

**BUSINESS FRANCHISE LICENCES (PETROLEUM PRODUCTS)  
ACT, 1982, No. 92**

**New South Wales**



**ANNO TRICESIMO PRIMO**

**ELIZABETHÆ II REGINÆ**

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**Act No. 92, 1982.**

An Act to make provision for the issue of licences to carry on the business of selling petroleum products, and for other purposes. [Assented to, 1st July, 1982.]

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**BE** it enacted by the Queen'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.

#### **Short title.**

1. This Act may be cited as the "Business Franchise Licences (Petroleum Products) Act, 1982".

#### **Arrangement.**

2. This Act is divided as follows:—

PART I.—PRELIMINARY—ss. 1–10.

PART II.—ADMINISTRATION—ss. 11–15.

PART III.—LICENCES—ss. 16–22.

PART IV.—APPEALS AND OBJECTIONS—ss. 23–26.

PART V.—MISCELLANEOUS—ss. 27–37.

SCHEDULE 1.—RELEVANT PERIODS FOR LICENCES.

#### **Interpretation.**

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Assistant Commissioner" means the Assistant Commissioner for Business Franchise Licences (Petroleum Products) referred to in section 11;

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“Commissioner” means the Commissioner for Business Franchise Licences (Petroleum Products) referred to in section 11;

“diesel fuel” means a petroleum or shale product used or capable of use in propelling a diesel engined road vehicle;

“group petroleum wholesalers licence” means a group petroleum wholesalers licence referred to in section 17 (3) (a) and in force under this Act;

“inspector” means—

- (a) an inspector referred to in section 13 (1); or
- (b) an inspector referred to in section 7 (1) of the Business Franchise Licences (Tobacco) Act, 1975;

“licence” means a Business Franchise Licence (Petroleum Products) granted under section 17 and in force under this Act;

“licensee” means the holder for the time being of a licence;

“motor spirit” means gasoline and other petroleum or shale spirit having a flash point of less than 23° Celsius when tested in an Abel Pensky closed test apparatus, but does not include aviation gasoline, solvents, special boiling point spirits or liquefied petroleum gas;

“petroleum products” means motor spirit and diesel fuel;

“petroleum retailers licence” means a licence referred to in section 17 (3) (b) and in force under this Act;

“petroleum retailing” means the business of selling petroleum products by retail in the course of intrastate trade either alone or in conjunction with any other merchandise, and includes any such business carried on as part of or in conjunction with any other business;

“petroleum wholesalers licence” means a petroleum wholesalers licence referred to in section 17 (3) (a) and in force under this Act;

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“petroleum wholesaling” means the business of selling motor spirit in the course of intrastate trade or the business of selling diesel fuel in the course of intrastate trade for use only in propelling diesel engined road vehicles, and includes any such business carried on as part of or in conjunction with any other business, but does not include the business of petroleum retailing;

“premises” includes any place, vehicle, vessel or aircraft;

“record” includes book, account, deed, writing and 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;

“regulations” means regulations under this Act;

“relevant period”, in relation to a licence in respect of a particular named month specified in column 1 of Schedule 1, means the month specified in column 2 of that Schedule opposite that particular month;

“road vehicle” means a vehicle designed solely or principally for transporting persons, goods or animals by road;

“Tribunal” means the Business Franchise Licence Fees (Petroleum Products) Appeals Tribunal referred to in section 12;

“value”, in relation to any petroleum products sold, means the value attributed to those products pursuant to section 20;

“voting share” has the meaning ascribed thereto in section 5 (1) of the Companies (New South Wales) Code.

**(2) A reference in this Act to—**

- (a) a petroleum wholesaler;
- (b) a petroleum retailer;
- (c) a person who sells petroleum products; or

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(d) a person who carries on the business of selling petroleum products, does not extend to a person who, as an agent or employee of a person referred to in paragraph (a), (b), (c) or (d), sells petroleum products or carries on such a business.

(3) A reference in this Act to intrastate trade is a reference to trade carried on in the State which is not trade or commerce among the States within the meaning of section 92 of the Constitution of the Commonwealth.

