

SOUTH AUSTRALIA

PETROLEUM PRODUCTS REGULATION ACT 1995

SUMMARY OF PROVISIONS**PART 1
PRELIMINARY**

1. Short title
2. Commencement
3. Objects of Act
4. Interpretation
5. Division of State into zones
6. Application of Act
7. Non-derogation

**PART 2
LICENCES****DIVISION 1—GENERAL**

8. Requirement for licence
9. Issue or renewal of licence
10. Licence term, etc.
11. Conditions of licence
12. Variation of licence
13. Form of application for issue, renewal or variation of licence
14. Reference of matters to other persons or bodies
15. Criteria for decisions relating to licences, etc.
16. Avoidance of multiple licences
17. Offence relating to licence conditions
18. Cancellation or suspension of licence
19. Cessation of prescribed retail sales under licence

DIVISION 2—LICENCE FEES

20. Fees
21. Determination of value of petroleum products
22. Recovery of unpaid fees from unlicensed persons
23. Reassessment of fee, etc.

**PART 3
INDUSTRIAL PUMPS**

24. Industrial pumps not to be installed without approval

**PART 4
GENERAL SAFETY AND ENVIRONMENTAL DUTIES**

25. General duty
26. Duty in relation to plant
27. Improvement notices
28. Prohibition notices
29. Action on default
30. Action in emergency situations
31. Cost recovery

**PART 5
PERIODS OF RESTRICTION AND RATIONING**

DIVISION 1—INTERPRETATION

32. Interpretation

DIVISION 2—DECLARATION OF PERIODS OF RESTRICTION AND RATIONING

33. Declaration of periods of restriction and rationing

DIVISION 3—CONTROLS DURING PERIODS OF RESTRICTION

34. Controls during periods of restriction

DIVISION 4—CONTROLS DURING RATIONING PERIODS

35. Controls during rationing periods
36. Permits

DIVISION 5—LIMIT ON PROCEEDINGS AGAINST MINISTER

37. Limit on proceedings against Minister

DIVISION 6—CONSERVATION OF PETROLEUM PRODUCTS

38. Publication of desirable principles for conserving petroleum
39. Special consideration to be given to those living in country areas

**PART 6
CORRECT MEASUREMENTS**

40. Correct measurements

**PART 7
SALE OF PETROLEUM PRODUCTS TO CHILDREN**

41. Sale of petroleum products to children

**PART 8
AUTHORISED OFFICERS**

42. Appointment of authorised officers
43. Identification of authorised officers
44. Powers of authorised officers
45. Offence to hinder, etc., authorised officers
46. Self-incrimination

**PART 9
APPEALS**

47. Appeals

**PART 10
APPLICATION OF FEES REVENUE**

48. Application of fees revenue

PART 11
MISCELLANEOUS

- 49. Delegation
- 50. Register of licences
- 51. Particulars of dealings with petroleum products
- 52. Invoices, statements of accounts and receipts to be endorsed
- 53. Records to be kept
- 54. False or misleading information
- 55. Statutory declarations
- 56. Confidentiality
- 57. General defence
- 58. Immunity from personal liability
- 59. Offences by bodies corporate
- 60. Continuing offence
- 61. Prosecutions
- 62. Evidence
- 63. Service
- 64. Regulations

SCHEDULE 1*Petroleum Products Retail Outlets Board***SCHEDULE 2***Groups for the Purposes of Licensing***SCHEDULE 3***Repeal and Transitional Provisions***SCHEDULE 4***Consequential Amendments to Environment Protection Act 1993*

PETROLEUM PRODUCTS REGULATION ACT 1995

being

Petroleum Products Regulation Act 1995 No. 30 of 1995
[Assented to 27 April 1995]¹

¹ Came into operation 1 July 1995: *Gaz.* 1 June 1995, p. 2529.

N.B. The amendments effected to this Act by the *Petroleum Products Regulation (Licence Fees and Subsidies) Amendment Act 1998* have not been brought into operation.

An Act to regulate activities involving or related to petroleum products; to repeal the Business Franchise (Petroleum Products) Act 1979, the Motor Fuel Distribution Act 1973 and the Petroleum Shortages Act 1980; to make consequential amendments to the Environment Protection Act 1993; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Petroleum Products Regulation Act 1995*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Objects of Act

3. The objects of this Act are—

- (a) to merge and simplify licensing and other regulatory requirements applying to activities involving or related to petroleum products; and
- (b) to direct the revenue resulting from fees under this Act towards the costs of administration of this Act and other areas of public administration incurring costs in consequence of activities involving or related to petroleum products.

Interpretation

4. (1) In this Act, unless the contrary intention appears—

"**annual licence**" means an annual licence under Part 2;

"**authorised officer**" means an authorised officer under Part 8;

"**Commissioner**" means the person for the time being holding or acting in the position of the Commissioner of Stamps or a position of Deputy Commissioner of Stamps and any other person performing any of the duties or functions of the Commissioner of Stamps or a Deputy Commissioner of Stamps;

"**condition**", in relation to a licence or permit, includes a limitation or restriction;

"**Consumer Price Index**" means the Consumer Price Index (All groups index for Adelaide);

"**contravention**" includes failure to comply with a requirement;

"**conveyance**" of a petroleum product means movement of the product whether by vehicle, pipeline or any other means, and "**convey**" has a corresponding meaning;

"**dangerous situation**" means a situation involving petroleum products that—

- (a) is immediately endangering the safety or health of a person, or the safety of a person's property; or

- (b) is creating immediate risk of significant environmental harm;

"**development authorisation**" means a development authorisation within the meaning of the *Development Act 1993*;

"**diesel fuel**" means a petroleum or shale product used or capable of being used in propelling a diesel engined road vehicle, but does not include a prescribed substance;

"**Environment Protection Fund**" means the fund of that name established under the *Environment Protection Act 1993*;

"**Highways Fund**" means the fund of that name established under the *Highways Act 1926*;

"**industrial pump**" means a pump that—

- (a) is connected to a bulk tank having a capacity of not less than 2 001 litres; and
- (b) is installed at or in the vicinity of premises principally for the supply of petroleum products to the occupier of the premises and not principally for resale,

but does not include such a pump used principally in connection with—

- (c) the business of primary production as defined for the purposes of the *Land Tax Act 1936*; or
- (d) any prescribed activity;

"**licence**" means a monthly licence or an annual licence under Part 2;

"**licensee**" means the holder of a licence under Part 2;

"**liquefied petroleum gas**" means a hydrocarbon fluid composed predominantly of any of the following hydrocarbons or mixtures of all or any of them:

- (a) propane (C_3H_8);
- (b) propylene (C_3H_6);
- (c) butane (C_4H_{10});
- (d) butylene (C_4H_8);

"**member of a group**"—see *schedule 2*;

"**monthly licence**" means a monthly licence under Part 2;

"**motor spirit**" means petrol or other petroleum or shale spirit having a closed-cup flash point of less than 23° Celsius when tested by the Abel method as set out in Part 1 of Australian Standard 2106 "Determination of the Flash Point of Flammable Liquids (Closed Cup)", but does not include—

- (a) solvents; or
- (b) special boiling point spirits; or
- (c) liquefied petroleum gas; or
- (d) any prescribed substance;

"**period of restriction**" means a period declared by proclamation under Part 5 to be a period of restriction (whether or not it is also a rationing period);

"**permit**" means a permit under Part 5;

"**permit holder**" means a person to whom a permit is issued under Part 5;

"**petroleum product**" means—

- (a) motor spirit; or
- (b) diesel fuel; or
- (c) liquefied petroleum gas; or
- (d) any other substance declared by regulation to be a petroleum product;

"**plant**" includes—

- (a) any machine, engine, equipment, container or device;
- (b) any component, fitting, pipe or accessory used in or in connection with any machine, engine, equipment, container or device;

"**premises**" includes any place or vehicle;

"**prescribed retail sale**" means a sale of a kind declared by regulation to be prescribed retail sales;

"**rationed petroleum product**" means a petroleum product of a kind declared by proclamation under Part 5 to be rationed petroleum products;

"**rationing period**" means a period of restriction declared by proclamation under Part 5 to be a rationing period;

"**record**" includes any book, document or writing and any other source of information compiled, recorded or stored by computer, microfilm or other process, or in any other manner or by any other means;

"**relevant period**", in relation to a monthly licence, means the calendar month that is the last calendar month but one preceding the calendar month during which the licence, if issued, would be in force;

"**Retail Outlets Board**" means the Petroleum Products Retail Outlets Board established under schedule 1;

"**retail sale**" means a sale for the purposes of use or consumption, and its correlatives and derivatives have corresponding meanings;

"**unleaded petrol**" means petrol that—

- (a) does not contain more than 0.013 grams of lead; and
- (b) does not contain more than 0.0013 grams of phosphorus,

per litre;

"**vehicle**" includes any kind of aircraft or vessel;

"**vending machine**" means a machine constructed to dispense petroleum products on the insertion into the machine of money or a token, card, disk or other object;

"**voting share**" has the meaning assigned to the term by section 9 of the *Corporations Law*.

