

Act No. 94

**BUSINESS FRANCHISE LICENCES (PETROLEUM  
PRODUCTS) BILL 1987\***

NEW SOUTH WALES



**EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

This Bill is cognate with the Business Franchise Licences (Tobacco) Bill 1987.

The object of this Bill is to provide for the licensing of persons carrying on the business of selling certain petroleum products.

The proposed Act will replace the Business Franchise Licences (Petroleum Products) Act 1982.

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**PART 1—PRELIMINARY**

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

Clause 3 defines certain terms used in the Bill, in particular "petroleum retailing" and "petroleum wholesaling", which are the two activities to be licensed. The definition of "relevant period" relates to the licence fee structure contained in Part 5.

Clause 4 provides that petroleum retailing by a wholesaler is to be counted as petroleum wholesaling. (This allows a trader engaged in both wholesaling and retailing to carry on business with one licence rather than two).

Clause 5 provides that the proposed Act is to bind the Crown.

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\* Amended in committee—see table at end of volume.

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Clause 6 provides for the proposed Act to be read down (so as to apply only to intrastate petroleum trading), in the event that it is found to be beyond the competence of Parliament to enact this Bill in so far as it purports to apply to interstate trade.

PART 2—MERCANTILE GROUPS

DIVISION 1—*Constitution of groups*

Clause 7 states the fundamental condition of membership of a group for the purposes of the proposed Act. A person is a group member if the person meets any of the criteria of membership set out in Division 1 of Part 2, unless the Chief Commissioner of Business Franchise Licences (Petroleum Products) determines that the person is not such a member.

Clause 8 provides for notice to be given of a determination of the Chief Commissioner under proposed section 7 or of the revocation of such a determination.

Clause 9 provides that corporations which, within the meaning of the Companies Code, are related corporations, form a group.

Clause 10 constitutes certain groups in terms of the employment relationship of employees.

Clause 11 constitutes certain groups by virtue of a person's controlling interest in two businesses.

Clause 12 consolidates any groups with overlapping membership into one group.

DIVISION 2—*Controlling interests*

This Division states, in relation to several kinds of businesses, criteria sufficient for the existence of a "controlling interest" referred to in clause 11. The kinds of businesses considered are—

- (a) corporate businesses (clause 13);
- (b) related corporate businesses (clause 14);
- (c) partnership businesses (clause 15);
- (d) businesses owned by sole traders (clause 16);
- (e) businesses owned by trustees (clause 17); and
- (f) businesses carried on under a trust (clause 18).

In addition, provision is made for the existence of a controlling interest—

- (a) arising from ownership of a business whose managers control some other business (clause 19); or
- (b) (as provided by clause 20) arising from—
  - (i) the entitlements of beneficiaries under a trust; or
  - (ii) the potential entitlements of persons eligible to be beneficiaries under a power in the nature of a discretionary trust.

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PART 3—ADMINISTRATION

Clause 21 creates the office of Chief Commissioner for Business Franchise Licences (Petroleum Products). The office is held by the permanent head for the time being of the Department of Finance.

Clause 22 creates the office of Deputy Chief Commissioner for Business Franchise Licences (Petroleum Products). The office is held by the deputy permanent head for the time being of the Department of Finance.

Clause 23 creates the office of Commissioner for Business Franchise Licences (Petroleum Products).

Clause 24 enables staff to be employed for the administration of the proposed Act.

Clause 25 enables delegation of the Chief Commissioner's functions.

Clause 26 constitutes a Business Franchise Licence Fees (Petroleum Products) Appeals Tribunal.

Clause 27 provides the Chief Commissioner and others with immunity from suit in respect of things done in good faith in the execution of the proposed Act.

PART 4—OFFENCES RELATING TO THE SALE OF PETROLEUM PRODUCTS

Clause 28 prohibits the sale of petroleum products without a licence.

Clause 29 prohibits (with specified exceptions) petroleum wholesaling without a wholesaler's licence or group wholesaler's licence.

Clause 30 prohibits petroleum retailing without a retailer's licence or group retailer's licence.

Clause 31 prohibits the sale of petroleum products on premises other than licensed premises.

Clause 32 creates a presumption that petroleum products stored in a tank having a capacity exceeding the prescribed capacity are for sale.

PART 5—LICENCES

Clause 33 describes the kinds of licences that may be granted under the proposed Act, and what each licence authorises.

Clause 34 states who may apply for a licence of each kind.

Clause 35 provides for the issue of licences.

Clause 36 sets out the particulars to be furnished to the Chief Commissioner by an applicant for a licence.

Clause 37 provides for the endorsement (and amendment, as required) on a licence of the premises at which the activity authorised by the licence is to be carried on.

Clause 38 specifies the duration of a licence.

Clause 39 provides for the automatic renewal of licences.

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Clause 40 provides the basis of assessment of fees payable for licences. Essentially, the fee is ad valorem of receipts from sales of petroleum products during the "relevant period" applicable to the licence.

Clause 41 states the effect, in relation to assessment of a licence fee, of certain changes in circumstances of the applicant. The changes contemplated are—

- (a) the applicant was a member of a group during the relevant period for the licence, but ceased to be such a member before the licence was issued; or
- (b) the applicant was a member of one group during the relevant period, but became a member of a different group before the licence was issued.

Clause 42 enables the Chief Commissioner to assess the fee payable by an applicant for a licence who did not trade during the whole or part of the relevant period or in a case where adequate data is not available in relation to the applicant's trading receipts during the relevant period.

