

1995—No. 373

**BUSINESS FRANCHISE LICENCES (PETROLEUM
PRODUCTS) ACT 1987—REGULATION**

(Business Franchise Licences (Petroleum Products) Regulation 1995)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Business Franchise Licences (Petroleum Products) Act 1987, has been pleased to make the Regulation set forth hereunder.

Michael Egan
Treasurer.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the “Business Franchise Licences (Petroleum Products) Regulation 1995”.

Commencement

2. This Regulation commences on 31 August 1995.

Definitions

3. In this Regulation:

“fee assessment” means a fee assessment under Part 5 of the Act;

“section 52B review” means a review by the Tribunal under section 52B of the Act of the Chief Commissioner’s decision on an objection to a fee assessment;

“the Act” means the Business Franchise Licences (Petroleum Products) Act 1987.

PART 2—TRIBUNAL**Application for extension of time for lodging an objection**

4. (1) An application to the Tribunal for an extension of time for lodging an objection to a fee assessment must be made in writing.
- (2) The hearing of the application by the Tribunal is limited to the grounds specified in the application to the Chief Commissioner for the extension.

(3) The Tribunal determines the application by recording its decision in writing and giving copies of the decision to the applicant and to the Chief Commissioner.

Review of decision on objection to a fee assessment

5. (1) The hearing of a section 52B review:
- (a) is to take place at a time and place determined by the Tribunal; and
 - (b) is not open to the public unless the Tribunal, on the application of the objector, otherwise directs; and
 - (c) may be from time to time adjourned by the Tribunal.
- (2) The objector and the Chief Commissioner must each be given at least 21 days notice, or such shorter notice as the Tribunal on the application of the objector or the Chief Commissioner directs, of the time and place at which the hearing is to take place.
- (3) A section 52B review:
- (a) may be heard in the absence of the Chief Commissioner, if the Chief Commissioner fails to appear in person or by a representative; or
 - (b) may be struck out for want of prosecution by the objector.

Evidence at a review

6. In hearing a section 52B review, the Tribunal is not bound by the rules of evidence and may inform itself in such manner as it thinks fit.

Representation at a review

7. (1) The parties at the hearing of a section 52B review may each be represented by a person who is not a barrister or solicitor.
- (2) A party at the hearing of a section 52B review may, with the consent of the Tribunal and the other party, be represented by a barrister or solicitor.

(3) The Chief Commissioner may, at a hearing of a section 52B review, be represented by a permanent employee of the Crown who is a barrister or solicitor.

(4) If the Crown is represented by a permanent employee of the Crown who is a barrister or solicitor, the objector at that hearing may be represented by a barrister or solicitor without obtaining the consent of the Tribunal or the Chief Commissioner.

Parties to be heard at a review

8. A section 52B review is to be determined by the Tribunal after hearing the objector or the objector's representative and, if the Chief Commissioner or the Chief Commissioner's representative appears, the Chief Commissioner or the Chief Commissioner's representative.

Determination of a review

9. The Tribunal determines a section 52B review by recording its decision in writing and giving copies of the decision to the objector and to the Chief Commissioner.

Prescribed rate of interest: sec. 52F

10. (1) For the purposes of section 52F (1) (b) of the Act, the prescribed rate of interest is the rate for the time being prescribed under section 95 (1) of the Supreme Court Act 1970 for payment of interest on a judgment debt.

(2) If an amount of interest calculated in accordance with subclause (1) is not a multiple of 1 cent the following applies:

- (a) in a case where the amount of interest is a multiple of 0.5 cent, the amount of interest is to be increased by 0.5 cent;
- (b) in any other case, the amount of interest is to be increased or decreased, as the case requires, to the nearest multiple of 1 cent.

PART 3—EXEMPTIONS

Exemptions in respect of sales in certain areas

11. (1) The Chief Commissioner may from time to time, by order published in the Gazette:

- (a) determine the boundaries of one or more areas within the State (referred to in this clause as "designated zones") for the purposes of exemptions under this clause; and

- (b) state the extent to which a person having the benefit of such an exemption is exempt from the operation of the relevant provisions of the Act.
- (2) A person who, in the course of petroleum wholesaling, sells petroleum products at a place outside a designated zone for resale within a designated zone is exempt, to the extent specified in the order referred to in subclause (1), from the provisions of the Act that require a fee to be paid before the Chief Commissioner may grant a licence to that person.