(2) Where, under a sale and purchase made outside the State, petroleum products are delivered within the State, that sale and purchase is for the purposes of this Act to be taken to have been made within the State.

Division of State into zones

5. (1) Subject to subsection (2), the State is divided into zones as follows:

- (a) zone 1 is that part of the mainland of the State that lies within a radius of 50 kilometres from the General Post Office at Adelaide; and
- (b) zone 2 is that part of the mainland of the State (excluding Yorke Peninsula) that lies outside zone 1 but within a radius of 100 kilometres from the General Post Office at Adelaide; and
- (c) zone 3 consists of all parts of the State outside zones 1 and 2.

(2) The Governor may, if satisfied that it is necessary to do so in order to achieve equity between vendors of petroleum products, make a regulation varying the boundaries of a zone to such extent as may be necessary for that purpose.

Application of Act

6. (1) The Minister may, by notice published in the *Gazette*—

- (a) exempt a class of persons or petroleum products from the application of this Act or a specified provision of this Act unconditionally or subject to specified conditions; and
- (b) vary or revoke a notice under this subsection.

- (2) The Minister may, by notice in writing to a person—
- (a) exempt the person from the application of this Act or a specified provision of this Act unconditionally or subject to specified conditions; and
 - (b) vary or revoke a notice under this subsection.

Non-derogation

7. (1) The provisions of this Act are in addition to and do not derogate from the provisions of any other Act.

(2) Subsection (1) does not limit the effect of any regulation made under Part 2 dispensing with a requirement for a licensee under this Act to hold a specified licence or other authority under some other specified Act.

**PART 2
LICENCES**

DIVISION 1—GENERAL

Requirement for licence

8. (1) A person must not—

- (a) keep petroleum products; or
- (b) sell petroleum products; or
- (c) convey petroleum products; or
- (d) engage in an activity of a prescribed class involving or related to petroleum products,

unless authorised to do so under a licence.

Maximum penalty: \$10 000.

(2) The licence required under subsection (1) is an annual licence subject to the exception that a monthly licence is required for the sale of petroleum products that have not been purchased by the vendor from another who sold the products under the authority of a licence.

(3) A prescribed retail sale of petroleum products is not authorised by a licence unless the sale is made from premises specified in the licence for that purpose.

Issue or renewal of licence

9. (1) The Minister may, on application by a person, issue or renew, or refuse to issue or renew, a licence under this Act.

(2) An application for the issue of a monthly licence may not be made earlier than one month before the commencement of the period in respect of which the licence is applied for.

(3) The Minister may, if he or she thinks fit, renew an annual licence despite the fact that application for renewal of the licence was made after the end of the previous term of the licence.

(4) Where an applicant for a monthly licence is a member of a group of petroleum vendors, the application must be made on behalf of all members of the group.

(5) Where an application for a monthly licence is made on behalf of the members of a group, and a licence is issued on that application, the names of all the members of the group must be inserted in the licence as joint licensees.

Licence term, etc.

10. (1) Subject to this Act, a monthly licence expires at the end of the calendar month in which it came into effect.

(2) Subject to this Act, an annual licence expires on the anniversary of the date of issue of the licence and may be renewed on application for successive terms of one year.

(3) A licence has effect, on issue or renewal, from the date specified in the licence for that purpose which may be earlier than the date of application for the issue or renewal of the licence.

(4) The holder of an annual licence may, at any time, by notice in writing to the Minister, surrender the licence, at which time the licence ceases to have effect.

Conditions of licence

11. (1) The Minister may fix conditions of a licence.

(2) Without limiting subsection (1), licence conditions may include the following:

- (a) conditions requiring compliance with specified codes or standards (as in force at a specified time or as in force from time to time);
- (b) conditions requiring the reporting of accidents;
- (c) conditions for the protection of employee or public safety or health;
- (d) conditions for the protection of the environment;
- (e) conditions requiring the licensee to prepare and submit to the Minister assessments of the safety, health or environmental risks associated with the activity authorised under the licence;
- (f) conditions limiting the premises that may be used under the licence;
- (g) conditions limiting sales of petroleum products that may be authorised by the licence;
- (h) conditions requiring the keeping of records and the provision of information;
- (i) conditions authorised or fixed by Part 5 or 6 or the regulations.

(3) If a code or standard is referred to in a licence condition—

- (a) a copy of the code or standard must be kept available for inspection, without charge and during normal office hours, at an office determined by the Minister; and
- (b) evidence of the contents of the code or standard may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code or standard.

Variation of licence

12. (1) The Minister may, on application or at the Minister's own initiative, substitute, add, remove or vary a condition of a licence or otherwise vary a licence.

(2) Without limiting subsection (1)—

- (a) the Minister may vary a licence—
 - (i) by substituting another person as the licensee; or

Petroleum Products Regulation Act 1995

- (ii) in the case of a licence authorising prescribed retail sales of petroleum products from specified premises—by substituting, adding or removing premises as premises from which prescribed retail sales of petroleum products may be made under the licence;
 - (b) the Minister may vary a licence on the Minister's own initiative if satisfied that the licensee has contravened or failed to comply with this Act or that other sufficient cause exists.
- (3) A licence may be varied—
- (a) by endorsement of the licence; or
 - (b) by notice in writing to the licensee; or
 - (c) by a notice published under Part 5.

Form of application for issue, renewal or variation of licence

13. (1) An application for the issue, renewal or variation of a licence must be made to the Minister in a manner and form approved by the Minister and contain the information required by the Minister.

(2) An applicant must provide any further information that the Minister reasonably requires for the purposes of determining the application.

Reference of matters to other persons or bodies

14. (1) Subject to this section—

- (a) an application for the issue or variation of a licence; or
- (b) an application for a development authorisation referred under the *Development Act 1993* to the Minister; or
- (c) any other matter with respect to a licence,

must be referred by the Minister—

- (d) to the Director under the *Dangerous Substances Act 1979*; and
- (e) to the Environment Protection Authority under the *Environment Protection Act 1993*; and
- (f) if the regulations so provide—to some other specified Minister or government agency,

for the recommendation of that person or body.

(2) A person or body referred to in subsection (1) may dispense with the requirement that a specified matter or class of matters be referred to it under that subsection.

(3) Subject to the regulations, the following must be referred by the Minister to the Retail Outlets Board for its recommendation:

- (a) an application for the issue or variation of a licence authorising prescribed retail sales of petroleum products;
- (b) an application for a development authorisation referred under the *Development Act 1993* to the Minister where the application is for a development that relates to premises from which prescribed retail sales of petroleum products are to be made;
- (c) any other matter with respect to a licence authorising prescribed retail sales of petroleum products.

(4) Except as otherwise determined by the Minister, a person or body must, when making a recommendation in respect of a matter referred to it under this section, give the Minister reasons in writing for the recommendation.

Criteria for decisions relating to licences, etc.

15. (1) This section applies to a decision by the Minister in respect of—

- (a) an application for the issue or variation of a licence; or
- (b) an application for a development authorisation referred under the *Development Act 1993* to the Minister; or
- (c) any other matter with respect to a licence.

