

BUSINESS FRANCHISE LICENCES (PETROLEUM) BILL

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*Schedule of the Amendments referred to in Legislative Council's  
Message of 26th September, 1974*

No. 1.—Page 8, clause 6. *After line 33 insert—*

**(7) Where the Commissioner refuses to issue a licence he shall, in writing, inform the applicant of the reasons for the refusal and refund to the applicant any fee paid by the applicant and referred to in subsection (1) (c).**

No. 2.—Page 13, clause 9, line 10. *Omit “on and from 2nd March, 1975” insert “before 2nd March, 1976”.*

No. 3.—Page 13, clause 9, line 13. *After “shall” insert “, except where subsection (12) is applicable,”.*

No. 4.—Page 13, clause 9, lines 32 to 35. *Omit “ended the thirtieth day of June in the year ended the thirty-first day of December next preceding the date on and from which the licence if granted would be in force” insert “of twelve months ended the thirtieth day of June next preceding the second day of March which next precedes the day on which the licence if granted would commence to be in force”.*

No. 5.—Page 24, clause 16, lines 2 and 3. *Omit “either of the persons making the request” insert “he shall, in writing, inform the persons making the request of the reasons for the refusal and either of those persons”.*

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*This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

**R. E. WARD,**  
*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,  
Sydney, 19 September, 1974.*

*The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.*

**A. W. SAXON,**  
*Clerk of the Parliaments.*

*Legislative Council Chamber,  
Sydney, 26 September, 1974.*

## **New South Wales**



ANNO VICESIMO TERTIO

**ELIZABETHÆ II REGINÆ**

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**Act No. , 1974.**

An Act to make provision for the issue of licences to be called "Business Franchise Licences (Petroleum)"; to prohibit the sale of petroleum products except by a person who is enfranchised to sell those products by such a licence; and for purposes connected therewith.

BE



*Business Franchise Licences (Petroleum).*

BE it enacted by the Queen's Most Excellent Majesty, by  
and with the advice and consent of the Legislative  
Council and Legislative Assembly of New South Wales in  
Parliament assembled, and by the authority of the same, as  
5 follows:—

1. This Act may be cited as the "Business Franchise Short title.  
Licences (Petroleum) Act, 1974".

2. This Act shall commence upon 1st December, 1974. Commence-  
ment.

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

"Assistant Commissioner" means the Assistant Commis-  
sioner for Business Franchise Licences (Petroleum)  
referred to in section 4;

15 "Commissioner" means the Commissioner for Business  
Franchise Licences (Petroleum) referred to in  
section 4;

"licence" means a Business Franchise Licence  
(Petroleum) in force under this Act;

"petroleum products" means—

- 20 (a) a liquid obtained by refining or processing  
petroleum;
- (b) a liquid obtained by refining or processing  
a liquid referred to in paragraph (a);
- 25 (c) any grease obtained by refining or processing  
petroleum or a liquid referred to in  
paragraph (a), (b), (d) or (e) or any  
mixture of any such grease and any other  
substance;

(d)



*Business Franchise Licences (Petroleum).*

- (d) a liquid which is the residue after refining or processing—
- (i) petroleum;
  - 5 (ii) any liquid referred to in paragraph (a), (b) or (e); or
  - (iii) any grease referred to in paragraph (c); or

- (e) a liquid which is a mixture of all or any of the liquids referred to in paragraphs (a),
- 10 (b) and (d) and any other substance,

but does not include liquefied petroleum gas, petroleum bitumen, mineral pitch or mineral tar or such other substances as may be prescribed;

“regulations” means regulations under this Act;

- 15 “relevant period” means, in relation to an applicant for a licence, the period of one year ended on the thirtieth day of June that last preceded the date on and from which the licence, if granted, would be in force;

- 20 “Tribunal” means the Business Franchise Licence Fees (Petroleum) Appeals Tribunal appointed under section 13;

- 25 “value”, in relation to any petroleum product, means the value of that product determined in accordance with section 10.

(2) A reference in this Act to a licensee or the holder of a licence includes a reference to a person to whom a licence is transferred in accordance with section 16.

(3) A reference in this Act to—

- 30 (a) a person who sells petroleum products; or

(b)



*Business Franchise Licences (Petroleum).*

(b) a person who carries on the business of selling petroleum products,

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

4. (1) There shall be a Commissioner for Business Franchise Licences (Petroleum) and an Assistant Commissioner for Business Franchise Licences (Petroleum), each of whom shall be appointed under, and shall hold office subject to, the Public Service Act, 1902.

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

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

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

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

5. (1) On and after 2nd March, 1975, a person shall not carry on the business of selling petroleum products unless he is the holder of a licence.

30 Penalty: \$500 for every day on which the person carries on the business.

(2) A licensee the fee for whose licence was fixed under section 9 (10) shall not carry on the business of selling petroleum products at any place unless that place is specified

in

Commissioner and Assistant Commissioner for Business Franchise Licences (Petroleum).

Sale of petroleum products by unlicensed persons prohibited.



*Business Franchise Licences (Petroleum).*

in the licence held by him as the place at which he may carry on that business.

Penalty: \$500 for every day on which the licensee carries on the business.

- 5 (3) A licensee shall not sell petroleum products except as authorised by the licence held by him.

Penalty: \$2,500.

- 10 (4) Where a licensee the fee for whose licence was assessed under section 9 (10) sells petroleum products to a purchaser who does not, at the time of the sale, produce to that licensee a licence held by that purchaser, the sale shall, for the purposes of subsection (3) and section 6 (3) (i), be deemed to be a sale to a person who is not a licensee.

- 15 (5) Nothing in this Act requires any person to hold a licence if—

- (a) his sales of petroleum products during any prescribed period consist only of sales of one or more than one petroleum product—

- 20 (i) where his sales consist only of sales of one petroleum product, the quantity of which petroleum product; or

- (ii) where his sales consist of more than one petroleum product, the quantity of each of which petroleum products,

- 25 does not exceed the quantity prescribed in respect of that product; or

- 30 (b) the quantity of all petroleum products prescribed for the purpose of this paragraph, sold by him during the prescribed period, does not exceed the quantity prescribed for the purpose of this paragraph.

(6)



*Business Franchise Licences (Petroleum).*

(6) A regulation made for the purposes of subsection (5) (b) prescribing petroleum products may prescribe any petroleum products except petroleum products referred to in paragraph (c) of the definition of "petroleum products" in section 3 (1).

6. (1) The Commissioner shall—

Issue of  
licence.

- (a) upon application made therefor in a form approved by him;
- 10 (b) on receipt of the particulars, if any, required by him to be furnished by the applicant under section 7; and
- (c) upon payment of—
  - (i) the fee assessed by the Commissioner in accordance with section 9; or
  - 15 (ii) where the applicant has made an election under section 12 (1), the first instalment of that fee,

issue to the applicant a Business Franchise Licence (Petroleum) or refuse to issue to the applicant such a licence.

20 (2) An application for a licence may not be made earlier than two months before the commencement of the period in respect of which the licence is applied for or, except with the approval of the Commissioner, later than one month before the commencement of that period.

25 (3) A licence authorises the licensee—

- (a) where the fee in respect of the licence is assessed under section 9 (2), to carry on the business of selling petroleum products manufactured by him and no other petroleum products and to sell them only to other licensees;
- 30 (b) where the fee in respect of the licence is assessed under section 9 (3), to carry on the business of selling petroleum products manufactured by him

and



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*Business Franchise Licences (Petroleum).*

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and no other petroleum products and to sell them to other licensees or to persons who are not licensees;

5 (c) where the fee in respect of the licence is assessed under section 9 (4), to carry on the business of selling petroleum products manufactured by him and no other petroleum products and to sell them only to persons who are not licensees;

10 (d) where the fee in respect of the licence is assessed under section 9 (5), to carry on the business of selling petroleum products manufactured by him and petroleum products not manufactured by him and to sell them only to other licensees;

15 (e) where the fee in respect of the licence is assessed under section 9 (6), to carry on the business of selling petroleum products manufactured by him and petroleum products not manufactured by him and to sell them to other licensees or to persons who are not licensees;

20 (f) where the fee in respect of the licence is assessed under section 9 (7), to carry on the business of selling petroleum products manufactured by him and petroleum products not manufactured by him and to sell them only to persons who are not licensees;

25 (g) where the fee in respect of the licence is assessed under section 9 (8), to carry on the business of selling petroleum products not manufactured by him and to sell them only to other licensees;

30 (h) where the fee in respect of the licence is assessed under section 9 (9), to carry on the business of selling petroleum products not manufactured by him and to sell them to other licensees or to a person who is not a licensee, if, in the case of the sale of any petroleum product prescribed for the purpose of this paragraph to such a person, the quantity of that petroleum product is not less than the quantity of that petroleum product prescribed for that purpose; or

(i)



*Business Franchise Licences (Petroleum).*

5 (i) where the fee in respect of the licence is assessed under section 9 (10), to carry on the business of selling, at the place specified in the licence, petroleum products not manufactured by him and not manufactured at that place and to sell them only to persons who are not licensees, if he may otherwise lawfully do so at that place.

(4) A licence shall be in force on and from the date specified in the licence as the date on which the licence  
10 commences—

- (a) until the first day of March next following that date;
- 15 (b) where the applicant for the licence made an election referred to in section 12 (1) in respect of the fee payable in respect of that licence, until any instalment (whether as originally assessed or as reduced under section 14 or 15) of that fee that is due and payable under section 12 (2) is unpaid;
- (c) until any additional amount that is due and payable under section 15 by the holder of the licence is  
20 unpaid; or
- (d) until the date endorsed on an instrument of surrender relating to the licence pursuant to subsection (6),

whichever first occurs.

25 (5) A licensee may deliver to the Commissioner an instrument of surrender, in a form approved by the Commissioner, in respect of the licence held by him together with the licence.

30 (6) Where a licence is delivered to the Commissioner together with an instrument referred to in subsection (5), the Commissioner shall endorse on the instrument a date, not being earlier than the date specified in the instrument as the date of surrender.

35 (7) Where the Commissioner refuses to issue a licence he shall, in writing, inform the applicant of the reasons for the refusal and refund to the applicant any fee paid by the applicant and referred to in subsection (1) (c).



*Business Franchise Licences (Petroleum).*

7. (1) The Commissioner may, by instrument in writing, require any person who is carrying on or has carried on the business of selling any petroleum products to furnish, within such period as is specified in the instrument or such further period as the Commissioner may, in writing, allow, to the Commissioner particulars with respect to such sales, purchases or stocks of, or dealings with, petroleum products as are specified in the instrument, being sales, purchases or dealings made, or stocks held, in any year ended on the thirtieth day of June (not being a year after the date of the requirement) in the course of carrying on that business.

Particulars  
of sales  
and  
purchases of  
petroleum  
products.

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

Penalty: \$5,000.

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

Appeal  
against  
refusal  
to grant  
licence.

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

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

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



*Business Franchise Licences (Petroleum).*

9. (1) A reference in this section to the quantity of a Fees.  
petroleum product non-accountable in respect of a relevant  
period in relation to which any part of a fee for a licence is  
assessed is a reference to the quantity, if any, of a petroleum  
5 product, being a petroleum product which was sold by that  
licensee to another licensee, whether or not during that period,  
and—

- (a) which was resold by that other licensee during that  
period;
- 10 (b) which, in the opinion of the Commissioner, was  
wasted or lost by spillage, evaporation, theft or fire  
by that other licensee during that period; or
- (c) which at the end of that period was, in the opinion  
of the Commissioner, held for resale by that other  
15 licensee,

reduced by the quantity, if any, of that petroleum product  
which was sold by the firstmentioned licensee to that other  
licensee and which at the end of the next preceding relevant  
period was, in the opinion of the Commissioner, held for  
20 resale by that other licensee.

(2) Where the applicant for a licence proposes to sell  
petroleum products manufactured by him and no other  
petroleum products and to sell them only to licensees, the  
fee payable for the licence shall be—

- 25 (a) \$500; and
- (b) 10 per centum of the value of the quantity of  
petroleum products sold by the applicant during the  
relevant period other than the quantity of a  
petroleum product non-accountable in respect of  
30 that period.