(4) A reference in this Act to a holder of a group petroleum wholesalers licence includes a reference to each person whose name is, under section 17 (4), specified in a group petroleum wholesalers licence.

(5) Where, pursuant to a sale made outside the State, petroleum products are delivered in the course of intrastate trade within the State, that sale shall, for the purposes of this Act, be deemed to have been made within the State.

**Membership of a group of petroleum wholesalers.**

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

- (a) that person is one of the persons who constitute a group for the purposes of this Act; and
- (b) there is not in force a determination under subsection (2) or (3) by the Commissioner that that person is not a member of the group.

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

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

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

(5) Notice of a determination under subsection (2) shall be given by the Commissioner to the person in respect of whom the determination was made and to all the members of the group concerned who he considers are carrying on petroleum wholesaling.

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

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

(8) Notice of the revocation of a determination made under subsection (2) or (3) shall be given by the Commissioner to the person in respect of whom the determination was made and to all the members of the group in respect of which the determination was made who he considers are carrying on petroleum wholesaling.

**Grouping of corporations.**

5. For the purposes of this Act, corporations constitute a group if they are related to each other (within the meaning of the Companies (New South Wales) Code) and any of them is carrying on petroleum wholesaling.

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**Grouping where employees used in another business.**

6. For the purposes of this Act, if—

- (a) an employee of an employer, or 2 or more employees of an employer, performs or perform duties solely or mainly for or in connection with a business carried on by that employer and another person or other persons or by another person or other persons; or
- (b) an employer has, in respect of the employment of, or the performance of duties by, one or more of his employees, an agreement, arrangement or undertaking (whether formal or informal, whether expressed or implied and whether or not the agreement, arrangement or undertaking includes provisions in respect of the supply of goods or services or goods and services) with another person or other persons relating to a business carried on by that other person or those other persons, whether alone or together with another person or other persons,

that employer and—

- (c) each such other person; or
- (d) both or all of those other persons,

constitute a group.

**Grouping of commonly controlled businesses.**

7. (1) A reference in this section to 2 businesses does not include a reference to 2 businesses both of which are owned by the same person, not being a trustee, or by the trustee or trustees of a trust.

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

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

- (a) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation, if the directors, or a majority of the directors, or one or more of the directors, being a director or directors who is or are entitled to exercise a majority in voting power at meetings of the directors of the corporation, are or is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person or of those persons acting together;
- (b) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation that has a share capital, if that person or those persons acting together could (whether directly or indirectly) exercise, control the exercise of or substantially influence the exercise of, half or more than half of the voting power attached to voting shares issued by the corporation;
- (c) a person has, or persons have together, a controlling interest in a business, being a business carried on by a partnership, if that person or those persons—
  - (i) owns, or own together (whether beneficially or not) half or more than half of the capital of the partnership; or
  - (ii) is, or are together, entitled (whether beneficially or not) to half or more than half of the profits of the partnership;
- (d) a person has, or persons have together, a controlling interest in a business, being a business carried on under a trust, if that person (whether or not as the trustee of another trust) is the beneficiary, or those persons (whether or not as the trustees of another trust) are together the beneficiaries, in respect of half or more than half of the value of the interests in the trust first mentioned in this paragraph;

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(e) a person has a controlling interest in a business if, whether or not he is a trustee of a trust, he is the sole owner of the business, or persons, being 2 or more trustees of a trust, have a controlling interest in a business if they are the owners of the business.

(4) Where a corporation has a controlling interest under subsection (3) in a business, it shall be deemed to have a controlling interest in any other business in which another corporation that is related to it (within the meaning of the Companies (New South Wales) Code) has a controlling interest.

(5) Where—

(a) a person has, or persons have together, a controlling interest under subsection (3) in a business; and

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

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

(6) Where—

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

(b) 2 or more persons together are beneficiaries under a trust,

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

**Smaller groups subsumed into larger groups.**

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

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

**Beneficiaries under discretionary trusts.**

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

**Crown bound.**

10. This Act binds the Crown.

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**PART II.****ADMINISTRATION.****Commissioner and Assistant Commissioner for  
Business Franchise Licences (Petroleum Products).**

11. (1) There shall be a Commissioner for Business Franchise Licences (Petroleum Products) and an Assistant Commissioner for Business Franchise Licences (Petroleum Products), each of whom shall be appointed under, and shall hold office subject to, the Public Service Act, 1979.