Other general exemptions

12. (1) The holder of a licence is exempt from the provisions of the Act that require a fee to be paid before the Chief Commissioner may grant a subsequent licence if the fee that would otherwise be payable in respect of the subsequent licence is only \$10.

- (2) The holder of a licence, being a person who:
 - (a) purchases petroleum products from a vendor who is not the holder of a licence, believing the vendor to be the holder of a licence; and
 - (b) obtains from the vendor an invoice specifying:
 - (i) the name and address of the vendor; and
 - (ii) the vendor's licence number; and
 - (iii) the registration number of the vehicle from which the petroleum products are delivered,

is exempt from the provisions of the Act that require a fee to be paid before the Chief Commissioner may grant a subsequent licence, to the extent to which those provisions require the value of those petroleum products to be taken into account when calculating the fee.

PART 4—OFF-ROAD DIESEL FUEL SCHEME

Division 1—Preliminary

Definitions

13. In this Part:

“section 48C authority” means an authority to sell diesel fuel for off-road purposes granted under section 48C of the Act;

“section 48D permit” means a permit to purchase diesel fuel for off-road purposes issued under section 48D of the Act.

Division 2—Provisions relating to authorities under section 48C of the Act**Chief Commissioner may grant authorities**

14. The Chief Commissioner may grant a section 48C authority on the Chief Commissioner's own motion or on the application of any other person.

Applications for authorities

15. An application for a section 48C authority must:

- (a) be in a form approved by the Chief Commissioner; and
- (b) provide such information as may be required in the form.

Duration of authorities

16. (1) A section 48C authority takes effect from the date specified in the authority and remains in force (unless sooner cancelled or surrendered) until such date of expiry as is specified in the authority.

(2) The expiry date for a section 48C authority may be extended from time to time by the Chief Commissioner.

Permits to be sighted

17. It is a condition of a section 48C authority that, at or before the time the holder of the authority first delivers diesel fuel for off-road purposes (other than marine purposes) to the holder of a section 48D permit, the holder of the authority must sight the permit.

Variation of conditions of authorities

18. (1) The Chief Commissioner may, from time to time, vary or revoke any condition, or add to the conditions, specified in a section 48C authority by notice in writing to the holder of the authority.

(2) Any such variation, addition or revocation has effect from the date specified in the notice served on the holder of the authority.

(3) This clause does not allow the Chief Commissioner to vary or revoke any condition imposed by this Regulation.

Records to be kept by holders of authorities

19. (1) The holder of a section 48C authority must keep the following records for each sale of diesel fuel for off-road purposes (other than a sale

for which records are required to be kept by subclause (3)) made by the holder of the authority:

- (a) the date of the sale;
- (b) the invoice number;
- (c) the volume (in litres) of diesel fuel sold;
- (d) the name of the purchaser;
- (e) the number of the purchaser's section 48D permit.

Maximum penalty: 50 penalty units.

(2) The records referred to in subclause (1) may be kept in the form of a copy of the relevant invoice.

(3) The holder of a section 48C authority must keep the following records for each sale of diesel fuel for marine purposes (being a sale accompanied by delivery of the diesel fuel directly into the fuel tanks of a vessel) made by the holder of the authority to a person who does not hold a section 48D permit:

- (a) the date of the sale;
- (b) the name (if any) indicated on the vessel;
- (c) if the vessel is registered under the Water Traffic Regulations—N.S.W., the number under which the vessel is registered (or if the vessel is registered outside New South Wales, the name or number under which it is so registered);
- (d) the volume of the diesel fuel sold.

Maximum penalty: 50 penalty units.

(4) The records required by this clause are additional to the other records that are required to be kept by or under the Act.