(3) Where the applicant for a licence proposes to sell  
petroleum products manufactured by him and no other  
petroleum products and to sell them to licensees and to  
persons who are not licensees, the fee payable for the licence  
35 shall be—

- (a) \$500; and

(b)



*Business Franchise Licences (Petroleum).*

5 (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(4) Where the applicant for a licence proposes to sell petroleum products manufactured by him and no other petroleum products and to sell them only to persons who are not licensees, the fee payable for the licence shall be—

10 (a) \$500; and

15 (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(5) Where the applicant for a licence proposes to sell petroleum products manufactured by him and petroleum products not manufactured by him and to sell them only to licensees, the fee payable for the licence shall be—

20 (a) \$500; and

25 (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(6) Where the applicant for a licence proposes to sell petroleum products manufactured by him and petroleum products not manufactured by him and to sell them to licensees and to persons who are not licensees, the fee payable 30 for the licence shall be—

(a) \$500; and

35 (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(7)



*Business Franchise Licences (Petroleum).*

(7) Where the applicant for a licence proposes to sell petroleum products manufactured by him and petroleum products not manufactured by him and to sell them only to persons who are not licensees, the fee payable for the licence  
5 shall be—

(a) \$500; and

(b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a  
10 petroleum product non-accountable in respect of that period.

(8) Where the applicant for a licence proposes to sell petroleum products not manufactured by him and to sell them only to licensees, the fee payable for the licence shall be—

15 (a) \$100; and

(b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a  
20 petroleum product non-accountable in respect of that period.

(9) Where the applicant for a licence proposes to sell petroleum products not manufactured by him and to sell them to licensees and to persons who are not licensees, the fee payable for the licence shall be—

25 (a) \$100; and

(b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a  
30 petroleum product non-accountable in respect of that period.

(10)



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*Business Franchise Licences (Petroleum).*

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(10) Where the applicant for a licence proposes to sell petroleum products not manufactured by him and to sell them only to persons who are not licensees, the fee payable for the licence shall be—

- 5       (a) \$50; and  
         (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period.

(11) Where an application is made for a licence to be  
10 in force ~~on and from 2nd March, 1975~~ **before 2nd March, 1976**, and the applicant carried on the business of selling petroleum products during the whole of the relevant period ended on 30th June, 1974, the fee payable by the applicant in respect of the licence shall, **except where subsection (12)**  
15 **is applicable**, be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard only to—

- (a) the sales of petroleum products that in the opinion of the Commissioner were made by the applicant  
20       during that relevant period; and  
         (b) the principles of assessing fees under whichever of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10) the Commissioner considers appropriate,

25 but where the Commissioner has regard to the principles of assessing fees under subsection (10) he shall not have regard to any such sales of petroleum products other than any such sales of petroleum products that were in his opinion made at the place to be specified in the licence as the place at which  
30 the holder of the licence may carry on the business of selling petroleum products.

(12) Where an application is made for a licence and, during the whole or any part of the period ended the thirtieth day of June in the year ended the thirty-first  
35 day of December next preceding the date on and from which the licence if granted would be in force of twelve months ended the thirtieth day of June next preceding the

second



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*Business Franchise Licences (Petroleum).*

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second day of March which next precedes the day on which the licence if granted would commence to be in force, the applicant did not carry on the business of selling petroleum products in the manner which would be authorised by the  
5 licence which he is applying for, the fee payable by the applicant in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard only to—

- 10 (a) the sales of petroleum products that in the opinion of the Commissioner would have been made by the applicant had he been carrying on the business of selling petroleum products during that period;
- 15 (b) the principles of assessing fees under whichever of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10) the Commissioner considers appropriate; and
- 20 (c) any fee already paid by the applicant for a licence which has been surrendered by him and but for its surrender would have authorised him to carry on the business of selling petroleum products during any part of the period in respect of which the licence applied for by him would, if granted, be in force,

but where the Commissioner has regard to the principles of assessing fees under subsection (10) he shall not have regard  
25 to any such sales of petroleum products other than any such sales of petroleum products that would in his opinion have been made by the applicant had he been carrying on the business of selling petroleum products during that period at the place to be specified in the licence as the place at which  
30 the holder of the licence may carry on the business of selling petroleum products.

(13) Where—

- (a) an application is made for a licence;
- 35 (b) during the whole of the relevant period the applicant carried on the business of selling petroleum products; and

(c)



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*Business Franchise Licences (Petroleum).*

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- (c) the Commissioner is of the opinion that he is unable for any reason accurately to assess the fee payable by the applicant under subsection (2), (3), (4), (5), (6), (7), (8), (9) or (10),
- 5 the fee payable by the applicant in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard only to—
- 10 (d) the sales of petroleum products that in the opinion of the Commissioner were made by the applicant during that period; and
- (e) the principles of assessing fees under whichever of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10) he considers appropriate.
- 15 but where the Commissioner has regard to the principles of assessing fees under subsection (10) he shall not have regard to any such sales of petroleum products other than any such sales of petroleum products that were in his opinion made at the place to be specified in the licence as the place at which
- 20 the holder of the licence may carry on the business of selling petroleum products.
- (14) The provisions of subsections (11), (12) and (13) have effect notwithstanding the provisions of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10).
- 25 (15) Where the fee for a licence is assessed under subsection (11), (12) or (13), the Commissioner shall specify in the licence which of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10) he considered appropriate in applying subsection (11) (b), (12) (b) or (13) (e), as
- 30 the case may be, and for the purposes of sections 5 (3) and 6 (3) the fee shall be deemed to have been assessed under the subsection so specified.



*Business Franchise Licences (Petroleum).*

(16) Notwithstanding any other provision of this section, where a licence is to be in force for a period of less than six months, the amount of the fee that, but for this subsection, would be payable shall be reduced by one-half.

- 5     **10.** For the purposes of sections 9 and 14 the value of any petroleum product during any period by reference to which a licence fee is assessed shall be deemed to be such amount as is determined by the Minister in respect of that period, having regard to the average retail price at which in the opinion of  
10 the Minister that petroleum product was sold in the County of Cumberland during that period.

11. (1) Notwithstanding section 9, where during any period by reference to which a licence fee is assessed petroleum products were delivered to any purchaser at a place  
15 in any zone fixed by the Minister under subsection (2), the fee payable in respect of the licence shall be reduced by such amount as the Minister thinks fit.

- (2) For the purpose of subsection (1) the Minister may by notification in the Gazette declare any part of New  
20 South Wales to be a zone.

12. (1) An applicant for a licence which is to be in force for more than three months may, in his application, elect to pay the licence fee payable in respect of that licence by instalments in accordance with this section.

- 25     (2) Where the licence—

- (a) is to be in force for a period of more than nine months, the licence fee may be paid by four equal instalments, the first instalment being due and payable as required by section 6 (1) and each of  
30 the remaining three instalments being due and payable respectively on the second day of June, the

second



*Business Franchise Licences (Petroleum).*

second day of September and the second day of December next following the date of issue of the licence;

5 (b) is to be in force for a period of more than six months but not more than nine months, the licence fee may be paid by three equal instalments, the first instalment being due and payable as required by section 6 (1) and each of the remaining two instalments being due and payable respectively on 10 the second day of September and the second day of December next following the date of issue of the licence; or

15 (c) is to be in force for a period of more than three months but not more than six months, the licence fee may be paid by two equal instalments, the first instalment being due and payable as required by section 6 (1) and the remaining instalment being due and payable on the second day of December next following the date of issue of the licence.

20 (3) For the purpose of calculating the amount of instalments under subsection (2), where the quotient obtained by dividing the licence fee by the appropriate number of instalments results in a remaining fraction of a cent, that fraction shall be ignored.

25 13. (1) There shall be a tribunal to be called the "Business Franchise Licence Fees (Petroleum) Appeals Tribunal" which shall consist of a person appointed by the Governor on the recommendation of the Minister.

Business  
Franchise  
Licence  
Fees  
(Petroleum)  
Appeals  
Tribunal.

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

(3) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment of a person referred to in subsection (1) or to such a person in his capacity as the Business Franchise Licence Fees (Petroleum) Appeals Tribunal.



*Business Franchise Licences (Petroleum).*

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

(5) The person so appointed shall be paid such fees and allowances as may from time to time be fixed by the Governor.

14. (1) A licensee who has paid the fee assessed in respect of his licence or, where he has made an election under section 12 (1), the first instalment of that fee, may within one month after the issue of the licence object to the Commissioner against the assessment of the fee on the ground that the fee was excessive by reason that it was incorrectly assessed by the Commissioner under section 9 and on no other ground.

Objection  
to and  
appeal  
against  
assessment.

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

(3) If the licensee is not satisfied with the determination of the Commissioner on his objection or if within one month after the objection was lodged the Commissioner has not given a determination with respect to the objection, the licensee may appeal to the Tribunal against the assessment of the fee on the ground referred to in subsection (1).

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

(a) where the licensee is not satisfied with the determination of the Commissioner on his objection, within one month after his being notified by the Commissioner of that determination; or

(b) where the Commissioner has not, within one month after the objection was lodged, given a determination with respect to the objection, within two months after the objection was lodged.

(5)



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*Business Franchise Licences (Petroleum).*

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(5) The Tribunal shall hear and determine the appeal and assess the fee payable and the provisions of section 9 apply to the Tribunal's assessment of that fee in the same way as that section applies to the assessment of fees by the  
5 Commissioner.

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

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

(8) Where on an objection or appeal made under this section, the Commissioner or Tribunal upholds the objection or appeal, in whole or in part—

15 (a) the Commissioner shall, where the whole of the fee as determined on the objection or appeal has been paid, refund any amount overpaid to the person who paid the whole of the fee as originally assessed or the first instalment of the fee as originally assessed; or

20 (b) if in the application for the licence the applicant made an election under section 12 (1), any instalment payable by virtue of that election has not become due and payable and—

25 (i) the applicant is, when the appeal is determined, the holder of the licence, each of the remaining instalments payable in respect of the licence shall be reduced by an amount that bears to the difference between the fee as originally assessed and the fee as determined on the objection or appeal the same  
30 proportion as one bears to the number of those remaining instalments; or

35 (ii) during the period between the date on which the licence commenced to be in force and the date on which the objection or appeal was determined the licence was held by two or more persons, the Commissioner shall

refund



*Business Franchise Licences (Petroleum).*

5 refund to that applicant an amount that  
bears to the difference between the fee as  
originally assessed and the fee as determined  
on the objection or appeal the same pro-  
portion as the period, in days, for which the  
licence was in force up to the date on which  
the objection or appeal was determined  
bears to the period, in days, from the date  
on which the licence commenced to be in  
10 force until the first day of March next  
following and each of the remaining instal-  
ments payable in respect of the licence shall  
be reduced by an amount that bears to the  
balance of that difference the same propor-  
15 tion as one bears to the number of those  
remaining instalments.

(9) Section 12 (3) applies to the calculation of  
reductions under subsection (8) in the same way as it applies  
to the calculation of instalments under section 12 (2).

20 15. (1) Where, in the opinion of the Commissioner, the fee assessed in respect of any licence was assessed incorrectly, <sup>Adjustment</sup><sub>of fee.</sub>  
the Commissioner may at any time reassess the fee in accord-  
ance with the principles of assessing fees under whichever of  
subsections (2), (3), (4), (5), (6), (7), (8), (9), (10),  
25 (11), (12) and (13) of section 9 the Commissioner considers  
appropriate.

(2) Where on a reassessment of a fee under sub-  
section (1) the fee is reduced, the amount overpaid shall be  
refunded by the Commissioner in accordance with the  
30 provisions of subsections (3) and (4).

(3) Where—

(a) during the whole of the period during which the  
licence in respect of which the licence fee was  
reassessed (whether or not the licence has ceased  
to be in force) has been or was in force, it was held  
35 by one person, the amount to be refunded shall be  
refunded to that person; or

(b)



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*Business Franchise Licences (Petroleum).*

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5 (b) during the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by two or more persons, the amount to be refunded shall be refunded to those persons in proportion to the periods, in days, for which they held the licence.

(4) Notwithstanding subsection (3), in a case where—

- 10 (a) the licence has not ceased to be in force;  
(b) in the application for the licence the applicant made an election under section 12 (1);  
(c) any instalment payable by virtue of that election has not become due and payable; and  
15 (d) the instalments paid do not exceed the amount of the fee as reassessed,

a refund shall not be made to the holder of the licence in accordance with subsection (3) (a) or (b) but in that case each of the remaining instalments payable in respect of the  
20 licence shall be reduced by an amount that bears to the amount that but for this subsection would be required to be refunded to that holder under subsection (3) the same proportion as one bears to the number of those remaining instalments.

25 (5) Where on a reassessment of a fee under subsection (1) the fee is increased, the additional amount payable by virtue of the reassessment shall be due and payable in accordance with the provisions of subsections (6) and (7).

(6) For the purposes of subsection (5) where—

- 30 (a) during the whole of the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by one person, the additional amount shall be due  
35 and payable within fourteen days after notice of the reassessment is served on that person; or

(b)



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*Business Franchise Licences (Petroleum).*

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5 (b) during the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by two or more persons, the additional amount shall be due and payable, within fourteen days after notice of the reassessment is served on them, by those persons in proportion to the periods, in days, for which they held the licence,

10 unless, in respect of that additional amount or any part of that additional amount so due and payable by that person or any of those persons, approval has been given under subsection (7) for the payment of that amount or part by instalments.

