

**BUSINESS FRANCHISE LICENCES (PETROLEUM
PRODUCTS) (APPLICATION AND ENFORCEMENT)
AMENDMENT ACT 1986 No. 181**

NEW SOUTH WALES



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(PETROLEUM PRODUCTS) ACT 1982**

**BUSINESS FRANCHISE LICENCES (PETROLEUM PRODUCTS)
(APPLICATION AND ENFORCEMENT) AMENDMENT ACT 1986 No. 181**

NEW SOUTH WALES



Act No. 181, 1986

An Act to amend the Business Franchise Licences (Petroleum Products) Act 1982 so as not to discriminate, in the application of licence fees, between different forms of trade in petroleum products, and to make further provision for the enforcement of the Act. [Assented to 18 December 1986]

Business Franchise Licences (Petroleum Products) (Application and Enforcement) Amendment 1986

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:

Short title

1. This Act may be cited as the "Business Franchise Licences (Petroleum Products) (Application and Enforcement) Amendment Act 1986".

Commencement

2. (1) Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.

(2) Schedule 1, and section 3 in its application to that Schedule, shall commence or be deemed to have commenced, as the case requires, on 1 January 1987.

Amendment of Act No. 92, 1982

3. The Business Franchise Licences (Petroleum Products) Act 1982 is amended in the manner set forth in Schedule 1.

SCHEDULE 1

(Sec. 3)

**AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES
(PETROLEUM PRODUCTS) ACT 1982**

(1) Section 3 (Interpretation)—

(a) Section 3 (1), definitions of "petroleum retailing", "petroleum wholesaling" —

Omit "in the course of intrastate trade" wherever occurring.

(b) Section 3 (2A)—

After subsection (2), insert:

(2A) A reference in this Act to the sale of a petroleum product is a reference to the sale of the petroleum product in the course of intrastate trade.

Business Franchise Licences (Petroleum Products) (Application and Enforcement) Amendment 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES
(PETROLEUM PRODUCTS) ACT 1982—*continued*

(c) Section 3 (5)—

Omit “in the course of intrastate trade”.

(2) Section 3A—

After section 3, insert:

Additional operation of Act

3A. (1) Without prejudice to its effect apart from this section, this Act also has, by force of this section, the effect it would have if there were added at the end of section 3 (2A) the words “and otherwise than in the course of intrastate trade”.

(2) Nothing in this Act affects the operation of section 14A of the Interpretation Act 1897.

(3) Section 13 (**Inspectors**)—

Section 13 (3) (c)—

Omit the paragraph, insert instead:

(c) to answer any question relating to—

- (i) any records and documents in the custody or under the control of the bank manager or other person;
- (ii) any statement produced in accordance with paragraph (b); or
- (iii) the carrying on by any person of any business of manufacture, distribution, transportation, sale or purchase of petroleum products or financial transactions in connection with or arising out of the carrying on of any such business.

(4) Section 13 (**Inspectors**), section 14 (**Certain particulars to be furnished**)—

Sections 13 (5), 14 (4)—

Omit “proceedings, civil or criminal” wherever occurring, insert instead “criminal proceedings”.

Business Franchise Licences (Petroleum Products) (Application and Enforcement) Amendment 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES
(PETROLEUM PRODUCTS) ACT 1982—*continued*

(5) Sections 13B, 13C—

After section 13A, insert:

Transportation records

13B. (1) A person shall not cause any petroleum products to be consigned for transportation by road vehicle into or within New South Wales unless, at or before the time when the transporter takes possession of the petroleum products, a record of consignment is delivered to the transporter.

(2) A person shall not take possession of any petroleum products for transportation by the person by road vehicle into or within New South Wales unless, on or before taking possession of the petroleum products, a record of consignment is delivered to the person.

(3) For the purposes of this section, a record of consignment is a document which accurately shows—

- (a) the date of consignment;
- (b) the type and quantity of the petroleum products consigned;
- (c) the name and address of the consignor;
- (d) the name and address of the consignee;
- (e) the address to which the petroleum products are to be delivered; and
- (f) such other particulars as may be prescribed.

(4) An inspector may at any time require a road vehicle in which the inspector reasonably suspects any petroleum products are being transported to stop and may require the person in charge of the vehicle to produce the record of consignment for inspection.

(5) The person in charge of the road vehicle shall stop the vehicle and shall produce the record of consignment as required by an inspector.

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

Business Franchise Licences (Petroleum Products) (Application and Enforcement) Amendment 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES
(PETROLEUM PRODUCTS) ACT 1982—*continued*

Seizure of petroleum products

13c. (1) If—

- (a) the driver of a road vehicle transporting petroleum products does not produce, on demand made by an inspector, a record of consignment referred to in section 13B; or
- (b) an inspector reasonably suspects that an offence has been committed by any person in relation to petroleum products transported by road vehicle,

the inspector may require the driver of the vehicle to convey the inspector in the vehicle to the address for delivery by the driver of the petroleum products.

(2) If—

- (a) a person does not convey an inspector in accordance with a requirement made by the inspector; or
- (b) it appears to the inspector that the driver is not complying in a reasonable manner with a requirement made by the inspector,

the inspector may direct the driver to drive the vehicle to the nearest practicable place, determined by the inspector, at which petroleum products may be placed in the custody of a person authorised in that behalf by the Chief Commissioner.