(5) The Chief Commissioner may determine in any particular case or class of cases that the holder of the section 48C authority concerned is not required to keep records under this clause or is only required to keep such records as are specified as a condition of the authority.

Division 3—Provisions relating to permits under section 48D of the Act

Chief Commissioner may grant permits

20. The Chief Commissioner may grant a section 48D permit on the written application of any person.

Applications for permits

- 21.** An application for a section 48D permit must:
- be in a form approved by the Chief Commissioner; and
 - provide such information as may be required in the form.

Chief Commissioner to be notified of changes in particulars

- 22.** The holder of a section 48D permit must notify the Chief Commissioner in writing of any change in the particulars furnished in the application for the permit within 7 days of the change occurring.

Maximum penalty: 50 penalty units.

Duration of permits

- 23. (1)** A section 48D permit takes effect from the date specified in the permit and remains in force (unless sooner cancelled or surrendered) until such date of expiry as is specified in the permit.

- (2)** The expiry date for a section 48D permit may be extended from time to time by the Chief Commissioner.

Restrictions on purchase of diesel fuel for off-road purposes

- 24. (1)** A section 48D permit may specify the maximum volume (in litres) of diesel fuel for off-road purposes (other than marine purposes) that may be purchased by the holder of the permit during any particular period.

- (2)** The holder of a section 48D permit must not purchase diesel fuel for off-road purposes (other than marine purposes) if the purchase (along with all other such purchases by the permit holder during the period concerned) exceeds the maximum volume (if any) specified in the permit for the period concerned.

- (3)** The holder of a section 48D permit must not allow the permit to be used by any other person for the purpose of purchasing diesel fuel for off-road purposes.

Maximum penalty (subclauses (2) and (3)): 50 penalty units.

Variation of conditions of permits

- 25. (1)** The Chief Commissioner may, from time to time, vary or revoke any condition, or add to the conditions, specified in a section 48D permit by notice in writing to the holder of the permit.

(2) Any such variation, addition or revocation has effect from the date specified in the notice served on the holder of the section 48D permit.

(3) This clause does not allow the Chief Commissioner to vary or revoke any condition imposed by this Regulation.

Records to be kept by holders of permits

26. (1) It is a condition of a section 48D permit that its holder keeps the following records for diesel fuel purchased by the holder for off-road purposes (other than marine purposes) for at least 6 years after the date of the purchase:

- (a) for each vehicle or item of equipment used by the holder of the permit for off-road purposes:
 - (i) a description of the vehicle or equipment (including information identifying the vehicle or equipment); and
 - (ii) the name of the owner of the vehicle or equipment (if it is not owned by the holder of the permit); and
 - (iii) such other information as is required by the permit;
- (b) for each purchase of diesel fuel by the holder of the permit for off-road purposes, a copy of the invoice for the sale together with such of the following information as is not contained in the invoice:
 - (i) the name and address of the person from whom the fuel was purchased; and
 - (ii) the volume (in litres) of fuel purchased; and
 - (iii) the date on which it was purchased; and
 - (iv) the address to which the fuel was delivered;
- (c) for all diesel fuel purchased by the holder for off-road purposes:
 - (i) the address or location where, and the specific purpose for which, the fuel was used; and
 - (ii) a record of the time spent by any equipment while using the fuel; and
 - (iii) a record of the distance travelled, or the time spent, by any vehicle while using the fuel.

(2) The Chief Commissioner may determine in any particular case or class of cases that the holder of the section 48D permit concerned is not required to keep records under this clause or is only required to maintain and keep such records as are specified as a condition of the permit.

Division 4—Cancellation of authorities and permits**Cancellation of authorities and permits**

27. (1) The Chief Commissioner may, by notice in writing to the holder concerned, cancel a section 48C authority or a section 48D permit if the holder of the authority or permit:

- (a) commits an offence under the Act or this Regulation; or
- (b) contravenes or fails to comply with any condition or requirement specified in the authority or permit or imposed on the holder of the authority or permit under this Regulation.

(2) The cancellation of a section 48C authority or section 48D permit takes effect on the date specified in the notice served on the holder of the authority or permit.