15 (7) A person by whom any additional amount or part is payable under subsection (6) may, within fourteen days after the service on him of notice of the reassessment by virtue of which the additional amount or part became so payable by him, apply to the Commissioner for approval to pay that amount or part by instalments, and if the Commissioner approves of the amount or part being so paid, it shall  
20 be due and payable by that person by such instalments payable at such times as are specified in the instrument of the Commissioner's approval.

(8) For the purposes of making the apportionment  
25 referred to in subsection (3) (b) or subsection (6) (b), where the licence has not ceased to be in force the period, in days, for which the licensee who was the holder of the licence at the time of the reassessment has held the licence together with the unexpired period, in days, of the licence shall be  
30 deemed to be the period for which that licensee held the licence.

(9) A person on whom notice of the reassessment of a licence fee is served may, within fourteen days after service of the notice, object to and appeal against the reassessment

as



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*Business Franchise Licences (Petroleum).*

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as if the reassessment were an assessment to or against which an objection or appeal may be made under section 14 and the provisions of section 14 apply accordingly.

(10) Any amount which is due and payable by any person under subsection (6) or (7) and which is unpaid may be recovered by the Commissioner, as a debt, in any court of competent jurisdiction.

16. (1) The holder of a licence and any person to whom that holder proposes to transfer the licence may, by application made in a form approved by the Commissioner and accompanied by a fee of ten dollars, jointly request the Commissioner to enter in his records the transfer of the licence from the holder to that person on and from such day as may be specified in the application. **Transfer of licences.**

15 (2) The Commissioner shall comply with the request or refuse to comply with the request and, where he complies with the request, shall notify the persons making the request that he has made an entry in his records in accordance with the request.

20 (3) A transfer of a licence in accordance with a request made under subsection (1) shall, after the transfer is recorded in accordance with the request, take effect on and from the day specified in the request as the day upon which the licence is transferred.

25 (4) Any person who has made a request under subsection (1) may without fee inspect in the office of the Commissioner the entry in the records of the Commissioner of the transfer.

(5)



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*Business Franchise Licences (Petroleum).*

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(5) Where the Commissioner refuses to comply with a request made under subsection (1), ~~either of the persons making the request~~ **he shall, in writing, inform the persons making the request of the reasons for the refusal**  
5 **and either of those persons** may appeal against the refusal to the District Court and the provisions of section 8 apply to and in respect of the appeal as if it were an appeal against a refusal to grant a licence.

17. A person who carries on the business of selling <sup>Records to</sup> petroleum products shall keep such accounts, records, books <sup>be kept.</sup> and documents as may be prescribed containing such particulars as may be prescribed relating to petroleum products and shall preserve each of those accounts, records, books and documents for a period of five years after the last entry was  
15 made in it.

Penalty: \$2,500.

18. (1) The Governor may, under and subject to the <sup>Inspectors.</sup> Public Service Act, 1902, appoint inspectors for the purposes of this Act.

20 (2) For the purposes of this Act, an inspector, on production of written evidence of his appointment as an inspector, may at any reasonable time—

25 (a) enter and remain in any place at which or at which he reasonably suspects the business of selling petroleum products is carried on or which is or which he reasonably suspects is being used for the storage or custody of any accounts, records, books or documents relating to the sale or purchase of petroleum products;

30 (b) take copies of, or extracts or notes from, any such accounts, records, books or documents; and

(c)



*Business Franchise Licences (Petroleum).*

(c) request any person found in or upon any premises used for the sale or purchase of petroleum products or on which petroleum products are stored for sale—

- 5 (i) to produce any accounts, records, books or documents which relate to or which the inspector reasonably suspects relate to the sale or purchase of petroleum products and which at the time of the request are in the possession or under the control of that person; and
- 10 (ii) to answer any question with respect to any such accounts, records, books or documents or the sale or purchase of any petroleum products.
- 15

(3) A person shall not—

- (a) prevent or attempt to prevent an inspector from exercising any power conferred on him by subsection (2);
- 20 (b) hinder or obstruct any inspector in the exercise of any such power;
- (c) fail to comply with a request of an inspector under subsection (2) (c); or
- 25 (d) furnish to an inspector information which is false or misleading in a material particular.

Penalty: \$250 or imprisonment for a term not exceeding three months, or both, and in the case of an offence under paragraph (c) an additional penalty not exceeding \$50 for every day on which the offence continues.

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

(5)



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*Business Franchise Licences (Petroleum).*

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

10 (6) Where an answer to a question referred to in subsection (2) (c) (ii) or any information whatsoever is given to an inspector by an officer of a corporation within the meaning of the Companies Act, 1961, which is carrying on or has carried on the business of selling petroleum products, the answer and information are, for the purposes of any proceedings against the corporation under any of the 15 provisions of this Act, binding upon and admissible in evidence against the corporation unless it is proved that the answer or information was given in relation to a matter in respect of which the officer had no authority to bind the corporation.

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

25 (8) Any matter or thing done by an inspector bona fide for the purpose or purported purpose of executing this Act shall not subject the inspector personally to any action, liability, claim or demand.

19. (1) Except as provided by subsection (2), a person shall not disclose any information or publish any document or 30 part of a document obtained by him in connection with the administration or execution of this Act or the regulations, unless the disclosure or publication is made—

(a) with the consent of the person from whom the information or document was obtained;

(b)



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*Business Franchise Licences (Petroleum).*

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(b) in connection with the administration or execution of this Act or the regulations; or

(c) for the purpose of any legal proceedings arising out of this Act or the regulations or of any report of any such proceedings.

5

Penalty: \$2,500.

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

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

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

Service of documents by the Commissioner.

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

25

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

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

(3)



*Business Franchise Licences (Petroleum).*

(3) The provisions of this section are in addition to and not in derogation of the provisions of section 362 of the Companies Act, 1961.

21. (1) All proceedings for offences against this Act or the regulations may be taken in a summary manner before a stipendiary magistrate sitting in petty sessions.

(2) An information for an offence against any provision of this Act may not be laid without the approval in writing of the Minister.

10 (3) Any information laid for an offence against any provision of this Act shall in the absence of evidence to the contrary be deemed to have been laid with the approval in writing of the Minister.

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

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

25 23. (1) The Governor may make regulations, not inconsistent with this Act, prescribing any matter which is necessary or convenient to be prescribed for the carrying out or giving effect to this Act and in particular but without limiting the generality of the foregoing, the Governor may  
30 make regulations for or with respect to requiring persons, or

persons



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*Business Franchise Licences (Petroleum).*

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

(2) The regulations may impose a penalty not exceeding \$500 for an offence arising under the regulations.

(3) Regulations may be made so as to apply dif-  
10 ferently to or in respect of different classes of persons or different classes of petroleum products or according to such other different factors as may be specified in the regulations.

(4) A regulation made for the purpose of excluding any substance from the definition of "petroleum products"  
15 in section 3 (1) may exclude that substance from that definition in respect of such period as may be specified in the regulation, whether that period is before, after or partly before and partly after the date on which that regulation takes effect.

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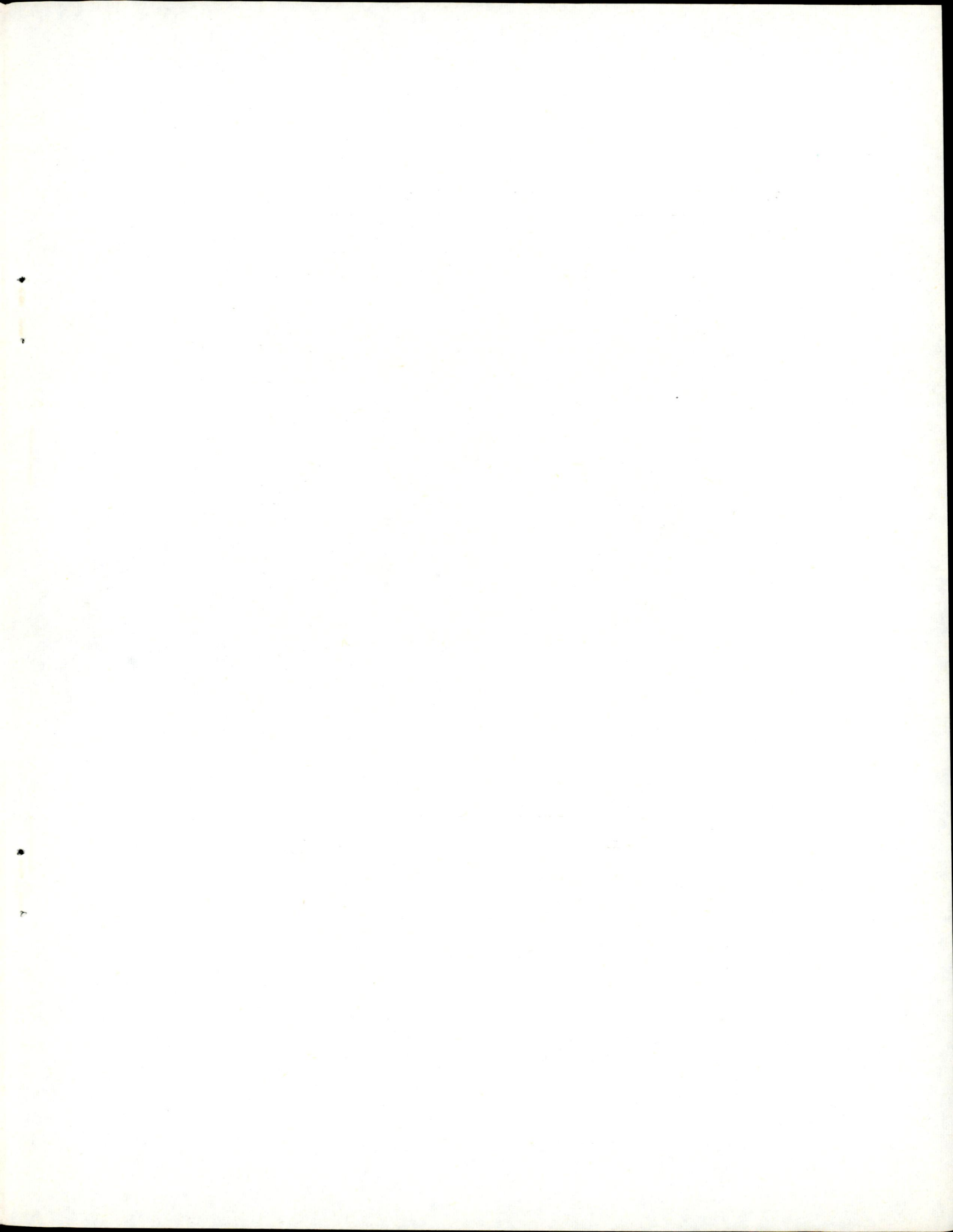
BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1974  
[25c]















*This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

R. E. WARD,  
*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,  
Sydney, 19 September, 1974.*

## New South Wales



ANNO VICESIMO TERTIO

**ELIZABETHÆ II REGINÆ**

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**Act No.           , 1974.**

An Act to make provision for the issue of licences to be called "Business Franchise Licences (Petroleum)"; to prohibit the sale of petroleum products except by a person who is enfranchised to sell those products by such a licence; and for purposes connected therewith.

**BE**



*Business Franchise Licences (Petroleum).*

5 **B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Business Franchise Short title.  
Licences (Petroleum) Act, 1974".

2. This Act shall commence upon 1st December, 1974. Commence-  
ment.

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

"Assistant Commissioner" means the Assistant Commissioner for Business Franchise Licences (Petroleum) referred to in section 4;

15 "Commissioner" means the Commissioner for Business Franchise Licences (Petroleum) referred to in section 4;

"licence" means a Business Franchise Licence (Petroleum) in force under this Act;

"petroleum products" means—

- 20 (a) a liquid obtained by refining or processing petroleum;
- (b) a liquid obtained by refining or processing a liquid referred to in paragraph (a);
- 25 (c) any grease obtained by refining or processing petroleum or a liquid referred to in paragraph (a), (b), (d) or (e) or any mixture of any such grease and any other substance;

(d)



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*Business Franchise Licences (Petroleum).*

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- (d) a liquid which is the residue after refining or processing—
- (i) petroleum;
  - (ii) any liquid referred to in paragraph (a), (b) or (e); or
  - (iii) any grease referred to in paragraph (c); or
- (e) a liquid which is a mixture of all or any of the liquids referred to in paragraphs (a), (b) and (d) and any other substance,
- but does not include liquefied petroleum gas, petroleum bitumen, mineral pitch or mineral tar or such other substances as may be prescribed;

“regulations” means regulations under this Act;

“relevant period” means, in relation to an applicant for a licence, the period of one year ended on the thirtieth day of June that last preceded the date on and from which the licence, if granted, would be in force;

“Tribunal” means the Business Franchise Licence Fees (Petroleum) Appeals Tribunal appointed under section 13;

“value”, in relation to any petroleum product, means the value of that product determined in accordance with section 10.