(2) The Minister must take the following matters into account in making a decision to which this section applies:

- (a) the protection of employee and public safety and health; and
- (b) the protection of the environment; and
- (c) whether the premises and plant proposed to be used or in use by the applicant or licensee comply with this Act and other relevant laws; and
- (d) the applicant's or licensee's record of compliance with this Act and other relevant laws; and
- (e) in the case of a decision relating to prescribed retail sales of petroleum products—
 - (i) the suitability of the premises from which the prescribed retail sales are to be made; and
 - (ii) the number of other premises (if any) within a distance of three kilometres from which prescribed retail sales of petroleum products may be made; and
 - (iii) the need for facilities and services to be provided at the premises for the assistance of motorists in the event of vehicle breakdown; and

Petroleum Products Regulation Act 1995

- (iv) the extent to which the interests of retail customers for petroleum products will be served; and
 - (v) the extent to which fair and reasonable competition in the retail sale of petroleum products will be affected; and
 - (vi) any other matter relevant to the orderly provision of services in the area of prescribed retail sales of petroleum products; and
- (f) any recommendation of a person or body to which the matter has been referred under this Part; and
- (g) any other relevant matters.
- (3) If the Minister, in making a decision to which this section applies—
- (a) grants an application contrary to the recommendation of a person or body to which the matter had been referred under this Part; or
 - (b) refuses an application contrary to the unanimous recommendations of the persons or bodies to which the matter has been referred under this Part,

the Minister must—

- (c) give the reasons for the decision in writing at the time of making the decision; and
- (d) on application by a person to the Minister's office, provide the person with a copy of the written reasons; and
- (e) have a copy of the written reasons tabled in both Houses of Parliament within six sitting days after the making of the decision.

Avoidance of multiple licences

16. (1) The Governor may make regulations applicable to licensees under this Act dispensing with a requirement for a specified licence or other authority to be held under some other specified Act.

(2) A regulation under this section has effect according to its terms and despite the provisions of any other Act.

Offence relating to licence conditions

17. A licensee must not contravene or fail to comply with a condition of the licence (whether fixed by the Minister or by Part 5 or 6).

Maximum penalty: \$10 000.

Cancellation or suspension of licence

18. The Minister may, if satisfied that a licensee has contravened or failed to comply with this Act or that other sufficient cause exists, suspend or cancel the licence.

Cessation of prescribed retail sales under licence

19. If, without the Minister's approval, the business of making prescribed retail sales of petroleum products from premises specified in a licence for that purpose is not carried on for a continuous period of one month during the term of the licence, the licence ceases to authorise such sales to be made from the premises unless the Minister otherwise determines.

DIVISION 2—LICENCE FEES

Fees

20. (1) An application for a monthly licence, or for the issue or renewal of an annual licence, may not be granted except on payment of—

- (a) in the case of a monthly licence—the fee assessed by the Commissioner; or
- (b) in the case of an annual licence—the appropriate fee under the regulations.

(2) The fee to be paid for a monthly licence is the sum of the following as assessed by the Commissioner:

- (a) the appropriate amount under the regulations; and
- (b) —
 - (i) 15.84 per cent of the value of motor spirit, other than unleaded petrol; and
 - (ii) 15.58 per cent of the value of unleaded petrol; and
 - (iii) 17.78 per cent of the value of diesel fuel,
sold by the applicant during the relevant period and destined for use or consumption in zone 1; and
- (c) —
 - (i) 11.78 per cent of the value of motor spirit, other than unleaded petrol; and
 - (ii) 11.52 per cent of the value of unleaded petrol; and
 - (iii) 13.82 per cent of the value of diesel fuel,
sold by the applicant during the relevant period and destined for use or consumption in zone 2; and
- (d) —
 - (i) 7.80 per cent of the value of motor spirit, other than unleaded petrol; and
 - (ii) 7.54 per cent of the value of unleaded petrol; and

Petroleum Products Regulation Act 1995

- (iii) 9.75 per cent of the value of diesel fuel,
sold by the applicant during the relevant period and destined for use or consumption in zone 3.
- (3) The following provisions apply for purposes of assessing the fee for a monthly licence:
- (a) petroleum products sold by the applicant will be taken to have been destined for use or consumption in zone 1 unless it is established to the Commissioner's satisfaction that they were destined for use or consumption in zone 2 or zone 3;
- (b) petroleum products will be taken to be destined for use or consumption in zone 2 or zone 3 if and only if it is established to the Commissioner's satisfaction—
- (i) that they were sold by retail, and delivered in pursuance of that sale, from a place of business in the relevant zone; or
- (ii) that they were delivered at a place of business within the relevant zone for the purpose of retail sale and delivery from that place of business;
- (c) the following amounts will be disregarded in assessing the fee for a monthly licence:
- (i) the value of petroleum products sold by the applicant (being at the time of the sale a monthly licensee) to another monthly licensee for the purpose of resale;
- (ii) the value of petroleum products sold for delivery and use or consumption outside the State;
- (iii) the value of diesel fuel sold for a purpose other than the propulsion of diesel engined road vehicles;
- (iv) the value of aviation gasoline sold for a purpose other than the propulsion of road vehicles;
- (d) if the applicant is, or was during the relevant period, a member of a group of petroleum vendors, all members of the group will be treated as applicants for the purpose of calculating the licence fee;
- (e) if—
- (i) the application is made on behalf of the members of a group of petroleum vendors; and
- (ii) any member of the group referred to in subparagraph (i) was, at any time during the relevant period, a member of another such group (any one or more of the members of which is not a member of the group referred to in subparagraph (i)),

the petroleum products sold by members of the first mentioned group during that relevant period are to be taken to have included any petroleum products sold by any of the members of the other group during that period unless the applicant satisfies the Commissioner that a fee for a monthly licence has been paid to the Commissioner after having been assessed in respect of the sale of petroleum products by the members of the other group during that relevant period;

- (f) if the applicant or the group of which the applicant is a member did not carry on the business of a monthly licensee during the whole of the relevant period, the fee payable in respect of the licence will be the amount 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 if the applicant or the group had been carrying on that business during the whole of that period;
- (g) if the applicant or the group of which the applicant is a member carried on the business of a monthly licensee during the whole of the relevant period, but the Commissioner is of the opinion that the Commissioner is unable for any reason accurately to assess the fee payable under this section, the fee payable in respect of the licence will be the amount assessed by the Commissioner as being just and reasonable in the circumstances of the case.

(4) A fee payable in respect of a monthly licence under this section is payable by the persons by or on behalf of whom the application is made.

Determination of value of petroleum products

21. (1) For the purpose of assessing the fee for a monthly licence, the value of motor spirit or diesel fuel sold during a particular relevant period will be taken to be—

- (a) the indexed amount; or
- (b) the amount prescribed by regulation and in force as at the commencement of the relevant period,

whichever is the greater, multiplied by the number of litres of motor spirit or diesel fuel sold.

(2) For the purposes of subsection (1), the indexed amount for a relevant period falling within the 12 months period commencing on 1 June in any year is the amount obtained by dividing the Consumer Price Index for the immediately preceding March quarter by the Consumer Price Index for the March quarter 1991, multiplying the quotient by 55 cents, and rounding the product to two decimal places.

(3) The Governor may, by regulation—

- (a) fix an amount for the purpose of fixing the per litre value of motor spirit (including unleaded petrol); and
- (b) fix an amount for the purpose of fixing the per litre value of diesel fuel,

(but an amount fixed under this subsection must not exceed an amount representing, in the Minister's opinion, a reasonable average wholesale price per litre for motor spirit or diesel fuel (as the case requires) in the State as at the date of the regulation).

(4) An amount fixed by regulation under this section takes effect as from the commencement of a relevant period specified in the regulation.

Recovery of unpaid fees from unlicensed persons

22. (1) If a person was required by this Act to hold but did not hold a particular licence in respect of any period, the person must pay to the Commissioner an amount equal to the licence fee that would have been payable if the person had held that licence.

(2) The Commissioner may assess the amount payable under this section.

(3) Notice of the assessment under this section is to be served on the person against whom the assessment was made.

(4) Any amount assessed under this section may be recovered by the Commissioner, as a debt due to the Crown, in any court of competent jurisdiction.

(5) A certificate purporting to be signed by the Commissioner and stating that a specified amount is the amount assessed under this section in respect of a specified person is admissible in proceedings for the recovery of that amount and will, in the absence of proof to the contrary, be proof of the assessment.

Reassessment of fee, etc.

23. (1) The Commissioner may reassess a monthly licence fee or other amount assessed under this Division—

(a) on the Commissioner's own initiative; or

(b) on receipt of an objection by the person liable to pay the fee or amount lodged with the Commissioner within two months after the service on the person of notice of the assessment.