(3) If the person does not comply with the inspector's direction, the inspector may take charge of the vehicle for the purpose of conveying the petroleum products to the place determined by the inspector.

(4) A person shall not hinder or obstruct an inspector in the exercise of the power conferred on an inspector by this section.

Business Franchise Licences (Petroleum Products) (Application and Enforcement) Amendment 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES
(PETROLEUM PRODUCTS) ACT 1982—*continued*

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

(5) As soon as practicable after arrival at the place determined by the inspector, the petroleum products shall be removed from the vehicle and a receipt, showing the type and quantity of the petroleum products, shall be tendered to the person from whose possession they are taken by the person taking custody of them.

(6) Petroleum products placed in custody under this section may be stored separately from other petroleum products or may be mixed with other petroleum products of the same kind and may, subject to subsection (7), be disposed of by the Chief Commissioner.

(7) Notwithstanding any other provision of this section, after petroleum products have been placed in custody under this section, any obligation or authority of the Chief Commissioner to return or release the petroleum products to any person shall be satisfied or properly exercised by the Chief Commissioner returning or releasing to the person petroleum products of an equivalent type and quantity.

(8) If no proceedings of the kind referred to in subsection (9) are commenced within 30 days after petroleum products are placed in custody under this section for an offence concerning the petroleum products, they shall be released to a person appearing to the Chief Commissioner to be entitled to them.

(9) If—

(a) in any proceedings before a court in which an offence under section 16 is found to be proven; or

Business Franchise Licences (Petroleum Products) (Application and Enforcement) Amendment 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES
(PETROLEUM PRODUCTS) ACT 1982—*continued*

- (b) upon application subsequently made by or on behalf of the Chief Commissioner to the court before which those proceedings were taken,

the court finds that any petroleum products placed in custody under this section were in any person's possession for sale in the course of the commission of, or for the purposes of, the offence, the petroleum products shall be forfeited to the Crown.

(10) Any petroleum products forfeited under subsection (9) may be disposed of by the Minister on behalf of the Crown as the Minister thinks fit.

(11) Nothing in this section prevents the Chief Commissioner from at any time causing any petroleum products placed in custody under this section to be delivered to a person appearing to the Chief Commissioner to be entitled to them.

(6) Section 17 (**Grant of licence**)—

Section 17 (5A)—

After section 17 (5), insert:

(5A) The Chief Commissioner may refuse to grant a licence to an applicant who complies with the requirements of subsection (1) only if the Chief Commissioner believes on reasonable grounds that the applicant—

- (a) has not paid an amount due and payable by the applicant under this Act; or
- (b) will not comply with the requirements of this Act if the licence is granted.

(7) Section 18 (**Fees**)—

- (a) Section 18 (1), (5) (a)—

Omit “in the course of intrastate trade” wherever occurring.

- (b) Section 18 (10)—

Omit the subsection.

Business Franchise Licences (Petroleum Products) (Application and Enforcement) Amendment 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES
(PETROLEUM PRODUCTS) ACT 1982—*continued*

(8) Section 20A—

After section 20, insert:

Refund, etc., of fees

20A. The Chief Commissioner may, in relation to the value of motor spirit and diesel fuel sold by retail at a place outside New South Wales in the relevant period, refund the whole or part of any fee paid, or waive payment of the whole or part of any fee payable, under this Act by a person if the person satisfies the Chief Commissioner that the person has, in relation to the value of that motor spirit and diesel fuel, paid a fee to another person under a law of another State or a Territory of the Commonwealth which corresponds to this Act.

(9) Section 24 (**Objection to and appeal against assessment**), section 26 (**Special provisions relating to objection to and appeal against assessment or reassessment under section 35**)—

Sections 24 (8), 26 (6)—

After “made” wherever occurring, insert “and, without limiting the generality of the foregoing, that person shall bear the onus of proving that the assessment of the fee is incorrect”.

(10) Section 31A—

After section 31, insert:

Notice of assessment

31A. (1) In any proceedings under this Act or the regulations or for the recovery of any amount due and payable under this Act or the regulations, the production of a notice of assessment of a fee, or of a document certified by the Chief Commissioner to be a copy of such a notice, shall be conclusive evidence of the due making of the assessment and that the amount and all the particulars of the assessment are correct, except in proceedings by way of appeal against the assessment, when it shall be *prima facie* evidence only.

(2) In this section, “assessment” includes reassessment.

Business Franchise Licences (Petroleum Products) (Application and Enforcement) Amendment 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES
(PETROLEUM PRODUCTS) ACT 1982—*continued*

(11) Section 32 (**Proceedings on prosecutions**)—

Section 32 (1B)—

After “proceedings”, insert “for an offence”.

(12) Section 37 (**Regulations**)—

(a) Section 37 (2) (a)—

Omit “and” where lastly occurring.

(b) Section 37 (2) (b), (c)—

After section 37 (2) (b), insert:

; and

(c) the stopping, detaining and taking charge of road vehicles, the taking and keeping in custody of petroleum products and the release of petroleum products (or petroleum products of an equivalent type and quantity) taken in custody.