(2) A reference in this Act to a licensee or the holder of a licence includes a reference to a person to whom a licence is transferred in accordance with section 16.

(3) A reference in this Act to—

(a) a person who sells petroleum products; or

(b)



*Business Franchise Licences (Petroleum).*

(b) a person who carries on the business of selling petroleum products,

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

4. (1) There shall be a Commissioner for Business Franchise Licences (Petroleum) and an Assistant Commissioner for Business Franchise Licences (Petroleum), each of whom shall be appointed under, and shall hold office subject to, the Public Service Act, 1902.

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

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

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

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

5. (1) On and after 2nd March, 1975, a person shall not carry on the business of selling petroleum products unless he is the holder of a licence.

Penalty: \$500 for every day on which the person carries on the business.

(2) A licensee the fee for whose licence was fixed under section 9 (10) shall not carry on the business of selling petroleum products at any place unless that place is specified

in

Commissioner and Assistant Commissioner for Business Franchise Licences (Petroleum).

Sale of petroleum products by unlicensed persons prohibited.



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*Business Franchise Licences (Petroleum).*

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in the licence held by him as the place at which he may carry on that business.

Penalty: \$500 for every day on which the licensee carries on the business.

- 5           (3) A licensee shall not sell petroleum products except as authorised by the licence held by him.  
Penalty: \$2,500.

- 10           (4) Where a licensee the fee for whose licence was assessed under section 9 (10) sells petroleum products to a purchaser who does not, at the time of the sale, produce to that licensee a licence held by that purchaser, the sale shall, for the purposes of subsection (3) and section 6 (3) (i), be deemed to be a sale to a person who is not a licensee.

- 15           (5) Nothing in this Act requires any person to hold a licence if—

- 20           (a) his sales of petroleum products during any prescribed period consist only of sales of one or more than one petroleum product—  
              (i) where his sales consist only of sales of one petroleum product, the quantity of which petroleum product; or  
              (ii) where his sales consist of more than one petroleum product, the quantity of each of which petroleum products,  
25           does not exceed the quantity prescribed in respect of that product; or  
30           (b) the quantity of all petroleum products prescribed for the purpose of this paragraph, sold by him during the prescribed period, does not exceed the quantity prescribed for the purpose of this paragraph.

(6)



*Business Franchise Licences (Petroleum).*

(6) A regulation made for the purposes of subsection (5) (b) prescribing petroleum products may prescribe any petroleum products except petroleum products referred to in paragraph (c) of the definition of "petroleum products" in section 3 (1).

6. (1) The Commissioner shall—

Issue of  
licence.

- (a) upon application made therefor in a form approved by him;
- 10 (b) on receipt of the particulars, if any, required by him to be furnished by the applicant under section 7; and
- (c) upon payment of—
  - (i) the fee assessed by the Commissioner in accordance with section 9; or
  - 15 (ii) where the applicant has made an election under section 12 (1), the first instalment of that fee,

issue to the applicant a Business Franchise Licence (Petroleum) or refuse to issue to the applicant such a licence.

20 (2) An application for a licence may not be made earlier than two months before the commencement of the period in respect of which the licence is applied for or, except with the approval of the Commissioner, later than one month before the commencement of that period.

25 (3) A licence authorises the licensee—

- (a) where the fee in respect of the licence is assessed under section 9 (2), to carry on the business of selling petroleum products manufactured by him and no other petroleum products and to sell them only to other licensees;
- 30 (b) where the fee in respect of the licence is assessed under section 9 (3), to carry on the business of selling petroleum products manufactured by him

and



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*Business Franchise Licences (Petroleum).*

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- and no other petroleum products and to sell them to other licensees or to persons who are not licensees;
- 5 (c) where the fee in respect of the licence is assessed under section 9 (4), to carry on the business of selling petroleum products manufactured by him and no other petroleum products and to sell them only to persons who are not licensees;
- 10 (d) where the fee in respect of the licence is assessed under section 9 (5), to carry on the business of selling petroleum products manufactured by him and petroleum products not manufactured by him and to sell them only to other licensees;
- 15 (e) where the fee in respect of the licence is assessed under section 9 (6), to carry on the business of selling petroleum products manufactured by him and petroleum products not manufactured by him and to sell them to other licensees or to persons who are not licensees;
- 20 (f) where the fee in respect of the licence is assessed under section 9 (7), to carry on the business of selling petroleum products manufactured by him and petroleum products not manufactured by him and to sell them only to persons who are not licensees;
- 25 (g) where the fee in respect of the licence is assessed under section 9 (8), to carry on the business of selling petroleum products not manufactured by him and to sell them only to other licensees;
- 30 (h) where the fee in respect of the licence is assessed under section 9 (9), to carry on the business of selling petroleum products not manufactured by him and to sell them to other licensees or to a person who is not a licensee, if, in the case of the sale of any petroleum product prescribed for the purpose of this paragraph to such a person, the quantity of that petroleum product is not less than the quantity of that petroleum product prescribed for that purpose; or
- 35

(i)



*Business Franchise Licences (Petroleum).*

5 (i) where the fee in respect of the licence is assessed under section 9 (10), to carry on the business of selling, at the place specified in the licence, petroleum products not manufactured by him and not manufactured at that place and to sell them only to persons who are not licensees, if he may otherwise lawfully do so at that place.

(4) A licence shall be in force on and from the date specified in the licence as the date on which the licence  
10 commences—

- (a) until the first day of March next following that date;
- 15 (b) where the applicant for the licence made an election referred to in section 12 (1) in respect of the fee payable in respect of that licence, until any instalment (whether as originally assessed or as reduced under section 14 or 15) of that fee that is due and payable under section 12 (2) is unpaid;
- 20 (c) until any additional amount that is due and payable under section 15 by the holder of the licence is unpaid; or
- (d) until the date endorsed on an instrument of surrender relating to the licence pursuant to subsection (6),

whichever first occurs.

25 (5) A licensee may deliver to the Commissioner an instrument of surrender, in a form approved by the Commissioner, in respect of the licence held by him together with the licence.

30 (6) Where a licence is delivered to the Commissioner together with an instrument referred to in subsection (5), the Commissioner shall endorse on the instrument a date, not being earlier than the date specified in the instrument as the date of surrender.



*Business Franchise Licences (Petroleum).*

7. (1) The Commissioner may, by instrument in writing, require any person who is carrying on or has carried on the business of selling any petroleum products to furnish, within such period as is specified in the instrument or such further period as the Commissioner may, in writing, allow, to the Commissioner particulars with respect to such sales, purchases or stocks of, or dealings with, petroleum products as are specified in the instrument, being sales, purchases or dealings made, or stocks held, in any year ended on the thirtieth day of June (not being a year after the date of the requirement) in the course of carrying on that business.

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

Penalty: \$5,000.

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

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

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

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



*Business Franchise Licences (Petroleum).*

9. (1) A reference in this section to the quantity of a **Fees.**  
petroleum product non-accountable in respect of a relevant  
period in relation to which any part of a fee for a licence is  
assessed is a reference to the quantity, if any, of a petroleum  
5 product, being a petroleum product which was sold by that  
licensee to another licensee, whether or not during that period,  
and—

- (a) which was resold by that other licensee during that  
period;
- 10 (b) which, in the opinion of the Commissioner, was  
wasted or lost by spillage, evaporation, theft or fire  
by that other licensee during that period; or
- (c) which at the end of that period was, in the opinion  
of the Commissioner, held for resale by that other  
15 licensee,

reduced by the quantity, if any, of that petroleum product  
which was sold by the firstmentioned licensee to that other  
licensee and which at the end of the next preceding relevant  
period was, in the opinion of the Commissioner, held for  
20 resale by that other licensee.

(2) Where the applicant for a licence proposes to sell  
petroleum products manufactured by him and no other  
petroleum products and to sell them only to licensees, the  
fee payable for the licence shall be—

- 25 (a) \$500; and
- (b) 10 per centum of the value of the quantity of  
petroleum products sold by the applicant during the  
relevant period other than the quantity of a  
petroleum product non-accountable in respect of  
30 that period.

(3) Where the applicant for a licence proposes to sell  
petroleum products manufactured by him and no other  
petroleum products and to sell them to licensees and to  
persons who are not licensees, the fee payable for the licence  
35 shall be—

- (a) \$500; and

(b)



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*Business Franchise Licences (Petroleum).*

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5 (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(4) Where the applicant for a licence proposes to sell petroleum products manufactured by him and no other petroleum products and to sell them only to persons who are not licensees, the fee payable for the licence shall be—

10 (a) \$500; and

15 (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(5) Where the applicant for a licence proposes to sell petroleum products manufactured by him and petroleum products not manufactured by him and to sell them only to licensees, the fee payable for the licence shall be—

20 (a) \$500; and

25 (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(6) Where the applicant for a licence proposes to sell petroleum products manufactured by him and petroleum products not manufactured by him and to sell them to licensees and to persons who are not licensees, the fee payable 30 for the licence shall be—

(a) \$500; and

35 (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(7)



*Business Franchise Licences (Petroleum).*

(7) Where the applicant for a licence proposes to sell petroleum products manufactured by him and petroleum products not manufactured by him and to sell them only to persons who are not licensees, the fee payable for the licence shall be—

(a) \$500; and

(b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(8) Where the applicant for a licence proposes to sell petroleum products not manufactured by him and to sell them only to licensees, the fee payable for the licence shall be—

(a) \$100; and

(b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(9) Where the applicant for a licence proposes to sell petroleum products not manufactured by him and to sell them to licensees and to persons who are not licensees, the fee payable for the licence shall be—

(a) \$100; and

(b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.



*Business Franchise Licences (Petroleum).*

(10) Where the applicant for a licence proposes to sell petroleum products not manufactured by him and to sell them only to persons who are not licensees, the fee payable for the licence shall be—

- 5 (a) \$50; and
- (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period.

(11) Where an application is made for a licence to be  
10 in force on and from 2nd March, 1975, and the applicant carried on the business of selling petroleum products during the whole of the relevant period ended on 30th June, 1974, the fee payable by the applicant in respect of the licence shall be such amount as is assessed by the Commissioner as being  
15 just and reasonable in the circumstances of the case, having regard only to—

- (a) the sales of petroleum products that in the opinion of the Commissioner were made by the applicant during that relevant period; and
- 20 (b) the principles of assessing fees under whichever of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10) the Commissioner considers appropriate,

but where the Commissioner has regard to the principles of  
25 assessing fees under subsection (10) he shall not have regard to any such sales of petroleum products other than any such sales of petroleum products that were in his opinion made at the place to be specified in the licence as the place at which the holder of the licence may carry on the business of selling  
30 petroleum products.

(12) Where an application is made for a licence and, during the whole or any part of the period ended the thirtieth day of June in the year ended the thirty-first day of December next preceding the date on and from which the  
35 licence if granted would be in force, the applicant did not

carry



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*Business Franchise Licences (Petroleum).*

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carry on the business of selling petroleum products in the manner which would be authorised by the licence which he is applying for, the fee payable by the applicant in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard only to—

- 5
- 10
- 15
- 20
- (a) the sales of petroleum products that in the opinion of the Commissioner would have been made by the applicant had he been carrying on the business of selling petroleum products during that period;
  - (b) the principles of assessing fees under whichever of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10) the Commissioner considers appropriate; and
  - (c) any fee already paid by the applicant for a licence which has been surrendered by him and but for its surrender would have authorised him to carry on the business of selling petroleum products during any part of the period in respect of which the licence applied for by him would, if granted, be in force,

but where the Commissioner has regard to the principles of assessing fees under subsection (10) he shall not have regard to any such sales of petroleum products other than any such sales of petroleum products that would in his opinion have been made by the applicant had he been carrying on the business of selling petroleum products during that period at the place to be specified in the licence as the place at which the holder of the licence may carry on the business of selling petroleum products.

30 (13) Where—

- (a) an application is made for a licence;
- (b) during the whole of the relevant period the applicant carried on the business of selling petroleum products; and

(c)



*Business Franchise Licences (Petroleum).*

- (c) the Commissioner is of the opinion that he is unable for any reason accurately to assess the fee payable by the applicant under subsection (2), (3), (4), (5), (6), (7), (8), (9) or (10),
- 5 the fee payable by the applicant in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard only to—
- 10 (d) the sales of petroleum products that in the opinion of the Commissioner were made by the applicant during that period; and
- (e) the principles of assessing fees under whichever of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10) he considers appropriate,
- 15 but where the Commissioner has regard to the principles of assessing fees under subsection (10) he shall not have regard to any such sales of petroleum products other than any such sales of petroleum products that were in his opinion made at the place to be specified in the licence as the place at which
- 20 the holder of the licence may carry on the business of selling petroleum products.