(2) If the fee or amount is reduced on reassessment, the amount overpaid must be refunded by the Commissioner and the Consolidated Account is appropriated accordingly.

(3) If the fee or amount is increased on reassessment, the Commissioner may recover as a debt due to the Crown, in a court of competent jurisdiction, the amount by which the fee or amount is increased from the person liable for the fee or amount.

(4) If an amount is recoverable under subsection (3) in respect of a licence held by two or more persons, those persons are jointly and severally liable to pay the amount.

**PART 3
INDUSTRIAL PUMPS**

Industrial pumps not to be installed without approval

24. (1) A person must not install an industrial pump without the prior approval of the Minister.

Maximum penalty: \$10 000.

(2) The Minister must not grant approval for the installation of an industrial pump unless the Minister is satisfied that the amount of petroleum products that will be supplied to the occupier of the premises in relation to which it is proposed to install the pump will be not less than 6 800 litres a month.

Petroleum Products Regulation Act 1995

**PART 4
GENERAL SAFETY AND ENVIRONMENTAL DUTIES****General duty**

25. A licensee or other person must, in keeping, handling, conveying, using or disposing of petroleum products, take such precautions and exercise such care as is reasonable in the circumstances in order to—

- (a) avoid endangering the safety or health of another, or the safety of another's property; and
- (b) prevent risk of significant environmental harm.

Maximum penalty: In the case of a body corporate—\$50 000.

In any other case—\$10 000 or imprisonment for 2 years, or both.

Duty in relation to plant

26. (1) This section applies to plant that is used, or that is reasonably expected to be used, in connection with petroleum products.

(2) For the purposes of this section, plant is in an environmentally sound condition if it is in a condition that does not give rise to a risk of significant environmental harm.

(3) A licensee or other person who is in charge of plant to which this section applies must—

- (a) take such precautions and exercise such care as is reasonable in the circumstances in order to ensure that the plant is in a safe and environmentally sound condition whenever it is used in connection with petroleum products; and
- (b) ensure that the plant is in a safe and environmentally sound condition when it is not in use.

(4) A licensee or other person who uses plant to which this section applies must—

- (a) ensure that the plant is in a safe and environmentally sound condition; and
- (b) take such precautions and exercise such care as is reasonable in the circumstances in order to—
 - (i) avoid endangering the safety or health of another, or the safety of another's property; and
 - (ii) prevent risk of significant environmental harm,

(whether during the use of the plant, or as a result of the use of the plant); and

(c) ensure that the plant is left in a safe and environmentally sound condition after use.

(5) A licensee or other person who performs, or supervises the performance of, work on, or in relation to, plant to which this section applies must take such precautions and exercise such care as is reasonable in the circumstances in order to—

- (a) avoid endangering the safety or health of another, or the safety of another's property;
and
- (b) prevent risk of significant environmental harm,

(whether during the performance of the work, or as a result of the performance of the work).

(6) A licensee or other person must not misuse or damage any plant to which this section applies.

(7) A person who contravenes or fails to comply with a provision of this section is guilty of an offence.

Maximum penalty: In the case of a body corporate—\$50 000.

In any other case—\$10 000 or imprisonment for 2 years, or both.

Improvement notices

27. (1) If an authorised officer is of the opinion that a person—

- (a) is contravening a provision of this Part or a condition of a licence; or
- (b) has contravened a provision of this Part or a condition of a licence in circumstances that make it—
 - (i) likely that the contravention will be repeated; or
 - (ii) reasonable to require that the contravention be remedied,

the authorised officer may issue an improvement notice requiring the person to remedy the matters occasioning the contravention.

(2) An improvement notice must—

- (a) state that the authorised officer is of the opinion that a person—
 - (i) is contravening a provision of this Part or a condition of a licence; or
 - (ii) has contravened a provision of this Part or a condition of a licence in circumstances that make it—
 - (A) likely that the contravention will be repeated; or
 - (B) reasonable to require that the contravention be remedied; and
- (b) state the grounds of the authorised officer's opinion; and
- (c) specify the provision of this Part or licence condition in respect of which that opinion is held.

Petroleum Products Regulation Act 1995

(3) An authorised officer may—

- (a) include in an improvement notice directions as to the measures to be taken to remedy the contravention, or to avoid further such contravention;
- (b) specify in an improvement notice a day by which the matters referred to in the notice must be remedied.

(4) An authorised officer may vary or revoke an improvement notice issued under this section.

(5) A person who contravenes or fails to comply with an improvement notice is guilty of an offence.

Maximum penalty: \$20 000.

Prohibition notices

28. (1) If an authorised officer is of the opinion that a dangerous situation exists, the authorised officer may issue to the person apparently in control of the activity giving rise to the danger or risk a prohibition notice prohibiting the carrying on of the activity until an authorised officer is satisfied that adequate measures have been taken to avert, eliminate or minimise the danger or risk.

(2) A prohibition notice must—

- (a) identify the activity giving rise to the danger or risk; and
- (b) state the grounds of the authorised officer's opinion.

(3) An authorised officer may include in a prohibition notice directions as to the measures to be taken to avert, eliminate or minimise the danger or risk to which the notice relates.

(4) An authorised officer may vary or revoke a prohibition notice issued under this section.

(5) Subject to this Act, a person who contravenes or fails to comply with a prohibition notice is guilty of an offence.

Maximum penalty: \$50 000.

Action on default

29. (1) If a person is required by an improvement notice or prohibition notice to take any specified measures and the person fails to comply with the notice, the authorised officer who issued the notice or any person authorised by him or her may—

- (a) after giving reasonable notice to the person required to take the measures, enter and take possession of any place (taking such measures as are reasonably necessary for the purpose); and
- (b) do, or cause to be done, such things as full and proper compliance with the notice may require.

(2) The Crown may recover the costs and expenses reasonably incurred by an authorised officer or other authorised person exercising powers under subsection (1) from the person who failed to comply with the notice, as a debt in a court of competent jurisdiction.

Action in emergency situations

30. (1) If an authorised officer considers on reasonable grounds that a dangerous situation exists and that there is insufficient time to issue a notice under this Part, the authorised officer may, after giving such notice (if any) as may be reasonable in the circumstances, take action or cause action to be taken as necessary to avert, eliminate or minimise the danger or risk.

(2) In the exercise of powers under this section, an authorised officer—

- (a) may at any time enter and take possession of any place (taking such measures as are reasonably necessary for the purpose); and
- (b) may be accompanied by such assistants as may be necessary or desirable in the circumstances.

(3) The Crown may recover the costs and expenses reasonably incurred by an authorised officer exercising the powers under this section from the person who caused the danger or risk, as a debt in a court of competent jurisdiction.

Cost recovery

31. (1) In this section—

"**agency or instrumentality of the Crown**" means any body corporate (other than a council) established for a public purpose by, or in accordance with, an Act;

"**council**" means a municipal or district council;

"**government authority**" means—

- (a) an administrative unit of the Public Service;
- (b) an agency or instrumentality of the Crown; or
- (c) a council;

"**principal officer**", in relation to a government authority, means—

- (a) in the case of an administrative unit of the Public Service—the chief executive officer of that unit;
- (b) in the case of an agency or instrumentality of the Crown—the chief executive officer of that agency or instrumentality or a person designated by the regulations as principal officer of that agency or instrumentality;
- (c) in the case of a council—the chief executive officer of that council.

(2) This section applies to any incident—

- (a) constituted of or arising from (whether wholly or in part) the escape of a petroleum product; or
- (b) that involves risk of the escape of a petroleum product.

Petroleum Products Regulation Act 1995

(3) For the purposes of this section, the escape of a petroleum product includes—

- (a) a discharge of the petroleum product onto or into any land or water, or any structure or thing; or
- (b) the release of the petroleum product into the air.

(4) Where a government authority incurs costs or expenses as a result of the occurrence of an incident to which this section applies, any such costs or expenses reasonably incurred by the government authority are recoverable as a debt in a court of competent jurisdiction.

(5) The costs or expenses may be recovered by—

- (a) in the case of costs or expenses incurred by a council—the council; or
- (b) in the case of costs or expenses incurred by an agency or instrumentality of the Crown—that agency or instrumentality, or the Crown; or
- (c) in any other case—the Crown.