(3) The date of cancellation specified in the notice must not be earlier than 7 days after the date on which the holder is duly served with the notice.

Appeal to Tribunal against cancellation

28. (1) If a section 48C authority or section 48D permit is cancelled by the Chief Commissioner, the person who was the holder of the authority or permit may appeal to the Tribunal against the cancellation.

(2) An application to the Tribunal for an appeal against cancellation of a section 48C authority or section 48D permit:

- (a) may be made within 30 days after notice of the cancellation is duly served on the holder of the authority or permit; and
- (b) must be in writing; and
- (c) must contain such particulars in support of the application as may be requested by the Tribunal.

(3) The procedure for hearing an appeal under this clause is to be determined by the Tribunal.

(4) Without limiting subclause (3), at a hearing of an appeal:

- (a) the Tribunal is not bound by the rules of evidence and may inform itself in such manner as it thinks fit; and
- (b) a party may, with the consent of the Tribunal and the other party, be represented by a barrister, solicitor or other person.

(5) The parties to an appeal are to bear their own costs.

Determination of appeal

29. (1) The Tribunal may determine an appeal:
- (a) by confirming the Chief Commissioner's decision to cancel the section 48C authority or section 48D permit; or
 - (b) by directing the Chief Commissioner to grant or issue a section 48C authority or section 48D permit to the appellant in accordance with any directions given by the Tribunal.
- (2) The Tribunal is to record its decision in writing and give a copy of its decision to the appellant and a copy to the Chief Commissioner.
- (3) The Tribunal's determination of an appeal is final.

PART 5—MISCELLANEOUS**Prescribed quantities of petroleum products for the purposes of evidentiary matters: sec. 32**

30. For the purposes of section 32 of the Act, 1,500 litres is prescribed as the quantity in excess of which a tank's capacity gives rise to the presumptions referred to in that section.

Prescribed quantities of petroleum products for the purposes of search warrants: sec. 54

31. For the purposes of section 54 (2) of the Act, 1,500 litres is prescribed as the quantity in excess of which the suspected presence of petroleum products justifies the issuing of a search warrant referred to in that subsection.

Expenses for witnesses before Chief Commissioner: sec. 55

32. (1) The scales of expenses allowable to witnesses in civil proceedings in the District Court are prescribed as the scales of expenses allowable to persons whose attendance is required under section 55 of the Act.

(2) Those scales of expenses do not apply to the person, or an employee or representative of the person, whose business or liability (as referred to in section 55 (1) (c) or (d) of the Act) is being investigated.

Records to be kept: sec. 59

33. (1) For the purposes of section 59 of the Act, the prescribed records to be kept by a person who carries on the business of selling petroleum products are as set out in this clause.

(2) For each purchase of petroleum products, the records must include:

(a) separate records showing:

- (i) the name and address of the vendor; and
- (ii) the number of the vendor's licence or a statement to the effect that the vendor is unlicensed, as the case requires; and
- (iii) the price at which the petroleum products were purchased; and
- (iv) the date of the purchase; and
- (v) the volume (in litres) of the petroleum products; and
- (vi) in the case of a purchase of motor spirit, the grade of the motor spirit; and
- (vii) the address of the place to which the petroleum products were delivered; and

(b) in the case of petroleum products delivered by road vehicle, a copy of the transportation record for the petroleum products so delivered.

(3) For each sale of petroleum products referred to in section 59 (2) of the Act, the records must include:

(a) separate records showing:

- (i) the name and (if known) the address of the purchaser; and
- (ii) the price at which the petroleum products were sold; and
- (iii) the date of the sale; and
- (iv) the volume (in litres) of the petroleum products; and
- (v) in the case of a sale of motor spirit, the grade of the motor spirit; and
- (vi) the address of the place to which the petroleum products are delivered; and

(b) in the case of petroleum products delivered by road vehicle, a copy of the transportation record for petroleum products so delivered.