(14) The provisions of subsections (11), (12) and (13) have effect notwithstanding the provisions of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10).

- 25 (15) Where the fee for a licence is assessed under subsection (11), (12) or (13), the Commissioner shall specify in the licence which of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10) he considered appropriate in applying subsection (11) (b), (12) (b) or (13) (e), as
- 30 the case may be, and for the purposes of sections 5 (3) and 6 (3) the fee shall be deemed to have been assessed under the subsection so specified.



*Business Franchise Licences (Petroleum).*

(16) Notwithstanding any other provision of this section, where a licence is to be in force for a period of less than six months, the amount of the fee that, but for this subsection, would be payable shall be reduced by one-half.

5     **10.** For the purposes of sections 9 and 14 the value of any petroleum product during any period by reference to which a licence fee is assessed shall be deemed to be such amount as is determined by the Minister in respect of that period, having regard to the average retail price at which in the opinion of  
10 the Minister that petroleum product was sold in the County of Cumberland during that period.

Value of  
petroleum  
products.

11. (1) Notwithstanding section 9, where during any period by reference to which a licence fee is assessed petroleum products were delivered to any purchaser at a place  
15 in any zone fixed by the Minister under subsection (2), the fee payable in respect of the licence shall be reduced by such amount as the Minister thinks fit.

Reduced  
fees in  
respect of  
petroleum  
products  
delivered in  
certain  
zones.

(2) For the purpose of subsection (1) the Minister may by notification in the Gazette declare any part of New  
20 South Wales to be a zone.

12. (1) An applicant for a licence which is to be in force for more than three months may, in his application, elect to pay the licence fee payable in respect of that licence by instalments in accordance with this section.

Payment of  
fees by  
instalments.

25     (2) Where the licence—

(a) is to be in force for a period of more than nine months, the licence fee may be paid by four equal instalments, the first instalment being due and payable as required by section 6 (1) and each of  
30 the remaining three instalments being due and payable respectively on the second day of June, the

second



*Business Franchise Licences (Petroleum).*

- second day of September and the second day of December next following the date of issue of the licence;
- 5 (b) is to be in force for a period of more than six months but not more than nine months, the licence fee may be paid by three equal instalments, the first instalment being due and payable as required by section 6 (1) and each of the remaining two instalments being due and payable respectively on 10 the second day of September and the second day of December next following the date of issue of the licence; or
- 15 (c) is to be in force for a period of more than three months but not more than six months, the licence fee may be paid by two equal instalments, the first instalment being due and payable as required by section 6 (1) and the remaining instalment being due and payable on the second day of December next following the date of issue of the licence.
- 20 (3) For the purpose of calculating the amount of instalments under subsection (2), where the quotient obtained by dividing the licence fee by the appropriate number of instalments results in a remaining fraction of a cent, that fraction shall be ignored.
- 25 **13.** (1) There shall be a tribunal to be called the "Business Franchise Licence Fees (Petroleum) Appeals Tribunal" which shall consist of a person appointed by the Governor on the recommendation of the Minister. Business Franchise Licence Fees (Petroleum) Appeals Tribunal.
- (2) A person shall not be appointed under subsection 30 (1) unless he is under the age of seventy years.
- (3) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment of a person referred to in subsection (1) or to such a person in his capacity as the Business Franchise Licence Fees (Petroleum) Appeals Tribunal.
- 35 (4)



*Business Franchise Licences (Petroleum).*

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

(5) The person so appointed shall be paid such fees and allowances as may from time to time be fixed by the Governor.

14. (1) A licensee who has paid the fee assessed in  
10 respect of his licence or, where he has made an election under section 12 (1), the first instalment of that fee, may within one  
month after the issue of the licence object to the Commissioner against the assessment of the fee on the ground that the fee  
was excessive by reason that it was incorrectly assessed by the  
15 Commissioner under section 9 and on no other ground.

Objection  
to and  
appeal  
against  
assessment.

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

(3) If the licensee is not satisfied with the determina-  
20 tion of the Commissioner on his objection or if within one month after the objection was lodged the Commissioner has not given a determination with respect to the objection, the licensee may appeal to the Tribunal against the assessment of the fee on the ground referred to in subsection (1).

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

(a) where the licensee is not satisfied with the determination of the Commissioner on his objection, within one month after his being notified by the Commissioner of that determination; or  
30

(b) where the Commissioner has not, within one month after the objection was lodged, given a determination with respect to the objection, within two months after the objection was lodged.

(5)



*Business Franchise Licences (Petroleum).*

(5) The Tribunal shall hear and determine the appeal and assess the fee payable and the provisions of section 9 apply to the Tribunal's assessment of that fee in the same way as that section applies to the assessment of fees by the  
5 Commissioner.

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

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

(8) Where on an objection or appeal made under this section, the Commissioner or Tribunal upholds the objection or appeal, in whole or in part—

15 (a) the Commissioner shall, where the whole of the fee as determined on the objection or appeal has been paid, refund any amount overpaid to the person who paid the whole of the fee as originally assessed or the first instalment of the fee as originally assessed; or

20 (b) if in the application for the licence the applicant made an election under section 12 (1), any instalment payable by virtue of that election has not become due and payable and—

25 (i) the applicant is, when the appeal is determined, the holder of the licence, each of the remaining instalments payable in respect of the licence shall be reduced by an amount that bears to the difference between the fee as originally assessed and the fee as determined on the objection or appeal the same  
30 proportion as one bears to the number of those remaining instalments; or

35 (ii) during the period between the date on which the licence commenced to be in force and the date on which the objection or appeal was determined the licence was held by two or more persons, the Commissioner shall

refund



*Business Franchise Licences (Petroleum).*

5 refund to that applicant an amount that  
bears to the difference between the fee as  
originally assessed and the fee as determined  
on the objection or appeal the same pro-  
portion as the period, in days, for which the  
licence was in force up to the date on which  
the objection or appeal was determined  
bears to the period, in days, from the date  
on which the licence commenced to be in  
10 force until the first day of March next  
following and each of the remaining instal-  
ments payable in respect of the licence shall  
be reduced by an amount that bears to the  
balance of that difference the same propor-  
15 tion as one bears to the number of those  
remaining instalments.

(9) Section 12 (3) applies to the calculation of  
reductions under subsection (8) in the same way as it applies  
to the calculation of instalments under section 12 (2).

20 15. (1) Where, in the opinion of the Commissioner, the <sup>Adjustment</sup>  
fee assessed in respect of any licence was assessed incorrectly, <sup>of fee.</sup>  
the Commissioner may at any time reassess the fee in accord-  
ance with the principles of assessing fees under whichever of  
subsections (2), (3), (4), (5), (6), (7), (8), (9), (10),  
25 (11), (12) and (13) of section 9 the Commissioner considers  
appropriate.

(2) Where on a reassessment of a fee under sub-  
section (1) the fee is reduced, the amount overpaid shall be  
30 refunded by the Commissioner in accordance with the  
provisions of subsections (3) and (4).

(3) Where—

(a) during the whole of the period during which the  
licence in respect of which the licence fee was  
reassessed (whether or not the licence has ceased  
35 to be in force) has been or was in force, it was held  
by one person, the amount to be refunded shall be  
refunded to that person; or

(b)



*Business Franchise Licences (Petroleum).*

- 5 (b) during the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by two or more persons, the amount to be refunded shall be refunded to those persons in proportion to the periods, in days, for which they held the licence.

(4) Notwithstanding subsection (3), in a case where—

- 10 (a) the licence has not ceased to be in force;  
 (b) in the application for the licence the applicant made an election under section 12 (1);  
 (c) any instalment payable by virtue of that election has not become due and payable; and  
 15 (d) the instalments paid do not exceed the amount of the fee as reassessed,

a refund shall not be made to the holder of the licence in accordance with subsection (3) (a) or (b) but in that case each of the remaining instalments payable in respect of the  
 20 licence shall be reduced by an amount that bears to the amount that but for this subsection would be required to be refunded to that holder under subsection (3) the same proportion as one bears to the number of those remaining instalments.

- 25 (5) Where on a reassessment of a fee under subsection (1) the fee is increased, the additional amount payable by virtue of the reassessment shall be due and payable in accordance with the provisions of subsections (6) and (7).

(6) For the purposes of subsection (5) where—

- 30 (a) during the whole of the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by one person, the additional amount shall be due  
 35 and payable within fourteen days after notice of the reassessment is served on that person; or

(b)



*Business Franchise Licences (Petroleum).*

5 (b) during the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by two or more persons, the additional amount shall be due and payable, within fourteen days after notice of the reassessment is served on them, by those persons in proportion to the periods, in days, for which they held the licence,

10 unless, in respect of that additional amount or any part of that additional amount so due and payable by that person or any of those persons, approval has been given under subsection (7) for the payment of that amount or part by instalments.

15 (7) A person by whom any additional amount or part is payable under subsection (6) may, within fourteen days after the service on him of notice of the reassessment by virtue of which the additional amount or part became so payable by him, apply to the Commissioner for approval to pay that amount or part by instalments, and if the Commissioner approves of the amount or part being so paid, it shall  
20 be due and payable by that person by such instalments payable at such times as are specified in the instrument of the Commissioner's approval.

25 (8) For the purposes of making the apportionment referred to in subsection (3) (b) or subsection (6) (b), where the licence has not ceased to be in force the period, in days, for which the licensee who was the holder of the licence at the time of the reassessment has held the licence together with the unexpired period, in days, of the licence shall be  
30 deemed to be the period for which that licensee held the licence.

(9) A person on whom notice of the reassessment of a licence fee is served may, within fourteen days after service of the notice, object to and appeal against the reassessment

as



*Business Franchise Licences (Petroleum).*

as if the reassessment were an assessment to or against which an objection or appeal may be made under section 14 and the provisions of section 14 apply accordingly.

(10) Any amount which is due and payable by any person under subsection (6) or (7) and which is unpaid may be recovered by the Commissioner, as a debt, in any court of competent jurisdiction.

16. (1) The holder of a licence and any person to whom that holder proposes to transfer the licence may, by application made in a form approved by the Commissioner and accompanied by a fee of ten dollars, jointly request the Commissioner to enter in his records the transfer of the licence from the holder to that person on and from such day as may be specified in the application.

Transfer of  
licences.

15 (2) The Commissioner shall comply with the request or refuse to comply with the request and, where he complies with the request, shall notify the persons making the request that he has made an entry in his records in accordance with the request.

20 (3) A transfer of a licence in accordance with a request made under subsection (1) shall, after the transfer is recorded in accordance with the request, take effect on and from the day specified in the request as the day upon which the licence is transferred.

25 (4) Any person who has made a request under subsection (1) may without fee inspect in the office of the Commissioner the entry in the records of the Commissioner of the transfer.

(5)



*Business Franchise Licences (Petroleum).*

(5) Where the Commissioner refuses to comply with a request made under subsection (1), either of the persons making the request may appeal against the refusal to the District Court and the provisions of section 8 apply to and in respect of the appeal as if it were an appeal against a refusal to grant a licence.

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

Records to be kept.

Penalty: \$2,500.

18. (1) The Governor may, under and subject to the Public Service Act, 1902, appoint inspectors for the purposes of this Act.

(2) For the purposes of this Act, an inspector, on production of written evidence of his appointment as an inspector, may at any reasonable time—

(a) enter and remain in any place at which or at which he reasonably suspects the business of selling petroleum products is carried on or which is or which he reasonably suspects is being used for the storage or custody of any accounts, records, books or documents relating to the sale or purchase of petroleum products;

(b) take copies of, or extracts or notes from, any such accounts, records, books or documents; and

(c)



*Business Franchise Licences (Petroleum).*

- (c) request any person found in or upon any premises used for the sale or purchase of petroleum products or on which petroleum products are stored for sale—
- 5 (i) to produce any accounts, records, books or documents which relate to or which the inspector reasonably suspects relate to the sale or purchase of petroleum products and which at the time of the request are in the possession or under the control of that person; and
- 10 (ii) to answer any question with respect to any such accounts, records, books or documents or the sale or purchase of any petroleum products.
- 15 (3) A person shall not—
- (a) prevent or attempt to prevent an inspector from exercising any power conferred on him by subsection (2);
- 20 (b) hinder or obstruct any inspector in the exercise of any such power;
- (c) fail to comply with a request of an inspector under subsection (2) (c); or
- 25 (d) furnish to an inspector information which is false or misleading in a material particular.