(6) The recovery of costs or expenses incurred by one government authority as a result of the occurrence of an incident to which this section applies (including an award or judgment in relation to those costs or expenses) does not preclude the recovery of costs and expenses incurred by another government authority as a result of the occurrence of the incident.

(7) The costs or expenses may be recovered (jointly or severally) from—

- (a) the person who was the owner of the petroleum product at the time of the incident; or
- (b) the person who was in control or possession of the petroleum product at the time of the incident; or
- (c) the person who caused the incident.

(8) For the purposes of subsection (7)—

- (a) any petroleum product in the control or possession of an employee or agent while acting in the course of employment will be taken to be in the control or possession of the employer or principal; and
- (b) an act or omission of an employee or agent while acting in the course of employment will be taken to be the act or omission of the employer or principal,

unless it is proved that the incident is attributable to serious and wilful misconduct on the part of the employee or agent.

(9) Costs and expenses are not recoverable against a person who establishes—

- (a) that the incident was due to the act or default of another person, or to some cause beyond the person's control; and

- (b) that he or she could not by the exercise of reasonable diligence have prevented the occurrence of the incident; and
- (c) that the incident is not attributable to an act or omission of a person who was an employee or agent of his or hers at the time when the incident occurred (unless it is proved that the incident is attributable to serious and wilful misconduct on the part of the employee or agent).

(10) This section does not exclude or derogate from any right to recover an amount in respect of costs or expenses that exists apart from this section but the Crown or a government authority is not entitled to recover, in respect of the same costs or expenses, an amount under this section and an amount in proceedings founded on rights that exist apart from this section.

(11) For the purposes of this section, a body that forms part, or is established for the purposes, of an agency or instrumentality of the Crown is not to be regarded as itself constituting a separate agency or instrumentality.

(12) In any proceedings under this section, a document apparently signed by the principal officer of the relevant government authority certifying as to the incurring of costs or expenses as a result of the occurrence of an incident to which this section applies, and as to the amount of those costs or expenses, constitutes proof, in the absence of proof to the contrary, of the matters so certified.

PART 5
PERIODS OF RESTRICTION AND RATIONING

DIVISION 1—INTERPRETATION

Interpretation

32. In this Part, unless the contrary intention appears—

"sale" includes—

- (a) barter or exchange;
- (b) offer or agreement to sell, barter or exchange;
- (c) delivery in pursuance of sale, barter or exchange,

and "sell" and "purchase" have corresponding meanings.

DIVISION 2—DECLARATION OF PERIODS OF RESTRICTION AND RATIONING

Declaration of periods of restriction and rationing

33. (1) If, in the opinion of the Governor, circumstances have arisen, or are likely to arise, that have caused, or are likely to cause, shortages of petroleum products in the State, the Governor may—

- (a) by proclamation, declare a period (commencing on the date of the proclamation, or some specified later date, and extending for not more than seven days) to be a period of restriction; and
- (b) if the Governor thinks fit, by the same or a subsequent proclamation—
 - (i) declare that the period of restriction will, as from its commencement, or some specified later date, be a rationing period; and
 - (ii) declare petroleum products of specified kinds to be rationed petroleum products.

(2) The Governor may, by proclamation—

- (a) extend a period of restriction for successive periods (each not to exceed seven days) but not so that the total period exceeds 28 days; or
- (b) extend a period of restriction by such other period or periods as may be authorised by a resolution of both Houses of Parliament; or
- (c) vary or revoke a declaration under subsection (1)(b); or
- (d) revoke a proclamation under this section.

(3) A period of restriction that has been declared to be a rationing period continues to be a rationing period during any extension of the period of restriction unless the declaration by virtue of which it became a rationing period is revoked.

(4) Where a period of restriction expires, no subsequent period may be declared to be a period of restriction unless—

- (a) that subsequent period commences 14 days or more after the expiration of the former period of restriction; or
- (b) the declaration is authorised by a resolution of both Houses of Parliament.

DIVISION 3—CONTROLS DURING PERIODS OF RESTRICTION

Controls during periods of restriction

34. (1) The Minister may, if of the opinion that it is in the public interest to do so—

- (a) fix conditions of licences; and
- (b) issue directions,

that apply during a period of restriction in relation to petroleum products.

(2) Without limiting the effect of subsection (1), licence conditions or directions may fix maximum prices in relation to classes of sales of petroleum products.

(3) Licence conditions or directions under this section may relate to petroleum products generally, or to petroleum products of a specified kind.

(4) Licence conditions under this section—

- (a) may apply to—
 - (i) a particular licence; or
 - (ii) a particular class of licences; and
- (b) if applying to a class of licences—may be fixed by notice published in the *Gazette* or in a newspaper circulating generally throughout the State.

(5) Directions under this section—

- (a) may apply to—
 - (i) a particular person; or
 - (ii) a particular class of persons; or
 - (iii) the public generally; and
- (b) if applying to—
 - (i) a particular person—may be issued by notice in writing to the person; or

Petroleum Products Regulation Act 1995

- (ii) a particular class of persons or the public generally—may be issued by notice published in the *Gazette* or in a newspaper circulating generally throughout the State.

(6) A person to whom a direction is issued under this section must not contravene or fail to comply with the direction.

Maximum penalty: \$10 000.

(7) A licence condition or direction under this section—

- (a) does not operate after the end of the period of restriction in relation to which it was fixed or issued; and
- (b) may be varied or revoked by the Minister in the manner in which it was fixed or issued.

(8) The Minister may, if of the opinion that it is just to do so, compensate a licensee or person who has incurred expenses in complying with a condition or direction under this section.

DIVISION 4—CONTROLS DURING RATIONING PERIODS**Controls during rationing periods**

35. (1) During a rationing period it is a condition of a licence that the licensee must not sell rationed petroleum products except to a permit holder.

(2) During a rationing period a person must not purchase rationed petroleum products unless the person is a permit holder.

Maximum penalty: \$10 000.

(3) This section does not apply to the sale of rationed petroleum products to, or the purchase of rationed petroleum products by, a licensee in the ordinary course of the licensee's business.

Permits

36. (1) The Minister may, if satisfied that it is in the public interest to do so, issue a permit to any person.

(2) The Minister may fix conditions of a permit as the Minister thinks fit.

(3) Without limiting the effect of subsection (2), permit conditions may limit the quantity or value of rationed petroleum products that may be purchased under the permit—

- (a) by reference to stipulated maxima; or
- (b) by reference to coupons to be given by the permit holder on purchasing rationed petroleum products; or
- (c) by any other means of limitation.

(4) It is a condition of a permit that the permit holder must carry the permit at all times when driving a motor vehicle to which petroleum products have been supplied under the permit.

(5) A permit holder must not contravene or fail to comply with a condition of the permit.

Maximum penalty: \$10 000.

(6) The Minister may by notice in writing served on a permit holder cancel the permit.

(7) On cancellation of a permit, the former permit holder must return the permit to the Minister or a person nominated by the Minister.

Maximum penalty: \$10 000.

(8) A permit is not transferable.

DIVISION 5—LIMIT ON PROCEEDINGS AGAINST MINISTER

Limit on proceedings against Minister

37. Except as provided by Part 9, no proceedings can be instituted against the Minister to compel the Minister to take, or to refrain from taking, any action under this Part.

DIVISION 6—CONSERVATION OF PETROLEUM PRODUCTS

Publication of desirable principles for conserving petroleum

38. (1) The Minister may publish, by notice in the *Gazette* and in a newspaper circulating generally throughout the State, principles that the public should, in the Minister's opinion, be encouraged to observe in relation to the conservation of petroleum products during a period of restriction.

(2) If, during a period of restriction, a person, by conforming with principles published under subsection (1), commits a breach of a policy of insurance, that breach is, for the purpose of determining the rights of that person under the policy, to be disregarded.

Special consideration to be given to those living in country areas

39. In exercising powers under this Part, the Minister must give special consideration to the needs of those living in country areas of this State.

PART 6
CORRECT MEASUREMENTS

Correct measurements

40. (1) A licensee or other person who uses for trade in petroleum products a measuring instrument that is incorrect or unjust is guilty of an offence.

Maximum penalty: \$20 000.

(2) It is a condition of a licence authorising the sale of petroleum products that the licensee must comply with the requirements of the *Trade Measurements Act 1993*.

