After section 16 (5), insert :—

(6) Where a licence for which the fee was fixed under section 9 (10) is transferred to a person who is the holder of a licence under section 6 (3) (b), (c), (e), (f) or (h), the fee for the licence shall be deemed to have been fixed under section 9 (10A).

(7) Where a licence for which the fee was fixed under section 9 (10A) is transferred to a person who is not the holder of a licence under section 6 (3) (b), (c), (e), (f) or (h), the fee for the licence shall be deemed to have been fixed under section 9 (10).

DISTRICT