Penalty: \$250 or imprisonment for a term not exceeding three months, or both, and in the case of an offence under paragraph (c) an additional penalty not exceeding \$50 for every day on which the offence continues.

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

(5)



*Business Franchise Licences (Petroleum).*

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

(6) Where an answer to a question referred to in subsection (2) (c) (ii) or any information whatsoever is given to an inspector by an officer of a corporation within the meaning of the Companies Act, 1961, which is carrying on or has carried on the business of selling petroleum products, the answer and information are, for the purposes of any proceedings against the corporation under any of the provisions of this Act, binding upon and admissible in evidence against the corporation unless it is proved that the answer or information was given in relation to a matter in respect of which the officer had no authority to bind the corporation.

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

(8) Any matter or thing done by an inspector bona fide for the purpose or purported purpose of executing this Act shall not subject the inspector personally to any action, liability, claim or demand.

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

(a) with the consent of the person from whom the information or document was obtained;

(b)



*Business Franchise Licences (Petroleum).*

- (b) in connection with the administration or execution of this Act or the regulations; or
- (c) for the purpose of any legal proceedings arising out of this Act or the regulations or of any report of any such proceedings.

Penalty: \$2,500.

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

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

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

Service of documents by the Commissioner.

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

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

(3)



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*Business Franchise Licences (Petroleum).*

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(3) The provisions of this section are in addition to and not in derogation of the provisions of section 362 of the Companies Act, 1961.

21. (1) All proceedings for offences against this Act or  
5 the regulations may be taken in a summary manner before a  
stipendiary magistrate sitting in petty sessions. **Proceedings  
on  
prosecu-  
tions.**

(2) An information for an offence against any provision of this Act may not be laid without the approval in writing of the Minister.

10 (3) Any information laid for an offence against any provision of this Act shall in the absence of evidence to the contrary be deemed to have been laid with the approval in writing of the Minister.

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

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

25 23. (1) The Governor may make regulations, not  
inconsistent with this Act, prescribing any matter which is  
necessary or convenient to be prescribed for the carrying out  
or giving effect to this Act and in particular but without  
limiting the generality of the foregoing, the Governor may  
30 make regulations for or with respect to requiring persons, or

persons



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*Business Franchise Licences (Petroleum).*

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

(2) The regulations may impose a penalty not exceeding \$500 for an offence arising under the regulations.

(3) Regulations may be made so as to apply dif-  
10 ferently to or in respect of different classes of persons or different classes of petroleum products or according to such other different factors as may be specified in the regulations.

(4) A regulation made for the purpose of excluding any substance from the definition of "petroleum products"  
15 in section 3 (1) may exclude that substance from that definition in respect of such period as may be specified in the regulation, whether that period is before, after or partly before and partly after the date on which that regulation takes effect.

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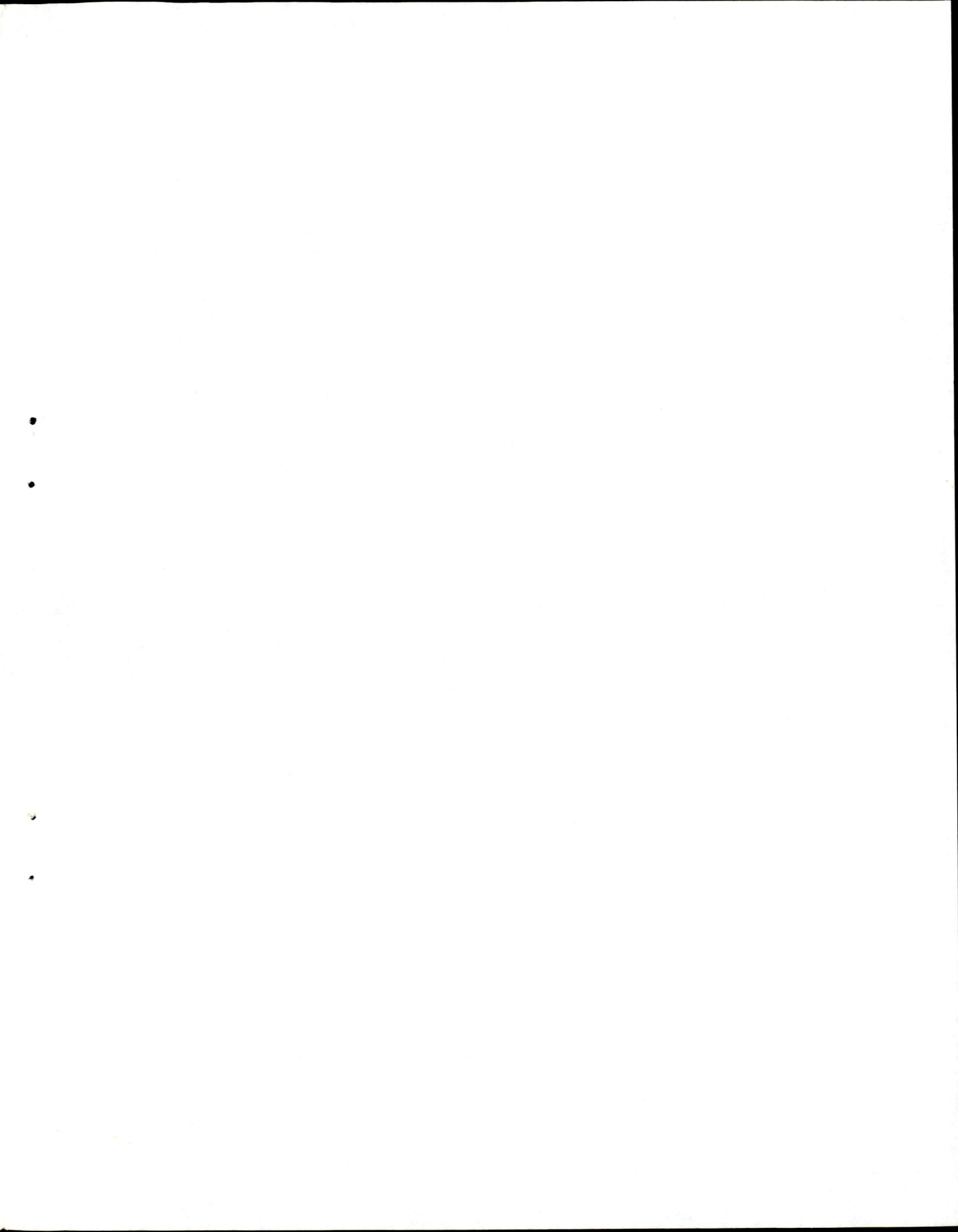
BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1974  
[25c]















No. , 1974.

# A BILL

To make provision for the issue of licences to be called "Business Franchise Licences (Petroleum)"; to prohibit the sale of petroleum products except by a person who is enfranchised to sell those products by such a licence; and for purposes connected therewith.

[SIR ROBERT ASKIN—11 September, 1974.]

BE



*Business Franchise Licences (Petroleum).*

BE it enacted by the Queen's Most Excellent Majesty, by  
and with the advice and consent of the Legislative  
Council and Legislative Assembly of New South Wales in  
Parliament assembled, and by the authority of the same, as  
5 follows:—

1. This Act may be cited as the "Business Franchise Short title.  
Licences (Petroleum) Act, 1974".

2. This Act shall commence upon 1st December, 1974. Commence-  
ment.

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

"Assistant Commissioner" means the Assistant Commis-  
sioner for Business Franchise Licences (Petroleum)  
referred to in section 4;

15 "Commissioner" means the Commissioner for Business  
Franchise Licences (Petroleum) referred to in  
section 4;

"licence" means a Business Franchise Licence  
(Petroleum) in force under this Act;

"petroleum products" means—

- 20 (a) a liquid obtained by refining or processing  
petroleum;
- (b) a liquid obtained by refining or processing  
a liquid referred to in paragraph (a);
- 25 (c) any grease obtained by refining or processing  
petroleum or a liquid referred to in  
paragraph (a), (b), (d) or (e) or any  
mixture of any such grease and any other  
substance;

(d)



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*Business Franchise Licences (Petroleum).*

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- (d) a liquid which is the residue after refining or processing—
- 5           (i) petroleum;
- (ii) any liquid referred to in paragraph (a), (b) or (e); or
- (iii) any grease referred to in paragraph (c); or

- (e) a liquid which is a mixture of all or any of the liquids referred to in paragraphs (a),
- 10           (b) and (d) and any other substance,

but does not include liquefied petroleum gas, petroleum bitumen, mineral pitch or mineral tar or such other substances as may be prescribed;

“regulations” means regulations under this Act;

- 15   “relevant period” means, in relation to an applicant for a licence, the period of one year ended on the thirtieth day of June that last preceded the date on and from which the licence, if granted, would be in force;

- 20   “Tribunal” means the Business Franchise Licence Fees (Petroleum) Appeals Tribunal appointed under section 13;

- 25   “value”, in relation to any petroleum product, means the value of that product determined in accordance with section 10.

(2) A reference in this Act to a licensee or the holder of a licence includes a reference to a person to whom a licence is transferred in accordance with section 16.

(3) A reference in this Act to—

- 30   (a) a person who sells petroleum products; or

(b)



*Business Franchise Licences (Petroleum).*

(b) a person who carries on the business of selling petroleum products,

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

4. (1) There shall be a Commissioner for Business Franchise Licences (Petroleum) and an Assistant Commissioner for Business Franchise Licences (Petroleum), each of whom shall be appointed under, and shall hold office subject to, the Public Service Act, 1902.

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

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

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

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

5. (1) On and after 2nd March, 1975, a person shall not carry on the business of selling petroleum products unless he is the holder of a licence.

Penalty : \$1,000 for every day on which the person carries on the business.

(2)



*Business Franchise Licences (Petroleum).*

(2) A licensee the fee for whose licence was fixed under section 9 (10) shall not carry on the business of selling petroleum products at any place unless that place is specified in the licence held by him as the place at which he may carry on that business.

Penalty : \$1,000 for every day on which the licensee carries on the business.

(3) A licensee shall not sell petroleum products except as authorised by the licence held by him.

Penalty : \$5,000.

(4) Where a licensee the fee for whose licence was assessed under section 9 (10) sells petroleum products to a purchaser who does not, at the time of the sale, produce to that licensee a licence held by that purchaser, the sale shall, for the purposes of subsection (3) and section 6 (3) (i), be deemed to be a sale to a person who is not a licensee.

(5) Nothing in this Act requires any person to hold a licence if his sales of petroleum products during any prescribed period consist only of sales of one or more than one petroleum product—

- (a) where his sales consist only of sales of one petroleum product, the quantity of which petroleum product; or
- (b) where his sales consist of more than one petroleum product, the quantity of each of which petroleum products,

does not exceed the quantity prescribed in respect of that product.

6. (1) The Commissioner shall—

- (a) upon application made therefor in a form approved by him;

Issue of licence.

(b)



*Business Franchise Licences (Petroleum).*

- (b) on receipt of the particulars, if any, required by him to be furnished by the applicant under section 7; and
- (c) upon payment of—
  - 5 (i) the fee assessed by the Commissioner in accordance with section 9; or
  - (ii) where the applicant has made an election under section 12 (1), the first instalment of that fee.

10 issue to the applicant a Business Franchise Licence (Petroleum) or refuse to issue to the applicant such a licence.

(2) An application for a licence may not be made earlier than two months before the commencement of the period in respect of which the licence is applied for or, except 15 with the approval of the Commissioner, later than one month before the commencement of that period.

(3) A licence authorises the licensee—

- 20 (a) where the fee in respect of the licence is assessed under section 9 (2), to carry on the business of selling petroleum products manufactured by him and no other petroleum products and to sell them only to other licensees;
- 25 (b) where the fee in respect of the licence is assessed under section 9 (3), to carry on the business of selling petroleum products manufactured by him and no other petroleum products and to sell them to other licensees or to persons who are not licensees;
- 30 (c) where the fee in respect of the licence is assessed under section 9 (4), to carry on the business of selling petroleum products manufactured by him and no other petroleum products and to sell them only to persons who are not licensees;

(d)



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*Business Franchise Licences (Petroleum).*

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- 5 (d) where the fee in respect of the licence is assessed under section 9 (5), to carry on the business of selling petroleum products manufactured by him and petroleum products not manufactured by him and to sell them only to other licensees;
- 10 (e) where the fee in respect of the licence is assessed under section 9 (6), to carry on the business of selling petroleum products manufactured by him and petroleum products not manufactured by him and to sell them to other licensees or to persons who are not licensees;
- 15 (f) where the fee in respect of the licence is assessed under section 9 (7), to carry on the business of selling petroleum products manufactured by him and petroleum products not manufactured by him and to sell them only to persons who are not licensees;
- 20 (g) where the fee in respect of the licence is assessed under section 9 (8), to carry on the business of selling petroleum products not manufactured by him and to sell them only to other licensees;
- 25 (h) where the fee in respect of the licence is assessed under section 9 (9), to carry on the business of selling petroleum products not manufactured by him and to sell them to other licensees or to a person who is not a licensee, if, in the case of the sale of any petroleum product prescribed for the purpose of this paragraph to such a person, the quantity of that petroleum product is not less than the quantity of that petroleum product prescribed for that purpose; or
- 30

(i)



*Business Franchise Licences (Petroleum).*

5 (i) where the fee in respect of the licence is assessed under section 9 (10), to carry on the business of selling, at the place specified in the licence, petroleum products not manufactured by him and not manufactured at that place and to sell them only to persons who are not licensees, if he may otherwise lawfully do so at that place.