(3) For the purposes of this section—

- (a) "**measuring instrument**" has the same meaning as in the *National Measurement Act 1960* of the Commonwealth as amended and in force for the time being;
- (b) a person uses a measuring instrument for trade if the person uses it, has it in possession for use, or makes it available for use, to make a measurement for the purpose of determining the consideration in respect of a transaction.

**PART 7
SALE OF PETROLEUM PRODUCTS TO CHILDREN**

Sale of petroleum products to children

41. (1) A licensee or other person must not sell a petroleum product to a child under the age of 16 years.

Maximum penalty: \$5 000.

(2) If a person, acting at the request of a child under the age of 16 years, purchases a petroleum product on behalf of the child for the purpose of inhalation, the person is guilty of an offence.

Maximum penalty: \$5 000.

(3) An authorised officer may confiscate a petroleum product that is in the possession of a child under the age of 16 years if the officer has reason to suspect that the child has the product for the purpose of inhalation.

PART 8
AUTHORISED OFFICERS**Appointment of authorised officers**

42. (1) The Minister may appoint persons to be authorised officers for the purposes of this Act.

(2) An appointment may be made subject to conditions specified in the instrument of appointment.

(3) The Minister may, at any time, revoke an appointment or vary, revoke or add a condition of an appointment.

(4) All members of the police force and authorised officers under the *Stamp Duties Act 1923* are authorised officers for the purposes of this Act.

Identification of authorised officers

43. (1) An authorised officer, other than a member of the police force, must be issued with an identity card—

- (a) containing the person's name and a photograph of the person; and
- (b) stating that the person is an authorised officer for the purposes of this Act.

(2) Where the powers of an authorised officer have been limited by conditions under this Part, the identity card issued to the authorised officer must contain a statement of the limitation on the officer's powers.

(3) An authorised officer must, at the request of a person in relation to whom the authorised officer intends to exercise any powers under this Act, produce for the inspection of the person—

- (a) in the case of an authorised officer who is a member of the police force and is not in uniform—his or her certificate of authority; or
- (b) in the case of an authorised officer who is not a member of the police force—his or her identity card.

Powers of authorised officers

44. (1) Subject to this Part, an authorised officer may—

- (a) enter and remain on premises and inspect premises for any reasonable purpose connected with the administration or enforcement of this Act;
- (b) with the authority of a warrant issued under this Part or in circumstances in which the authorised officer reasonably believes that immediate action is required, use reasonable force to break into or open any part of, or anything in or on premises;
- (c) give directions with respect to the stopping or movement of a vehicle as reasonably required in connection with the administration or enforcement of this Act;
- (d) require a person to produce a record, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process, as reasonably required in connection with the administration or enforcement of this Act;

- (e) examine, copy or take extracts from a record, or require a person to provide a copy of a record, as reasonably required in connection with the administration or enforcement of this Act;
- (f) remove and retain a record for so long as is reasonably necessary for the purpose of making a copy of the record;
- (g) take photographs, films, audio, video or other recordings as reasonably required in connection with the administration or enforcement of this Act;
- (h) examine or test any plant or other thing for the purpose of determining whether a provision of this Act is being or has been complied with, or cause or require it to be so examined or tested, or seize it or require its production for such examination or testing;
- (i) take samples of a substance or thing from premises for analysis as reasonably required in connection with the administration or enforcement of this Act;
- (j) require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, a contravention of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity;
- (k) require a person who the authorised officer reasonably suspects has knowledge of matters in respect of which information is reasonably required for the administration or enforcement of this Act to answer questions in relation to those matters;
- (l) require a person holding or required to hold a licence or permit to produce it for inspection;
- (m) give directions reasonably required in connection with the exercise of a power conferred by this subsection or otherwise in connection with the administration or enforcement of this Act.

(2) A magistrate may issue a warrant for the purposes of subsection (1) if satisfied that the warrant is reasonably required for the administration or enforcement of this Act.

(3) In the exercise of powers under this Act an authorised officer may be assisted by such persons as he or she considers necessary in the circumstances.

(4) An authorised officer may require an occupier of any place or a person apparently in charge of any plant, equipment, vehicle or other thing to give to the authorised officer or a person assisting the authorised officer such assistance as is reasonably required by the authorised officer for the effective exercise of powers conferred by this Act.

Offence to hinder, etc., authorised officers

45. A person who—

- (a) hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of powers conferred by this Act; or
- (b) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or

Petroleum Products Regulation Act 1995

- (c) refuses or fails to comply with a requirement or direction of an authorised officer under this Part; or
- (d) when required by an authorised officer under this Part to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or
- (e) falsely represents, by words or conduct, that he or she is an authorised officer,

is guilty of an offence.

Maximum penalty: \$5 000.

Self-incrimination

46. (1) It is not an excuse for a person to refuse or fail to answer a question or to produce, or provide a copy of, a record or information as required under this Part on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

(2) If compliance by a person with a requirement to answer a question or to produce, or provide a copy of, a record or information might tend to incriminate the person or make the person liable to a penalty, then—

- (a) in the case of a person who is required to produce, or provide a copy of, a record or information—the fact of production, or provision of a copy of, the record or the information (as distinct from the contents of the record or the information); or
- (b) in any other case—the answer given in compliance with the requirement,

is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings under this Act).

**PART 9
APPEALS**

Appeals

47. (1) An appeal to the Administrative and Disciplinary Division of the District Court may be made—

- (a) by an applicant for the issue, renewal or variation of a licence against a decision by the Minister to refuse to issue, renew or vary the licence; or
- (b) by an applicant for the issue of a permit against a decision by the Minister to refuse to issue the permit; or
- (c) by a licensee against a decision by the Minister to vary, suspend or cancel the licence; or
- (d) by a permit holder against a decision by the Minister to cancel the permit; or
- (e) by a person against an assessment by the Commissioner of a monthly licence fee or other amount under Division 2 of Part 2; or
- (f) by a person to whom an improvement notice or a prohibition notice has been issued under Part 4 against the decision to issue the notice.

(2) The Court may, in exercising its jurisdiction under this Part, be constituted of a Magistrate.

(3) If the Minister does not give reasons in writing for a decision of the Minister referred to in subsection (1) when the decision is made, the Minister must do so on request made by the applicant, licensee or permit holder within one month of the making of the decision.

(4) An appeal against an assessment by the Commissioner of a monthly licence fee or other amount under Division 2 of Part 2 may only be instituted if the person liable to pay the fee or amount has lodged an objection with the Commissioner on the ground that the assessment was not made in accordance this Act and—

- (a) the Commissioner has served on the person notice of the determination of the objection and the person is not satisfied with that determination; or
- (b) the Commissioner has not, within one month of the lodging of the objection, given a determination with respect to the objection.

(5) An appeal must be instituted—

- (a) in the case of an appeal against a decision of the Minister—
 - (i) within one month of the making of the decision being appealed against; or
 - (ii) if a request for reasons in writing for the decision has been made under subsection (3)—within one month of the receipt of the reasons in writing; or

Petroleum Products Regulation Act 1995

- (b) in the case of an appeal against an assessment by the Commissioner of a monthly licence fee or other amount under Division 2 of Part 2—
- (i) within one month of receipt of notice of determination of the objection; or
 - (ii) if the Commissioner has not given a determination as referred to in subsection (4)—within two months of the lodging of the objection; or
- (c) in the case of an appeal against a decision to issue an improvement notice or a prohibition notice under Part 4—within 14 days of receipt of the notice.

(6) The Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an appeal be instituted within the period fixed by this section.

(7) Pending the determination of an appeal against a decision to issue an improvement notice or prohibition notice under Part 4, the operation of the notice to which the appeal relates—

- (a) in the case of an improvement notice—is suspended; or
- (b) in the case of a prohibition notice—continues.

(8) The Court may, if it thinks fit, make an interim order suspending the operation of a prohibition notice until the appeal is determined or until further order.

(9) An order under subsection (8) must be made subject to such conditions as may be necessary to protect the health or safety of any person, or the safety of any property or to protect the environment.

(10) Except as determined by the Court, an appeal is to be conducted by way of a fresh hearing and for that purpose the Court may receive evidence given orally or, if the Court so determines, by affidavit.

(11) The Court may, on the hearing of an appeal—

- (a) affirm, vary or quash the decision appealed against or substitute, or make in addition, any decision that the Court thinks appropriate; and
- (b) make an order as to any other matter that the case requires (including an order for costs).