(2) The Assistant Commissioner shall have and may exercise or perform—

(a) where the Commissioner is absent from office or the office of the Commissioner is vacant, all the powers, authorities, duties and functions conferred or imposed on the Commissioner by this Act or the regulations; or

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(b) where the Commissioner has directed the Assistant Commissioner to exercise or perform any of those powers, authorities, duties or functions, such of those powers, authorities, duties or functions as are specified in the direction.

(3) No person shall be concerned to inquire whether the Assistant Commissioner is entitled to exercise or perform the powers, authorities, duties and functions conferred or imposed on the Commissioner by this Act or the regulations.

(4) Until a person is appointed as Commissioner, the person for the time being holding office as Commissioner for Business Franchise Licences (Tobacco) shall also hold office as Commissioner for Business Franchise Licences (Petroleum Products).

(5) Until a person is appointed as Assistant Commissioner, the person for the time being holding office as Assistant Commissioner for Business Franchise Licences (Tobacco) shall also hold office as Assistant Commissioner for Business Franchise Licences (Petroleum Products).

**Business Franchise Licence Fees (Petroleum Products) Appeals Tribunal.**

12. (1) There shall be a tribunal to be called the "Business Franchise Licence Fees (Petroleum Products) Appeals Tribunal" which shall consist of a person appointed by the Governor on the recommendation of the Minister.

(2) A person shall not be appointed under subsection (1) unless he is under the age of 70 years.

(3) The provisions of the Public Service Act, 1979, do not apply to or in respect of the appointment of a person referred to in subsection (1) or to such a person in his capacity as the Tribunal.

(4) Subject to section 30 (b) of the Interpretation Act, 1897, the person appointed under subsection (1) shall hold office for such period not exceeding 3 years as is specified in the instrument of his appointment or until he attains the age of 70 years, whichever first happens.

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**(5)** The person so appointed is entitled to be paid such fees and allowances as the Minister may from time to time determine.

**(6)** Until a person is so appointed, the person for the time being holding office as the Business Franchise Licence Fees (Tobacco) Appeals Tribunal shall also hold office as the Business Franchise Licence Fees (Petroleum Products) Appeals Tribunal.

**Inspectors.**

**13.** **(1)** Inspectors may be appointed for the purposes of this Act under and subject to the Public Service Act, 1979.

**(2)** For the purposes of this Act, an inspector, on production of written evidence of his appointment as an inspector, may at any reasonable time and with such assistants as he considers necessary—

- (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) 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

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

**(3) A person shall not—**

- (a) prevent or attempt to prevent an inspector from exercising any power conferred on him by subsection (2);
- (b) hinder or obstruct any inspector in the exercise of any such power; or
- (c) fail to comply with a request of an inspector under subsection (2) (b).

Penalty: \$1,000 or imprisonment for a term not exceeding 3 months, or both, and in the case of an offence under paragraph (c) an additional penalty not exceeding \$200 for every day on which the offence continues.

**(4) A person is not guilty of an offence under subsection (3) (c) by reason of his failure to answer any question referred to in subsection (2) (b) (iii) if he proves to the satisfaction of the court that he did not know, and could not with reasonable diligence ascertain, the answer to the question.**

**(5) A person is not excused from answering any question if requested to do so under subsection (2) (b) (iii) on the ground that the answer might tend to criminate him or make him liable to a penalty but the information furnished by him shall not be admissible against him in any proceedings, civil or criminal, except in proceedings for an offence under subsection (3) or section 30.**

**(6) Where an answer to a question referred to in subsection (2) (b) (iii) or any information whatsoever is given to an inspector by an officer of a corporation within the meaning of the Companies (New South Wales) Code which is carrying on or has carried on the business of manufacturing, distributing, selling or purchasing petroleum products, the answer and information are, for the purposes of any proceedings against the corporation under any of the provisions of this Act, binding upon and admissible in evidence against the corporation unless it is proved that the answer or information was given in relation to a matter in respect of which the officer had no authority to bind the corporation.**

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(7) The provisions of subsection (6) are in addition to and not in derogation of any rule of law relating to the binding effect and admissibility in evidence of statements made by any officer or employee of a corporation.