10 (4) A licence shall be in force on and from the date specified in the licence as the date on which the licence commences—

- (a) until the first day of March next following that date;
- 15 (b) where the applicant for the licence made an election referred to in section 12 (1) in respect of the fee payable in respect of that licence or referred to in section 15 (3) in respect of any additional amount payable by him under section 15 (3), until any instalment (whether as originally assessed or as reduced under section 14 or 15) of that fee or additional amount that is due and payable under section 12 (2) or section 15 (3) is unpaid; or
- 20 (c) until the date endorsed on an instrument of surrender relating to the licence pursuant to subsection (6),

whichever first occurs.

25 (5) A licensee may deliver to the Commissioner an instrument of surrender, in a form approved by the Commissioner, in respect of the licence held by him together with the licence.

30 (6) Where a licence is delivered to the Commissioner together with an instrument referred to in subsection (5), the Commissioner shall endorse on the instrument a date, not being earlier than the date specified in the instrument as the date of surrender.



*Business Franchise Licences (Petroleum).*

7. (1) The Commissioner may, by instrument in writing, require any person who is carrying on or has carried on the business of selling any petroleum products to furnish, within such period as is specified in the instrument or such further period as the Commissioner may, in writing, allow, to the Commissioner particulars with respect to such sales or purchases of petroleum products as are specified in the instrument, being sales or purchases made in any year ended on the thirtieth day of June (not being a year after the date of the requirement) in the course of carrying on that business.

Particulars  
of sales  
and  
purchases of  
petroleum  
products.

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

Penalty: \$5,000.

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

Appeal  
against  
refusal  
to grant  
licence.

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

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

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



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*Business Franchise Licences (Petroleum).*

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9. (1) A reference in this section to the quantity of a Fees.  
petroleum product non-accountable in respect of a relevant  
period in relation to which any part of a fee for a licence is  
assessed is a reference to the quantity, if any, of a petroleum  
5 product, being a petroleum product which was sold by that  
licensee to another licensee, whether or not during that period,  
and—

- (a) which was resold by that other licensee during that  
period;
- 10 (b) which, in the opinion of the Commissioner, was  
wasted or lost by spillage, evaporation, theft or fire  
by that other licensee during that period; or
- (c) which at the end of that period was, in the opinion  
of the Commissioner, held for resale by that other  
15 licensee,

reduced by the quantity, if any, of petroleum products which  
at the end of the next preceding relevant period was, in the  
opinion of the Commissioner, held for resale by that other  
licensee.

20 (2) Where the applicant for a licence proposes to sell  
petroleum products manufactured by him and no other  
petroleum products and to sell them only to licensees, the  
fee payable for the licence shall be—

- (a) \$500; and
- 25 (b) 10 per centum of the value of the quantity of  
petroleum products sold by the applicant during the  
relevant period other than the quantity of a  
petroleum product non-accountable in respect of  
that period.

30 (3) Where the applicant for a licence proposes to sell  
petroleum products manufactured by him and no other  
petroleum products and to sell them to licensees and to  
persons who are not licensees, the fee payable for the licence  
shall be—

- 35 (a) \$500; and

(b)



*Business Franchise Licences (Petroleum).*

5 (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(4) Where the applicant for a licence proposes to sell petroleum products manufactured by him and no other petroleum products and to sell them only to persons who are not licensees, the fee payable for the licence shall be—

10 (a) \$500; and

15 (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(5) Where the applicant for a licence proposes to sell petroleum products manufactured by him and petroleum products not manufactured by him and to sell them only to licensees, the fee payable for the licence shall be—

20 (a) \$500; and

25 (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(6) Where the applicant for a licence proposes to sell petroleum products manufactured by him and petroleum products not manufactured by him and to sell them to licensees and to persons who are not licensees, the fee payable 30 for the licence shall be—

(a) \$500; and

35 (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(7)



*Business Franchise Licences (Petroleum).*

(7) Where the applicant for a licence proposes to sell petroleum products manufactured by him and petroleum products not manufactured by him and to sell them only to persons who are not licensees, the fee payable for the licence shall be—

- (a) \$500; and
- (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(8) Where the applicant for a licence proposes to sell petroleum products not manufactured by him and to sell them only to licensees, the fee payable for the licence shall be—

- (a) \$100; and
- (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(9) Where the applicant for a licence proposes to sell petroleum products not manufactured by him and to sell them to licensees and to persons who are not licensees, the fee payable for the licence shall be—

- (a) \$100; and
- (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.



*Business Franchise Licences (Petroleum).*

(10) Where the applicant for a licence proposes to sell petroleum products not manufactured by him and to sell them only to persons who are not licensees, the fee payable for the licence shall be—

- 5       (a) \$50; and
- (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period.

(11) Where an application is made for a licence to be  
10 in force on and from 2nd March, 1975, and the applicant carried on the business of selling petroleum products during the whole of the relevant period ended on 30th June, 1974, the fee payable by the applicant in respect of the licence shall be such amount as is assessed by the Commissioner as being  
15 just and reasonable in the circumstances of the case, having regard only to—

- (a) the sales of petroleum products that in the opinion of the Commissioner were made by the applicant during that relevant period; and
- 20       (b) the principles of assessing fees under whichever of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10) the Commissioner considers appropriate,

but where the Commissioner has regard to the principles of  
25 assessing fees under subsection (10) he shall not have regard to any such sales of petroleum products other than any such sales of petroleum products that were in his opinion made at the place to be specified in the licence as the place at which the holder of the licence may carry on the business of selling  
30 petroleum products.

(12) Where an application is made for a licence and, during the whole or any part of the period ended the thirtieth day of June in the year ended the thirty-first day of December next preceding the date on and from which the  
35 licence if granted would be in force, the applicant did not

carry



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*Business Franchise Licences (Petroleum).*

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carry on the business of selling petroleum products in the manner which would be authorised by the licence which he is applying for, the fee payable by the applicant in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard only to—

- 5 (a) the sales of petroleum products that in the opinion of the Commissioner would have been made by the applicant had he been carrying on the business of selling petroleum products during that period;
- 10 (b) the principles of assessing fees under whichever of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10) the Commissioner considers appropriate; and
- 15 (c) any fee already paid by the applicant for a licence which has been surrendered by him and but for its surrender would have authorised him to carry on the business of selling petroleum products during any part of the period in respect of which the licence
- 20 applied for by him would, if granted, be in force,

but where the Commissioner has regard to the principles of assessing fees under subsection (10) he shall not have regard to any such sales of petroleum products other than any such sales of petroleum products that would in his opinion have

25 been made by the applicant had he been carrying on the business of selling petroleum products during that period at the place to be specified in the licence as the place at which the holder of the licence may carry on the business of selling petroleum products.

30 (13) Where—

- (a) an application is made for a licence;
- (b) during the whole of the relevant period the applicant carried on the business of selling petroleum products; and

(c)



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*Business Franchise Licences (Petroleum).*

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- (c) the Commissioner is of the opinion that he is unable for any reason accurately to assess the fee payable by the applicant under subsection (2), (3), (4), (5), (6), (7), (8), (9) or (10),
- 5 the fee payable by the applicant in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard only to—
- 10 (d) the sales of petroleum products that in the opinion of the Commissioner were made by the applicant during that period; and
- (e) the principles of assessing fees under whichever of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10) he considers appropriate,
- 15 but where the Commissioner has regard to the principles of assessing fees under subsection (10) he shall not have regard to any such sales of petroleum products other than any such sales of petroleum products that were in his opinion made at the place to be specified in the licence as the place at which
- 20 the holder of the licence may carry on the business of selling petroleum products.
- (14) The provisions of subsections (11), (12) and (13) have effect notwithstanding the provisions of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10).
- 25 (15) Where the fee for a licence is assessed under subsection (11), (12) or (13), the Commissioner shall specify in the licence which of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10) he considered appropriate in applying subsection (11) (b), (12) (b) or (13) (e), as
- 30 the case may be, and for the purposes of sections 5 (3) and 6 (3) the fee shall be deemed to have been assessed under the subsection so specified.



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*Business Franchise Licences (Petroleum).*

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(16) Notwithstanding any other provision of this section, where a licence is to be in force for a period of less than six months, the amount of the fee that, but for this subsection, would be payable shall be reduced by one-half.

- 5     **10.** For the purposes of sections 9 and 14 the value of any petroleum product during any period by reference to which a licence fee is assessed shall be deemed to be such amount as is determined by the Minister in respect of that period, having regard to the average retail price at which in the opinion of  
10 the Minister that petroleum product was sold in the County of Cumberland during that period.

Value of  
petroleum  
products.

11. (1) Notwithstanding section 9, where during any period by reference to which a licence fee is assessed petroleum products were delivered to any purchaser at a place  
15 in any zone fixed by the Minister under subsection (2), the fee payable in respect of the licence shall be reduced by such amount as the Minister thinks fit.

Reduced  
fees in  
respect of  
petroleum  
products  
delivered in  
certain  
zones.

- (2) For the purpose of subsection (1) the Minister may by notification in the Gazette declare any part of New  
20 South Wales to be a zone.

12. (1) An applicant for a licence which is to be in force for more than three months may, in his application, elect to pay the licence fee payable in respect of that licence by instalments in accordance with this section.

Payment of  
fees by  
instalments.

- 25     (2) Where the licence—

- (a) is to be in force for a period of more than nine months, the licence fee may be paid by four equal instalments, the first instalment being due and payable as required by section 6 (1) and each of  
30 the remaining three instalments being due and payable respectively on the second day of June, the

second



*Business Franchise Licences (Petroleum).*

second day of September and the second day of December next following the date of issue of the licence;

5 (b) is to be in force for a period of more than six months but not more than nine months, the licence fee may be paid by three equal instalments, the first instalment being due and payable as required by section 6 (1) and each of the remaining two instalments being due and payable respectively on 10 the second day of September and the second day of December next following the date of issue of the licence; or

15 (c) is to be in force for a period of more than three months but not more than six months, the licence fee may be paid by two equal instalments, the first instalment being due and payable as required by section 6 (1) and the remaining instalment being due and payable on the second day of December next following the date of issue of the licence.

20 (3) For the purpose of calculating the amount of instalments under subsection (2), where the quotient obtained by dividing the licence fee by the appropriate number of instalments results in a remaining fraction of a cent, that fraction shall be ignored.

25 13. (1) There shall be a tribunal to be called the "Business Franchise Licence Fees (Petroleum) Appeals Tribunal" which shall consist of a person appointed by the Governor on the recommendation of the Minister.

Business  
Franchise  
Licence  
Fees  
(Petroleum)  
Appeals  
Tribunal.

(2) A person shall not be appointed under subsection 30 (1) unless he is under the age of seventy years.

(3) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment of a person referred to in subsection (1) or to such a person in his capacity as the Business Franchise Licence Fees (Petroleum) Appeals Tribunal.

*Business Franchise Licences (Petroleum).*

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

(5) The person so appointed shall be paid such fees and allowances as may from time to time be fixed by the Governor.

14. (1) A licensee who has paid the fee assessed in  
10 respect of his licence or, where he has made an election under section 12 (1), the first instalment of that fee, may within one month after the issue of the licence object to the Commissioner  
15 against the assessment of the fee on the ground that the fee was excessive by reason that it was incorrectly assessed by the Commissioner under section 9 and on no other ground.

Objection  
to and  
appeal  
against  
assessment.

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

(3) If the licensee is not satisfied with the determination of the Commissioner on his objection or if within one  
20 month after the objection was lodged the Commissioner has not given a determination with respect to the objection, the licensee may appeal to the Tribunal against the assessment of the fee on the ground referred to in subsection (1).

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

(a) where the licensee is not satisfied with the determination of the Commissioner on his objection, within one month after his being notified by the Commissioner of that determination; or  
30

(b) where the Commissioner has not, within one month after the objection was lodged, given a determination with respect to the objection, within two months after the objection was lodged.