**PART 10
APPLICATION OF FEES REVENUE**

Application of fees revenue

48. (1) The money collected by way of fees under this Act must be paid into the Consolidated Account.

(2) The Treasurer must apply the money referred to in subsection (1) by making payments, at intervals and in amounts and proportions determined from time to time by the Treasurer—

- (a) towards the costs of administration of this Act; and
- (b) to the Environment Protection Fund; and
- (c) to the Highways Fund; and
- (d) towards the cost of health and ambulance services; and
- (e) towards other administrative costs incurred in consequence of activities involving or related to petroleum products.

(3) This section is sufficient authority for the appropriation, from the Consolidated Account, of the payments referred to in subsection (2).

PART 11
MISCELLANEOUS**Delegation**

49. (1) The Minister may delegate any of the Minister's powers or functions under this Act to—

- (a) another Minister; or
- (b) the Commissioner; or
- (c) any person or body.

(2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

(3) A delegation under this section—

- (a) must be by instrument in writing; and
- (b) may be absolute or conditional; and
- (c) does not derogate from the power of the delegator to act in any matter; and
- (d) is revocable at will by the delegator.

Register of licences

50. (1) The Minister must cause a register to be kept of licensees under Part 2.

(2) The register must be kept available for public inspection at a place approved by the Minister during ordinary office hours.

Particulars of dealings with petroleum products

51. (1) The Minister or the Commissioner may, by notice in writing, require—

- (a) a person who is carrying on, or has carried on, or is or was concerned in, a business involving or related to petroleum products;
- (b) a person who, as agent or employee of a person referred to in paragraph (a), has or has had duties or provides or has provided services in connection with a business so referred to,

to furnish in writing, within the period specified in the notice or such further period as the Minister or Commissioner may allow, such information with respect to those petroleum products as is specified in the notice, not being information relating to any period after the date of the requirement.

(2) A person who fails to comply with a requirement under subsection (1) is guilty of an offence.

Maximum penalty: \$5 000.

Invoices, statements of accounts and receipts to be endorsed

52. (1) The holder of a monthly licence must endorse on every invoice, statement of account and receipt issued by the licensee relating to the sale of petroleum products the words "Licensed petroleum wholesaler".

Maximum penalty: \$1 250.

Expiation fee: \$150.

(2) A person who is not the holder of a monthly licence must not issue an invoice, statement of account or receipt relating to the sale of petroleum products that is endorsed with the words "Licensed petroleum wholesaler" or words of similar effect.

Maximum penalty: \$2 500.

Records to be kept

53. (1) A person who carries on a business involving or related to petroleum products must keep accounts, records, books and documents as required by the Minister from time to time by notice published in the *Gazette* for a period of five years after the last entry is made in any of the accounts, records, books or documents.

Maximum penalty: \$2 500.

Expiation fee: \$200.

(2) This section does not apply so as to require the preservation of any accounts, records, books or documents—

- (a) in respect of which the Minister has notified the person carrying on the business that preservation is not required; or
- (b) of a body corporate that has gone into liquidation and been finally dissolved.

False or misleading information

54. A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information furnished, or record kept, under this Act.

Maximum penalty: \$5 000.

Statutory declarations

55. Where a person is required by or under this Act to furnish information to the Minister or the Commissioner, the Minister or the Commissioner may require that the information be verified by statutory declaration and, in that event, the person will not be taken to have furnished the information as required unless it has been verified in accordance with the requirements of the Minister or the Commissioner.

Confidentiality

56. A person must not divulge any information relating to information obtained (whether by that person or some other person) in the administration of this Act except—

- (a) as authorised by or under this Act; or

- (b) with the consent of the person from whom the information was obtained or to whom the information relates; or
- (c) in connection with the administration or enforcement of this Act; or
- (d) to—
 - (i) the Commonwealth Commissioner of Taxation; or
 - (ii) an officer of this or another State, or of a Territory, employed in the administration of laws relating to taxation; or
 - (iii) the Comptroller-General of the Australian Customs Service; or
- (e) for the purpose of any legal proceedings arising out of the administration or enforcement of this Act.

Maximum penalty: \$10 000.

General defence

57. It is a defence to a charge of an offence against this Act if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

Immunity from personal liability

58. (1) No personal liability attaches to an authorised officer or any other person engaged in the administration of this Act for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under this Act.

(2) A liability that would, but for subsection (1), lie against a person, lies instead against the Crown.

Offences by bodies corporate

59. If a body corporate is guilty of an offence against this Act, each director of the body corporate is, subject to the general defence under this Part, guilty of an offence and liable to the same penalty as may be imposed for the principal offence.

Continuing offence

60. (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—

- (a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and
- (b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.

(2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

Prosecutions

61. (1) Proceedings for an offence against this Act must be commenced within two years after the date on which the offence is alleged to have been committed or, with the authorisation of the Minister, at a later time within five years after that date.

(2) A prosecution for an offence against this Act cannot be commenced except with the consent of the Minister.

(3) In any proceedings, an apparently genuine document purporting to be a certificate of the Minister, certifying authorisation of, or consent to, a prosecution for an offence against this Act will be accepted, in the absence of proof to the contrary, as proof of the authorisation or consent.

Evidence

62. (1) In any proceedings for an offence against this Act, an apparently genuine document purporting to be a certificate of the Minister certifying—

- (a) that a person is an authorised officer or was an authorised officer at a specified date; or
- (b) that a person was or was not the holder of a licence of a specified kind at a specified date; or
- (c) that a person was or was not the holder of a permit at a specified date; or
- (d) that a specified period is or was a period of restriction or a rationing period; or
- (e) that a specified substance—
 - (i) is or was a petroleum product of a specified kind; or
 - (ii) was, on a specified date, a rationed petroleum product,

constitutes proof of the matters so certified in the absence of proof to the contrary.

(2) The presence on any premises of a vending machine from which petroleum products may be obtained is to be taken to constitute conclusive evidence that the occupier of the premises has sold petroleum products by means of the machine unless a licensee is authorised by licence to sell petroleum products by means of the machine.

Service

63. (1) A notice, order or other document to be given to or served on a person under this Act may be given or served—

- (a) by delivering it personally to the person or an agent of the person; or
- (b) by leaving it for the person at the person's place of residence or business with someone apparently over the age of 16 years; or

Petroleum Products Regulation Act 1995

- (c) by posting it to the person or agent of the person at the person's or agent's last known place of residence or business.

(2) Without limiting the effect of subsection (1), a notice, order or other document required or authorised to be given to or served on a person may—

- (a) if the person is the holder of a licence or a permit under this Act—given to or served on the person—

(i) by posting it to the person at the address last provided by the person for that purpose; or

(ii) by transmitting it to the person by facsimile transmission to the number last provided by the person for that purpose; or

- (b) if the person is a body corporate—be given to or served on the person in accordance with section 220 of the *Corporations Law*.

Regulations

64. (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), those regulations may—

- (a) prescribe matters required or authorised to be prescribed under this Act;

- (b) provide for and require the making of returns relating to dealings with petroleum products;

- (c) provide for the keeping of records under this Act;

- (d) fix fees (which may vary according to different factors) to be paid in respect of any matter under this Act and regulate the payment, recovery, waiver or reduction of such fees;

- (e) impose a penalty not exceeding \$2 500 for a breach of a regulation.

(3) The regulations may incorporate or operate by reference to a specified code or standard as in force at a specified time or as in force from time to time.

(4) If a code or standard is referred to or incorporated in the regulations—

- (a) a copy of the code or standard must be kept available for inspection by members of the public, without charge and during normal office hours, at an office determined by the Minister; and

- (b) evidence of the contents of the code or standard may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code or standard.

SCHEDULE 1

Petroleum Products Retail Outlets Board

Establishment

1. The *Petroleum Products Retail Outlets Board* is established.

Function

2. (1) The Retail Outlets Board has the function of making recommendations to the Minister in respect of matters referred to the Board under Part 2 and any function delegated to the Board by the Minister.

(2) In making a recommendation to the Minister in respect of a matter referred to it under Part 2, the Retail Outlets Board must take into account the matters that the Minister is specifically required by that Part to take into account in making a decision relating to prescribed sales of petroleum products.