**Certain particulars to be furnished.**

14. (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,
- (c) 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
- (d) if the Commissioner thinks fit, a certificate signed by a person registered as a public accountant under the Public Accountants Registration Act, 1945, certifying that the statement is correct.

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

Penalty: \$20,000.

(3) A person is not guilty of an offence under subsection (2) if the court 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

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

**Protection for Commissioner, etc.**

**15.** Any matter or thing done by the Commissioner, the Assistant Commissioner, an inspector or any other person bona fide for the purpose or purported purpose of administering or executing this Act shall not subject him personally to any action, liability, claim or demand.

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**PART III.**

**LICENCES.**

**Offences relating to sale of petroleum products.**

**16. (1)** On or after 1st September, 1982, a person shall not carry on petroleum wholesaling unless he is the holder of a petroleum wholesalers licence or a group petroleum wholesalers licence.

Penalty: \$2,000 for every day on which the person carries on the business.

**(2)** On or after 1st September, 1982, a person shall not carry on petroleum retailing unless he is the holder of a petroleum retailers licence.

Penalty: \$2,000 for every day on which the person carries on the business.

**(3)** The holder of a licence shall not contravene any condition to which the licence is subject.

Penalty: \$2,000 for every day on which the person carries on business in contravention of the condition.

**(4)** Subsection (1) does not apply in respect of a sale by wholesale by the holder of a petroleum retailers licence of petroleum products sold by wholesale to that holder by a person who is the holder of a petroleum wholesalers licence or a group petroleum wholesalers licence.

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**Grant of licence.**

**17. (1)** The Commissioner shall—

- (a) upon application made therefor in a form approved by him;
- (b) on receipt of the particulars, if any, required by him to be furnished by the applicant under section 14; and
- (c) upon payment of the fee assessed by the Commissioner in accordance with section 18,

grant to the applicant a Business Franchise Licence (Petroleum Products) in a form approved by the Commissioner or refuse to grant to the applicant such a licence.

**(2)** An application under subsection (1) (a)—

- (a) for a petroleum wholesalers licence—may be made by any person other than a person who is a member of a group of petroleum wholesalers;
- (b) for a group petroleum wholesalers licence—may be made on behalf of all or any of the members of a group of petroleum wholesalers by any member of the group; and
- (c) for a petroleum retailers licence—may be made by any person.

**(3)** A licence shall be either—

- (a) a petroleum wholesalers licence or a group petroleum wholesalers licence, which authorises the licensee to carry on petroleum wholesaling; or
- (b) a petroleum retailers licence, which authorises the licensee to carry on petroleum retailing.

**(4)** The Commissioner shall, on the grant of a group petroleum wholesalers licence, cause the name of each person who is a member of the group of petroleum wholesalers and on whose behalf the application for the licence was made to be specified in the licence.

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**(5)** A licence shall be in force on and from the day specified in the licence as the date from which the licence commences until, unless it sooner ceases to have effect, the last day of the month in which it commenced.

**(6)** Where the Commissioner refuses to grant a licence, he shall, in writing, inform the applicant of the reasons for the refusal and refund to the applicant any fee paid by the applicant.

**(7)** A licence may be granted unconditionally or subject to a condition specified in the licence that the business authorised to be carried on by the licence may not be carried on except at the premises specified in the licence.

**Fees.**

**18. (1)** The fees to be paid for licences under this Act shall be \$50 (or such lesser amount as may be prescribed) together with the prescribed amount calculated in accordance with subsection (2) by reference to the value of motor spirit and diesel fuel sold in the course of intrastate trade in the relevant period.