(4) For petroleum products that are sold from a fixed storage tank by means of one or more pumps that each have an accumulative sales meter, the records must include, for each pump:

- (a) separate records showing the volume (in litres) of petroleum products sold by the person each day through the pump; and
- (b) separate records showing details of each reading taken from the meter in accordance with subclause (7), including:

- (i) the date of the reading; and
- (ii) the volume (in litres) of petroleum products shown by the meter as having been pumped and, in the case of motor spirit, the grade of motor spirit to which the reading relates; and
- (iii) if the petroleum products were dispensed otherwise than for the purpose of sale, an explanation of the purpose of its being so dispensed and details of its destination.

(5) For all petroleum products sold, the records must include separate records showing the volume (in litres) of petroleum products held in stock at the end of each month.

(6) For the purposes of subclause (2) (a) and (3) (a), the records may be in the form of invoices or copies of invoices containing the required particulars.

(7) For the purposes of the records referred to in subclause (4) (b), readings from the accumulative sales meter must be taken on the following occasions:

- (a) immediately after the pump is installed (whether as a replacement pump or a new pump);
- (b) at least once daily;
- (c) immediately before and immediately after each alteration or adjustment made to the meter;
- (d) immediately before and immediately after motor spirit or diesel fuel is dispensed otherwise than for sale;
- (e) immediately before the removal of the pump.

(8) If any petroleum products consist of motor spirit of different grades or both motor spirit and diesel fuel, a requirement under this clause to record the price or volume of the petroleum products is not complied with unless the price or volume of the different kinds (including, in the case of motor spirit, the different grades) of petroleum products are separately recorded.

(9) All records required to be kept under this clause must be made in the English language, and the entries in each record must be arranged in chronological order according to the time of each purchase, sale or other matter to which the record relates.

(10) In this clause, “**transportation record**” means a record that is required by section 56 of the Act to be carried on a road vehicle by which petroleum products are being transported.

Inspection of tanks

34. (1) For the purpose of ascertaining whether records are being kept in accordance with this Regulation, an inspector may require a person who sells petroleum products to permit the inspector to estimate, by the use of a dip stick or by some other method proposed by the inspector, the volume of any petroleum products stored in a tank from which those products are sold.

(2) A person must not fail to comply with a requirement under this clause.

Maximum penalty: 5 penalty units.

Amendment of the Business Franchise Licences (Petroleum Products) Regulation 1987

35. The Business Franchise Licences (Petroleum Products) Regulation 1987 is amended:

- (a) by inserting in clause 1 after the words “(Petroleum Products)” the words “(Transitional Provisions)”;
- (b) by omitting Parts 2, 3 and 3A and clauses 12–15.

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EXPLANATORY NOTE

The object of this Regulation is to repeal and remake, without any changes in substance, most of the provisions of the Business Franchise Licences (Petroleum Products) Regulation 1987. The new Regulation:

- (a) deals with applications to, and procedure before, the Business Franchise Licence Fees (Petroleum Products) Appeals Tribunal and other matters relating to the business of the Tribunal (Part 2); and

- (b) provides for exemptions from provisions of the Business Franchise Licences (Petroleum Products) Act 1987 relating to the payment of certain fees (Part 3); and
- (c) deals with authorities to sell diesel fuel for off-road purposes and permits to purchase diesel fuel for off-road purposes (Part 4); and
- (d) deals with matters relating to the presumption that a person possesses commercial quantities of petroleum products (clause 30); and
- (e) deals with matters justifying the issuing of a search warrant (clause 31); and
- (f) prescribes a scale of expenses to be allowed to persons required to appear before the Chief Commissioner for Business Franchise Licences (Petroleum Products) (clause 32); and
- (g) specifies the records to be kept by persons selling petroleum products (clause 33); and
- (h) gives inspectors power to inspect storage tanks to ensure that records are being accurately kept (clause 34); and
- (i) amends the Business Franchise Licences (Petroleum Products) Regulation 1987 to rename it and to remove all the provisions other than the definitions and transitional provisions (clause 35); and
- (j) contains formal provisions (Part 1).

This Regulation is made under the Business Franchise Licences (Petroleum Products) Act 1987, including section 76 (the general regulation making power) and various other sections specified in the Regulation.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