Clause 43 provides for a refund of a licence fee paid in respect of the receipts from certain sales of petroleum products to interstate purchasers.

Clause 44 empowers the Minister to determine the value, for the purposes of the proposed Act, of petroleum products.

Clause 45 provides for reassessment of a fee originally assessed incorrectly.

Clause 46 empowers the Chief Commissioner to assess and recover fees from traders who ought to have had, but did not have, a licence at the time they carried on business.

Clause 47 requires the payment of interest if a payment owing to the Chief Commissioner as the result of a reassessment, or of an assessment under proposed section 46, is not paid in due time.

Clause 48 requires the surrender of a licence by a trader who has ceased to trade under its authority.

#### PART 6—APPEALS AND OBJECTIONS

Clause 49 affords a right of appeal to an applicant for a licence to whom a licence has not been granted.

Clause 50 enables a person who disagrees with the Chief Commissioner's assessment (or reassessment) of the person's licence fee to lodge a formal objection to the assessment.

Clause 51 enables a person dissatisfied with the Chief Commissioner's determination on an objection to appeal to the Tribunal.

Clause 52 provides that the onus of proof regarding the correctness of an assessment rests with the person lodging an objection or appeal in respect of it.

#### PART 7—ENFORCEMENT POWERS

Clause 53 empowers the Chief Commissioner or an inspector, for the purposes of the proposed Act, to enter premises (other than a dwelling), inspect and copy records and documents and require statements to be produced and questions to be answered.

Clause 54 enables the issue of a search warrant authorising the Chief Commissioner or an inspector to enter premises.

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Clause 55 empowers the Chief Commissioner to require a person to furnish information, or to attend and give evidence before the Chief Commissioner or an authorised officer, concerning dealings in petroleum products.

**PART 8—TRANSPORTATION OF PETROLEUM PRODUCTS**

Clause 56—

- (a) requires a record of certain particulars to be carried by a person transporting petroleum products in New South Wales by road vehicle; and
- (b) empowers the Chief Commissioner or an inspector to require production, by the driver of a vehicle carrying petroleum products, of the record.

Clause 57 empowers the Chief Commissioner to take custody of any petroleum products in respect of which no transportation record, or no apparently correct transportation record, has been produced by the driver of the vehicle transporting it.

Clause 58 describes what may happen after any petroleum products have been taken into custody under proposed section 57. The Chief Commissioner is to release the petroleum products on production of the transportation record. If the record is not produced within 6 months, the petroleum products may be disposed of in a manner approved by the Chief Commissioner.

**PART 9—MISCELLANEOUS**

Clause 59 requires a person who sells petroleum products to keep and retain such records as the regulations may prescribe.

Clause 60 requires invoices relating to the sale of petroleum products in certain cases to bear the licence number of the vendor.

Clause 61 prohibits the endorsement, on an invoice, of particulars appearing to be those required by proposed section 60 if in fact they are not.

Clause 62 prohibits (with certain specified exceptions) the disclosure, by a person employed in connection with the administration or execution of the proposed Act or its regulations, of information obtained in the course of that employment.

Clause 63 prohibits the furnishing of false or misleading information to the Chief Commissioner or an inspector.

Clause 64 denies a person the right to refuse to answer a question put to the person by or on behalf of the Chief Commissioner, but provides that the person's answer is not admissible in criminal proceedings other than proceedings for an offence of answering falsely (or proceedings for perjury, if the answer is a sworn statement).

Clause 65 provides that a corporation is bound by information supplied by officers of the corporation, unless it is established that the information was provided without due authorisation.

Clause 66 prohibits the obstruction of the Chief Commissioner or inspectors in the exercise of their functions.

Clause 67 provides for the admissibility in evidence of certain matters given in a certificate of the Chief Commissioner. The certificate is prima facie evidence of the matters certified.

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Clause 68 provides for the admissibility in evidence of a notice of assessment of a licence fee. The notice is conclusive as to its contents except in proceedings to review the assessment, in which case it is prima facie evidence only.

Clause 69 provides for offences against the proposed Act or its regulations to be dealt with summarily by the Supreme Court or a Local Court.

Clause 70 provides that proceedings for an offence may be taken by the Chief Commissioner or an authorised officer.

Clause 71 empowers the Chief Commissioner to recover, as a debt, money payable to the Chief Commissioner under the proposed Act or the regulations.

Clause 72 empowers the Chief Commissioner to obtain money from the debtors of a person who owes money to the Chief Commissioner under the proposed Act.

Clause 73 authorises members of the police force to provide assistance to the Chief Commissioner or other officers in the exercise of the functions of the Chief Commissioner.

Clause 74 makes directors and managers of a corporation responsible for offences committed by the corporation with their authority or permission.

Clause 75 provides for service of notices and other documents for the purposes of the proposed Act.

Clause 76 authorises the Governor-in-Council to make regulations in aid of the proposed Act.

Clause 77 amends the Search Warrants Act 1985 as a consequence of the enactment of proposed section 54.

Clause 78 effects the repeal of the Business Franchise Licences (Petroleum Products) Act 1975 and enactments amending that Act.

Clause 79 gives effect to Schedule 3 to the proposed Act.

**SCHEDULE 1—THE TRIBUNAL**

This Schedule enacts provisions relating to the person appointed as the Tribunal constituted by proposed section 26.

**SCHEDULE 2—REPEALS**

This Schedule lists the enactments repealed by proposed section 78.

**SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS**

This Schedule enacts savings and transitional provisions in consequence of the repeals effected by proposed section 78.

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