**(2)** The prescribed amount shall be—

(a) for a petroleum wholesalers licence an amount of—

- (i) 8.4 per cent of the value of motor spirit sold by the applicant in the course of petroleum wholesaling; and
- (ii) 14 per cent of the value of diesel fuel sold by the applicant in the course of petroleum wholesaling;

(b) for a group petroleum wholesalers licence an amount of—

- (i) 8.4 per cent of the value of motor spirit sold by the members of the group of petroleum wholesalers of which the applicant is a member in the course of petroleum wholesaling; and

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(ii) 14 per cent of the value of diesel fuel sold by the members of the group of petroleum wholesalers of which the applicant is a member in the course of petroleum wholesaling,

whether or not they were members of that group during the whole or any part of the relevant period; or

(c) for a petroleum retailers licence an amount of—

(i) 8.4 per cent of the value of motor spirit sold by the applicant in the course of petroleum retailing; and

(ii) 14 per cent of the value of diesel fuel sold by the applicant in the course of petroleum retailing.

(3) Where an applicant for a petroleum wholesalers licence was, at any time during the relevant period for the licence, a member of a group of petroleum wholesalers, the petroleum products sold by the applicant in the course of petroleum wholesaling during that relevant period shall, for the purposes of subsection (2) (a), be deemed to have included any petroleum products sold by the other or, if more than one, all of the other members of the group in the course of petroleum wholesaling during that relevant period unless the applicant satisfies the Commissioner that a fee for a petroleum wholesalers licence or a group petroleum wholesalers licence has been paid to the Commissioner after having been assessed in respect of the sale of those petroleum products during that relevant period.

(4) Where—

(a) an application is made on behalf of all or any of the members of a group of petroleum wholesalers for a group petroleum wholesalers licence; and

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

the petroleum products sold by members of the firstmentioned group in the course of petroleum wholesaling during that relevant period shall, for the purposes of subsection (2) (b), be deemed to have included any petroleum

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products sold by any of the members of the other group in the course of petroleum wholesaling during that relevant period unless the applicant satisfies the Commissioner that a fee for a petroleum wholesalers licence or a group petroleum wholesalers licence has been paid to the Commissioner after having been assessed in respect of the sale of those petroleum products during that relevant period.

(5) For the purposes of calculating any fee that, but for this subsection, would be payable under this section by the purchaser of—

- (a) motor spirit or diesel fuel purchased in the course of intrastate trade—
  - (i) from the holder of a petroleum wholesalers licence or a group petroleum wholesalers licence; or
  - (ii) from the holder of a petroleum retailers licence who does not, in the relevant period, purchase motor spirit or diesel fuel from any person other than a licensed petroleum wholesaler or a licensed group petroleum wholesaler; and
- (b) diesel fuel sold for use otherwise than for propelling diesel engined road vehicles on roads,

that motor spirit or diesel fuel shall be disregarded.

(6) For the purposes of subsections (2) (a) and (b), (3) and (4), petroleum products shall not be treated as having been sold by reason only of their having been sold to the holder of a petroleum wholesalers licence or a group petroleum wholesalers licence.

(7) Where an application is made for a licence and the applicant did not carry on the business in respect of which the application for the licence was made during the whole of the relevant period, the fee payable in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard to the petroleum products that in the opinion of the Commissioner would have been sold by the applicant had he been carrying on that business during the whole of that relevant period, and the relevant principles of assessing fees under subsections (1)–(6).

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**(8)** Where an application is made for a licence and the applicant carried on the business in respect of which the application for the licence was made during the whole of the relevant period and the Commissioner is of the opinion that he is unable for any reason accurately to assess the fee payable under subsections (1)–(6), the fee payable in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard to the petroleum products that in the opinion of the Commissioner were sold by the applicant during that relevant period, and the relevant principles of assessing fees under subsections (1)–(6).

**(9)** The value of any petroleum products sold for delivery and consumption outside the State shall be disregarded in assessing fees payable under this section.

**(10)** The Commissioner shall not, in assessing a fee under subsection (7), have regard to any particulars furnished pursuant to a requirement under section 14.

**(11)** In subsections (7) and (8), “applicant”, in relation to a petroleum wholesalers licence or a group petroleum wholesalers licence, includes any person whose petroleum wholesaling during the relevant period for the licence would be required to be taken into account by reason of subsection (2) (b), (3) or (4) for the purpose of assessing the fee for the licence if the fee was not required to be assessed under either subsection (7) or (8).