Powers

3. (1) For the purpose of performing its functions, the Retail Outlets Board may—

- (a) inform itself as to any matter before the Board in such manner as the Board thinks fit; and
- (b) invite interested persons to make written or oral submissions in relation to any matter before the Board; and
- (c) if the Board requires information in respect of a matter before it—by notice in writing served on a person, require the person—
 - (i) to furnish specified information in writing; or
 - (ii) to attend before the Board and answer truthfully relevant questions put to him or her by the Board; and
- (d) direct an authorised officer (not being a member of the police force or an authorised officer under the *Stamp Duties Act 1923*) to conduct an investigation; and
- (e) obtain expert or technical advice from a person on such terms and conditions as the Board thinks fit.

(2) A person must not fail to comply with a requirement of the Retail Outlets Board under subclause (1)(c).

Maximum penalty: \$2 500.

(3) An authorised officer may exercise his or her powers under Part 8 as reasonably required for an investigation directed by the Board.

Membership

4. (1) The Retail Outlets Board is to consist of three members appointed by the Governor.

(2) One member will be appointed by the Governor to chair meetings of the Retail Outlets Board.

(3) The Governor may appoint a person to be the deputy of a member and the deputy may perform or exercise the functions and powers of that member in the member's absence.

(4) A member's appointment will be for a term, not exceeding five years, specified in the instrument of appointment and such a member will, at the expiration of a term of appointment, be eligible for reappointment.

Petroleum Products Regulation Act 1995

(5) The Governor may remove a member from office for—

- (a) misconduct; or
- (b) neglect of duty; or
- (c) incapacity to carry out satisfactorily the duties of office; or
- (d) failure to carry out satisfactorily the duties of office.

(6) The office of a member of the Retail Outlets Board becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice addressed to the Minister; or
- (d) is removed from office by the Governor under subclause (5).

(7) On the office of a member of the Retail Outlets Board becoming vacant, a person must be appointed under this clause to the vacant office.

Remuneration

5. The members of the Retail Outlets Board are entitled to receive such allowances and expenses as may, from time to time, be determined by the Governor.

Vacancies or defects in appointment of members

6. An act or proceeding of the Retail Outlets Board is not invalid by reason only of a vacancy in its membership or any defect in the appointment of a member.

Proceedings

7. (1) A quorum of the Retail Outlets Board consists of two members.

(2) The member appointed to chair the Retail Outlets Board will preside at meetings of the Board at which that member is present.

(3) If the member appointed to chair the Retail Outlets Board is absent from a meeting of the Board, a member chosen by the members present at the meeting will preside at the meeting.

(4) A decision carried by a majority of the votes cast by members at a meeting is a decision of the Retail Outlets Board.

(5) Each member present at a meeting of the Retail Outlets Board has one vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.

(6) The Retail Outlets Board must have accurate minutes kept of its proceedings and make them available to all members of the Board.

(7) Subject to this clause, the Retail Outlets Board may determine its own procedures.

SCHEDULE 2

Groups for the Purposes of Licensing

Membership of group of petroleum vendors

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

- (a) that person is one of the persons who constitute a group for the purposes of this schedule; and
- (b) one or more members of the group sells, or intends to sell, petroleum products; and
- (c) there is not in force a determination under subclause (2) by the Commissioner that the person is not a member of the group.

(2) The Commissioner may determine that a person who would, but for the determination, be a member of a group for the purposes of this schedule is not a member of a group of petroleum vendors if the Commissioner is satisfied—

- (a) that the person—
 - (i) has continuously carried on the business of selling petroleum products independently of the group and will continue to carry on that business independently of the group; and
 - (ii) is not subject to control by any other member of the group; or
- (b) that the person is not, and has no intention of, selling petroleum products.

(3) A determination made under subclause (2) comes into force on the day on which it is made and continues 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.

(4) Notice of a determination under subclause (2)(a) must 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.

(5) Notice of a determination under subclause (2)(b) must be published in the *Gazette*.

(6) The Commissioner may at any time revoke a determination made under this clause.

(7) Notice of the revocation of a determination made under this clause must be given by the Commissioner to the person in respect of whom the determination was made and all members of the group in respect of which the determination was made.

Grouping of corporations

2. For the purposes of this schedule, corporations constitute a group if they are related bodies corporate within the meaning of the *Corporations Law*.

Grouping where employees used in another business

3. For the purposes of this schedule, if—

- (a) an employee performs duties solely or mainly for, or in connection with, a business carried on by the employer and another person or 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 or her employees, an agreement, arrangement or undertaking (whether formal or informal, 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 relating to a business carried on by that other person, whether alone or together with another person or other persons,

Petroleum Products Regulation Act 1995

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

4. (1) A reference in this clause to two businesses does not include a reference to two 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 schedule, where the same person has, or the same persons have together, a controlling interest, as referred to in subclause (3), in each of two businesses, the persons who carry on those businesses constitute a group.

(3) For the purposes of subclause (2), the same person has, or the same persons have together, a controlling interest in each of two 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;
- (e) a person has a controlling interest in a business if (whether or not he or she is a trustee of a trust) he or she is the sole owner of the business, or persons, being two 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 subclause (3) in a business, it is to be taken to have a controlling interest in any other business in which another corporation that is related to it (within the meaning of the *Corporations Law*), has a controlling interest.

(5) Where—

- (a) a person has, or persons have together, a controlling interest under subclause (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) is or are to be taken to have a controlling interest in the business referred to in paragraph (b).

(6) Where—

- (a) a person is a beneficiary under a trust; or
- (b) two 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 subclause (3) a controlling interest in a business, that beneficiary or those beneficiaries is or are, for the purposes of subclause (3), to be taken to have a controlling interest in that business.

Smaller groups subsumed into larger groups

5. (1) Despite any other provision of this schedule (except subclause (2)), where a person is (whether or not because of this subclause) a member of two or more groups (each of which is in subclause (2) referred to as a smaller group), all of the members of those groups constitute, for the purposes of this schedule, one group.

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

Beneficiaries under discretionary trusts

6. 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 is to be taken for the purposes of this schedule, to be a beneficiary in respect of half or more than half of the value of the interests in that trust.

SCHEDULE 3*Repeal and Transitional Provisions***Repeal**

1. The following Acts are repealed:

- (a) *Business Franchise (Petroleum Products) Act 1979*;
- (b) *Motor Fuel Distribution Act 1973*;
- (c) *Petroleum Shortages Act 1980*.

Licensing

2. (1) Subject to this clause, a Class B licence in force under the *Business Franchise (Petroleum Products) Act 1979* immediately before the commencement of this Act will be taken to be an annual licence under this Act authorising the sale of petroleum products purchased from another person who sold the products under the authority of a licence under this Act.

(2) An annual licence referred to in subclause (1) does not authorise prescribed retail sales of petroleum products from premises unless a licence or permit in force under the *Motor Fuel Distribution Act 1973* immediately before the commencement of this Act authorised the sale of petroleum products from the premises, in which case, the premises will be taken to be specified in the annual licence.

(3) A licence to keep dangerous substances that are petroleum products in force under the *Dangerous Substances Act 1979* immediately before the commencement of this Act will be taken to be an annual licence under this Act authorising the keeping of those petroleum products and, if the same person holds such a licence and a licence referred to in subclause (1), the licences may, on renewal under this Act, be consolidated into one licence.

(4) The date on which a licence referred to in subclause (1) or (3) next expires after the commencement of this Act will be taken to be a date specified by the Minister by notice in writing to the licensee and such a licence may be subsequently renewed as an annual licence under this Act for successive terms of one year.

(5) The Minister may adjust the fee for the renewal of a licence referred to in subclause (1) or (3) next occurring after the commencement of this Act to take into account any variation (resulting from notification by the Minister of a new expiry date under subclause (4)) of the term for which the licence would have continued in force if this Act had not been enacted.

(6) An approval of the Motor Fuel Distribution Board for the installation of an industrial pump under Part V of the *Motor Fuel Distribution Act 1973* will be taken to be an approval of the Minister for such an installation under Part 3 of this Act.

SCHEDULE 4

Consequential Amendments to Environment Protection Act 1993

The *Environment Protection Act 1993* is amended—

- (a) by inserting after paragraph (i) of section 24(1) the following paragraph:
 - (j) any money paid into the Fund under any other Act;
- (b) by inserting after paragraph (e) of section 24(4) the following paragraph:
 - (f) towards the costs of administration of this Act.