**Adjustment of fee.**

**19. (1)** Where, in the opinion of the Commissioner, the fee assessed in respect of any licence was assessed incorrectly, the Commissioner may at any time reassess the fee in accordance with the principles of assessing fees under section 18.

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

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**(3)** Where on a reassessment of a fee under subsection (1) the fee is increased, the additional amount payable by virtue of the reassessment shall be due and payable within 14 days after notice of the reassessment is served on the person who is or was the holder of the licence concerned.

**(4)** Where the additional amount is payable by virtue of a reassessment in respect of a petroleum wholesalers licence or a group petroleum wholesalers licence, the additional amount shall be due and payable (whether or not the licence has ceased to be in force)—

- (a) within 14 days after notice of the reassessment is served on the person who is or was the holder of the petroleum wholesalers licence or on any one or more of the persons who are or were holders of the group petroleum wholesalers licence, as the case may be; and
- (b) by the person or, where notice is served on more than one person, by each of the persons on whom the notice is served.

**(5)** Any amount which is due and payable by any person under this section and which is unpaid may be recovered by the Commissioner, as a debt, in any court of competent jurisdiction.

**Value of petroleum products.**

**20.** For the purposes of this Act, the value of any petroleum product during any relevant period shall be deemed to be such amount as is determined by the Minister in respect of that relevant period, having regard to the wholesale price at which in the opinion of the Minister that petroleum product was sold in the County of Cumberland during that relevant period and to such other matters or things as the Minister considers relevant.

**Surrender and termination of licences.**

**21. (1)** A holder of a licence may, at any time, by notice in writing to the Commissioner, surrender his licence, and the licence shall thereupon cease to be in force.

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(2) A licence shall cease to be in force if any additional amount that is due and payable under section 19 in respect of the licence is unpaid.

**Certain persons deemed to hold licences.**

22. Where a licensee (including a licensee holding a licence deemed by paragraph (b) to have been issued) furnishes to the Commissioner any particulars that would be required as referred to in section 17 (1) (b), and pays the fee that would be payable under section 17 (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 the same authority 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.

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**PART IV.****APPEALS AND OBJECTIONS.****Appeal against refusal to grant licence.**

23. (1) Where the Commissioner refuses to grant a licence to any person, that person may, in accordance with this section, appeal against the refusal to the District Court and, if the Court is satisfied that in all the circumstances of the case the licence ought to be granted, it may direct that, on payment of the licence fee, a licence be granted to that person to be in force on and from such day as is specified in the direction.

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(2) The Commissioner shall give effect to any direction given by the District Court under subsection (1).

(3) Subject to this section, an appeal under this section shall be instituted, heard and determined in accordance with rules of court.

(4) The determination of the District Court on the hearing of an appeal under this section is final and without appeal.

**Objection to and appeal against assessment.**

24. (1) A licensee who has paid the fee assessed in respect of his licence may within one month after the grant of the licence object to the Commissioner against the assessment of the fee on the ground that the fee is excessive by reason that it was incorrectly assessed by the Commissioner under section 18 and on no other ground.

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

(3) If the licensee is not satisfied with the determination of the Commissioner on his objection or if within one month after the objection was lodged the Commissioner has not given a determination with respect to the objection, the licensee may appeal to the Tribunal against the assessment of the fee on the ground referred to in subsection (1) and on no other ground.

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

- (a) where the licensee is not satisfied with the determination of the Commissioner on his objection, within one month after his being notified by the Commissioner of that determination; or
- (b) where the Commissioner has not, within one month after the objection was lodged, given a determination with respect to the objection, within 2 months after the objection was lodged.

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**(5)** The Tribunal shall hear and determine the appeal and assess the fee payable and the provisions of section 18 apply to the Tribunal's assessment of that fee in the same way as they apply to the assessment of fees by the Commissioner.

**(6)** The decision of the Tribunal on any such appeal shall be conclusive.

**(7)** Subject to this section, an appeal under this section shall be instituted, heard and determined in the prescribed manner.

**(8)** It is the responsibility of the person making an objection or appeal under this section to establish the grounds on which it is made.

**(9)** 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.

**Objection to and appeal against reassessment.**

**25.** A person on whom notice of the reassessment of a licence fee is served may, within 14 days after service of the notice, object to and appeal against the reassessment as if the reassessment were an assessment to or against which an objection or appeal may be made under section 24, and the provisions of section 24 apply accordingly.

**Special provisions relating to objection to and appeal against assessment or reassessment under section 35.**

**26. (1)** A person on whom notice of an assessment has been served under section 35 (3) may, within one month after service of the assessment, object to the Commissioner against the fee assessed on the ground that the fee is excessive by reason that it was incorrectly assessed by the Commissioner under section 18 and on no other ground.

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

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(3) If the person is not satisfied with the determination of the Commissioner on his objection or if within one month after the objection was lodged the Commissioner has not given a determination with respect to the objection, the person may appeal to the Tribunal against the assessment of the fee on the ground referred to in subsection (1) and on no other ground.

(4) The provisions of section 24 (4), (5), (6) and (7) apply to and in respect of an appeal under this section, and so apply as if references therein to the licensee were references to the person appealing under this section, and as if a reference (however expressed) in the regulations to a prescribed form of appeal were a reference to a form approved by the Tribunal.

(5) The Commissioner on an objection, or the Tribunal on an appeal, may vary the assessment.

(6) It is the responsibility of the person making an objection or appeal under this section to establish the grounds on which it is made.

(7) A person on whom notice of a reassessment has been served under section 19 (as applied by section 35 (7)) may, within 14 days after service of the notice, object to and appeal against the reassessment as if the reassessment were an assessment to or against which an objection or appeal may be made under the foregoing provisions of this section, and those provisions apply accordingly.

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## PART V.

### MISCELLANEOUS.

#### **Records to be kept.**

27. A person who carries on the business of selling petroleum products shall keep such records as may be prescribed containing such particulars as may be prescribed relating to petroleum products and shall preserve each of those records for a period of 5 years after the last entry was made in it.

Penalty: \$10,000.

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**Invoice to be endorsed.**

**28. (1)** A holder of a petroleum wholesalers licence or a group petroleum wholesalers licence shall endorse or cause to be endorsed on every invoice issued by him for or in relation to the sale of petroleum products the words "SOLD BY LICENSED WHOLESALER—LICENCE No. " followed by the number of the licence.

Penalty: \$2,000.

**(2)** A person shall not issue an invoice which bears—

- (a) the words "SOLD BY LICENSED WHOLESALER" (or words of like import) unless he is the holder of a petroleum wholesalers licence or a group petroleum wholesalers licence; or
- (b) the matter "LICENCE No. " (or matter of like import) followed by a number, unless he is the holder of a petroleum wholesalers licence or a group petroleum wholesalers licence bearing that number.

Penalty: \$5,000.

**Disclosure of information.**

**29. (1)** Except as provided by subsection (2), a person shall not disclose any information or publish any record or part of any record obtained by him in connection with the administration or execution of this Act or the regulations, unless the disclosure or publication is made—

- (a) with the consent of the person from whom the information or record was obtained;
- (b) in connection with the administration or execution of this Act or the regulations; or
- (c) for the purpose of any legal proceedings arising out of this Act or the regulations or of any report of any such proceedings.

Penalty: \$10,000.

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**(2)** The Commissioner may communicate any matter which comes to his knowledge in the exercise or performance of his powers, authorities, duties or functions under this Act or the regulations to an officer or authority engaged in administering or executing a law of another State or a Territory of the Commonwealth relating to the licensing of persons to carry on the business of selling any petroleum products.

**(3)** Nothing in subsection (1) prevents the disclosure of information or the publication of a record in accordance with any lawful requirement of the Australian Statistician.

**False or misleading statements.**

**30. (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,

that is false or misleading in a material particular.

Penalty: \$1,000 or imprisonment for 3 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 any statement or representation that is false or misleading in a material particular.

Penalty: \$1,000 or imprisonment for 3 months, or both.

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**(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 believed on reasonable grounds that it was neither false nor misleading.

**Evidence.**

**31.** A certificate signed by the Commissioner or the Assistant Commissioner certifying any one or more of the following matters, that is to say—

- (a) that a person specified therein was or was not an inspector at a time or during a period so specified; or
- (b) that a person so specified was or was not the holder of a licence of a kind specified in the certificate at a time or during a period so specified,

is admissible in any proceedings under this Act and shall be *prima facie* evidence of the matters so certified.

**Proceedings on prosecutions.**

**32. (1)** Proceedings for an offence against this Act or the regulations may only be taken in a summary manner before a stipendiary magistrate sitting in petty sessions.

**(2)** Proceedings for an offence against this Act may be commenced at any time within a period of 2 years after the commission of the offence.

**(3)** An information for an offence against this Act or the regulations may not be laid without the approval in writing of the Minister.

**(4)** An information laid for an offence against this Act or the regulations shall, in the absence of evidence to the contrary, be deemed to have been laid with the approval in writing of the Minister.

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**Institution of proceedings.**

**33.** (1) An information for an offence against this Act or the regulations may be laid in the name of the Commissioner by any officer of the Public Service employed in the administration or execution of this Act and authorised to lay informations on behalf of the Commissioner, and any prosecution instituted in the name of the Commissioner shall, in the absence of evidence to the contrary, be deemed to have been instituted by his authority.

(2) An officer referred to in subsection (1) may appear on behalf of the Commissioner in any proceedings for an offence against this Act or the regulations.

**Offences by bodies corporate.**

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

**Recovery of unpaid fees from unlicensed persons.**

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

(2) The Commissioner may assess the amount of the fee as if the person had applied for the licence, notwithstanding that the Commissioner may have made or purported to have made such an assessment.

(3) Notice of the assessment under this section shall be served by the Commissioner on the person.

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**(4)** Any amount assessed under this section or, if varied under section 26, as so varied and which is unpaid may be recovered by the Commissioner, as a debt, in any court of competent jurisdiction, unless the person satisfies the court that he was not required to hold the licence referred to in subsection (1).

**(5)** Proceedings may not be commenced for the purpose of recovering an amount assessed under this section until—

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

**(6)** A certificate purporting to be signed by the Commissioner and stating that a specified amount is the amount assessed under this section, or is the amount as varied under section 26, in respect of a specified person is admissible in the proceedings and shall be *prima facie* evidence of the matters so certified.

**(7)** The provisions of section 19 apply to and in respect of an amount assessed under this section in the same way as they apply to and in respect of a licence fee assessed under section 18.

**Service of documents by the Commissioner.**

**36. (1)** Any notice or other document required or authorised by this Act or the regulations to be served or given by the Commissioner shall be deemed to have been duly served or given—

- (a) if delivered personally to, or if left at the last known place of abode or business in or out of the State of, the person on or to whom the notice or document is to be served or given; or

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(b) if sent by prepaid letter post, addressed to the person on or to whom the notice or document is to be served or given at his last known place of abode or business in or out of the State.

(2) Service of a notice or document in accordance with subsection (1) (b) shall *prima facie* be deemed to have been effected at the time when it would be delivered in the ordinary course of post.

(3) The provisions of this section are in addition to and not in derogation of the provisions of sections 528, 529 and 530 of the Companies (New South Wales) Code.

**Regulations.**

37. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the Governor may make regulations for or with respect to—

(a) requiring persons, or persons belonging to classes of persons, specified in the regulations to make returns in such form and manner and containing such information relating to sales, purchases or stocks of, or dealings with, petroleum products, as is indicated by the regulations and to furnish the returns to the Commissioner within such time as may be so specified; and

(b) the exemption, absolutely or to a specified extent, and whether or not subject to conditions, of persons from the operation of all or any specified provisions of this Act.

(3) A provision of a regulation may—

(a) apply generally or be limited in its application by reference to specified exceptions or factors;

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- (b) apply differently according to different factors of a specified **kind**;  
or
- (c) authorise any matter or thing to be from time to time **determined**,  
applied or regulated by any specified person or body,

or may do any combination of those things.

**(4)** The regulations may impose a penalty not exceeding \$2,000 for an offence arising under the regulations.

## SCHEDULE 1.

(Sec. 3 (1).)

## RELEVANT PERIODS FOR LICENCES.

Column 1.	Column 2.
July	May
August	June
September	July
October	August
November	September
December	October
January	November
February	December
March	January
April	February
May	March
June	April