(5)



*Business Franchise Licences (Petroleum).*

(5) The Tribunal shall hear and determine the appeal and assess the fee payable and the provisions of section 9 apply to the Tribunal's assessment of that fee in the same way as that section applies to the assessment of fees by the  
5 Commissioner.

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

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

(8) Where on an objection or appeal made under this section, the Commissioner or Tribunal upholds the objection or appeal, in whole or in part—

(a) the Commissioner shall, where the whole of the fee as originally assessed has been paid, refund to the licensee any amount overpaid; or  
15

(b) where the licensee in his application for the licence made an election under section 12 (1), each of the remaining instalments payable by the licensee shall be reduced by an amount that bears to the difference between the fee as originally assessed and the fee as determined on the objection or appeal the same proportion as one bears to the number of those remaining instalments.  
20

(9) Section 12 (3) applies to the calculation of reductions under subsection (7) in the same way as it applies to the calculation of instalments under section 12 (2).  
25

15. (1) Where, in the opinion of the Commissioner, the fee assessed in respect of any licence was assessed incorrectly, the Commissioner may at any time reassess the fee.  
30

(2)

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*Business Franchise Licences (Petroleum).*

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(2) Where on a reassessment of a fee under subsection (1), the fee is reduced—

- 5 (a) the Commissioner shall, where the whole of the fee as originally assessed has been paid, refund to the licensee any amount overpaid; or
- 10 (b) then if the licensee in his application for the licence made an election under section 12 (1), each of the remaining instalments payable by the licensee shall be reduced by an amount that bears to the difference between the fee as originally assessed and the fee as reassessed the same proportion as one bears to the number of those remaining instalments.

(3) Where within fourteen days after notice of a reassessment made under subsection (1) is served on the licensee, the licensee notifies the Commissioner that he elects to pay any amount payable by virtue of the reassessment by instalments—

- 20 (a) an amount that bears to the additional amount payable by the licensee by reason of the reassessment the same proportion as the number of instalments already paid by the licensee under the original assessment bears to the total number of instalments paid or payable by the licensee under the original assessment shall be due and payable within fourteen
- 25 days after notice of the reassessment was so served; and
- 30 (b) the remaining part of the additional amount payable by the licensee by reason of the reassessment shall be payable by such number of equal instalments (in this paragraph referred to as "further instalments") as is equal to the number of remaining instalments payable by the licensee under section 12 (2) in respect of the licence fee as originally assessed and those further instalments shall respectively be due and payable at the same time as those
- 35 remaining instalments.

(4)



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*Business Franchise Licences (Petroleum).*

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(4) A licensee who has paid the additional amount assessed in respect of his licence under this section or, where he has made an election referred to in subsection (3), the first instalment of that additional amount may object to and  
5 appeal against that assessment as if that assessment were an assessment to or against which an objection or appeal may be made under section 14 and the provisions of section 14 apply accordingly.

(5) Section 12 (3) applies to the calculation of  
10 reductions or instalments under subsection (2) or (3) in the same way as it applies to the calculation of instalments under section 12 (2).

**16.** (1) The holder of a licence and any person to whom  
that holder proposes to transfer the licence may, by application  
15 made in a form approved by the Commissioner and accompanied by a fee of ten dollars, jointly request the Commissioner to enter in his records the transfer of the licence from the holder to that person on and from such day as may be specified in the application. Transfer of  
licences.

20 (2) The Commissioner shall comply with the request or refuse to comply with the request and, where he complies with the request, shall notify the persons making the request that he has made an entry in his records in accordance with the request.

25 (3) A transfer of a licence in accordance with a request made under subsection (1) shall, after the transfer is recorded in accordance with the request, take effect on and from the day specified in the request as the day upon which the licence is transferred.

30 (4) Any person who has made a request under subsection (1) may without fee inspect in the office of the Commissioner the entry in the records of the Commissioner of the transfer.

(5)

*Business Franchise Licences (Petroleum).*

(5) Where the Commissioner refuses to comply with a request made under subsection (1), either of the persons making the request may appeal against the refusal to the District Court and the provisions of section 8 apply to and in respect of the appeal as if it were an appeal against a refusal to grant a licence.

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

Records to be kept.

Penalty : \$5,000.

18. (1) The Governor may, under and subject to the Public Service Act, 1902, appoint inspectors for the purposes of this Act.

(2) For the purposes of this Act, an inspector, on production of written evidence of his appointment as an inspector, may at any reasonable time—

(a) enter and remain in any place at which or at which he reasonably suspects the business of selling petroleum products is carried on or which is or which he reasonably suspects is being used for the storage or custody of any accounts, records, books or documents relating to the sale or purchase of petroleum products;

(b) take copies of, or extracts or notes from, any such accounts, records, books or documents; and

(c)



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*Business Franchise Licences (Petroleum).*

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(c) request any person found in or upon any premises used for the sale or purchase of petroleum products or on which petroleum products are stored for sale—

- 5           (i) to produce any accounts, records, books or documents which relate to or which the inspector reasonably suspects relate to the sale or purchase of petroleum products and which at the time of the request are in the possession or under the control of that person; and
- 10           (ii) to answer any question with respect to any such accounts, records, books or documents or the sale or purchase of any petroleum products.
- 15

(3) A person shall not—

- (a) prevent or attempt to prevent an inspector from exercising any power conferred on him by subsection (2);
- 20       (b) hinder or obstruct any inspector in the exercise of any such power;
- (c) fail to comply with a request of an inspector under subsection (2) (c); or
- 25       (d) furnish to an inspector information which is false or misleading in a material particular.

Penalty : \$500 or imprisonment for a term not exceeding six months, or both, and in the case of an offence under paragraph (c) an additional penalty not exceeding \$100 for every day on which the offence continues.

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

(5)

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*Business Franchise Licences (Petroleum).*

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

(6) Where an answer to a question referred to in subsection (2) (c) (ii) or any information whatsoever is given to an inspector by an officer of a corporation within the meaning of the Companies Act, 1961, which is carrying on or has carried on the business of selling petroleum products, the answer and information are, for the purposes of any proceedings against the corporation under any of the provisions of this Act, binding upon and admissible in evidence against the corporation unless it is proved that the answer or information was given in relation to a matter in respect of which the officer had no authority to bind the corporation.

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

(8) Any matter or thing done by an inspector bona fide for the purpose or purported purpose of executing this Act shall not subject the inspector personally to any action, liability, claim or demand.

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

(a) with the consent of the person from whom the information or document was obtained;

(b)



*Business Franchise Licences (Petroleum).*

(b) in connection with the administration or execution of this Act or the regulations; or

(c) for the purpose of any legal proceedings arising out of this Act or the regulations or of any report of any such proceedings.

Penalty : \$5,000.

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

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

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

Service of documents by the Commissioner.

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

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

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

*Business Franchise Licences (Petroleum).*

(3) The provisions of this section are in addition to and not in derogation of the provisions of section 362 of the Companies Act, 1961.

21. (1) All proceedings for offences against this Act or  
5 the regulations may be taken in a summary manner before a  
stipendiary magistrate sitting in petty sessions. Proceedings  
on  
prosecu-  
tions.

(2) An information for an offence against any provision of this Act may not be laid without the approval in writing of the Minister.

10 (3) Any information laid for an offence against any provision of this Act shall in the absence of evidence to the contrary be deemed to have been laid with the approval in writing of the Minister.

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

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

25 23. (1) The Governor may make regulations, not  
inconsistent with this Act, prescribing any matter which is  
necessary or convenient to be prescribed for the carrying out  
or giving effect to this Act and in particular but without  
limiting the generality of the foregoing, the Governor may  
30 make regulations for or with respect to requiring persons, or

persons



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*Business Franchise Licences (Petroleum).*

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persons belonging to classes of persons, specified in the regulations to make returns in such form and manner and containing such information relating to sales or purchases of petroleum products as is indicated by the regulations and to  
5 furnish the returns to the Commissioner within such time as may be so specified.

(2) The regulations may impose a penalty not exceeding \$1,000 for an offence arising under the regulations.

(3) Regulations may be made so as to apply dif-  
10 ferently to or in respect of different classes of persons or different classes of petroleum products or according to such other different factors as may be specified in the regulations.

(4) A regulation made for the purpose of excluding any substance from the definition of "petroleum products"  
15 in section 3 (1) may exclude that substance from that definition in respect of such period as may be specified in the regulation, whether that period is before, after or partly before and partly after the date on which that regulation takes effect.

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1974  
[25c]





## BUSINESS FRANCHISE LICENCES (PETROLEUM) BILL, 1974

### EXPLANATORY NOTE

THE object of this Bill is to prohibit as on and from 2nd March, 1975, any person from carrying on the business of selling petroleum products as defined in the Bill unless he is the holder of a licence, called a Business Franchise Licence (Petroleum), authorising him to do so.

The Bill—

- (a) makes provision for the appointment of a Commissioner and an Assistant Commissioner for Business Franchise Licences (Petroleum);
- (b) prohibits the carrying on of the business of selling on and after 2nd March, 1975, petroleum products, as so defined, except by a person authorised to carry on that business by a licence;
- (c) makes provision for exempting from the requirements set out in the Bill small sales of petroleum products;
- (d) authorises the Commissioner to issue licences to persons upon payment of the fees assessed in accordance with the provisions contained in the Bill or to refuse to issue a licence to any person;
- (e) confers a right of appeal to the District Court against the refusal of the Commissioner to grant a licence;
- (f) prescribes the methods of assessing the fees payable by different classes of persons carrying on the business of selling petroleum products;
- (g) enables reduced fees to be fixed where petroleum products are delivered to a person in any zone fixed by the Minister;
- (h) enables fees to be paid by instalments;
- (i) makes provision for the constitution of a Tribunal to be called the Business Franchise Licence Fees (Petroleum) Appeals Tribunal;
- (j) enables an applicant for a licence to appeal against the assessment of the licence fee to that Tribunal;
- (k) empowers the Commissioner to adjust licence fees that have been incorrectly assessed;
- (l) enables licences to be transferred;
- (m) requires persons carrying on the business of selling petroleum products to keep and preserve prescribed accounts, records, books and documents;
- (n) authorises the appointment of inspectors and confers on them powers, authorities, duties and functions with respect to the administration and execution of the proposed Act;

- (o) prohibits a person from disclosing any information or publishing any document obtained by him in connection with the administration or execution of the proposed Act or the regulations to be made under that Act except in certain limited circumstances;
- (p) makes provisions with respect to proceedings for offences against the proposed Act;
- (q) makes other provisions of a minor or ancillary character.



PROOF

No. , 1974.

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## A BILL

To make provision for the issue of licences to be called "Business Franchise Licences (Petroleum)"; to prohibit the sale of petroleum products except by a person who is enfranchised to sell those products by such a licence; and for purposes connected therewith.

[SIR ROBERT ASKIN—11 September, 1974.]

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BE

*Business Franchise Licences (Petroleum).*

BE it enacted by the Queen's Most Excellent Majesty, by  
and with the advice and consent of the Legislative  
Council and Legislative Assembly of New South Wales in  
Parliament assembled, and by the authority of the same, as  
5 follows:—

1. This Act may be cited as the "Business Franchise Short title.  
Licences (Petroleum) Act, 1974".

2. This Act shall commence upon 1st December, 1974. Commence-  
ment.

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

"Assistant Commissioner" means the Assistant Commis-  
sioner for Business Franchise Licences (Petroleum)  
referred to in section 4;

15 "Commissioner" means the Commissioner for Business  
Franchise Licences (Petroleum) referred to in  
section 4;

"licence" means a Business Franchise Licence  
(Petroleum) in force under this Act;

"petroleum products" means—

20 (a) a liquid obtained by refining or processing  
petroleum;

(b) a liquid obtained by refining or processing  
a liquid referred to in paragraph (a);

25 (c) any grease obtained by refining or processing  
petroleum or a liquid referred to in  
paragraph (a), (b), (d) or (e) or any  
mixture of any such grease and any other  
substance;

(d)



*Business Franchise Licences (Petroleum).*

- (d) a liquid which is the residue after refining or processing—
- (i) petroleum;
  - 5 (ii) any liquid referred to in paragraph (a), (b) or (e); or
  - (iii) any grease referred to in paragraph (c); or

- 10 (e) a liquid which is a mixture of all or any of the liquids referred to in paragraphs (a), (b) and (d) and any other substance,

but does not include liquefied petroleum gas, petroleum bitumen, mineral pitch or mineral tar or such other substances as may be prescribed;

“regulations” means regulations under this Act;

- 15 “relevant period” means, in relation to an applicant for a licence, the period of one year ended on the thirtieth day of June that last preceded the date on and from which the licence, if granted, would be in force;

- 20 “Tribunal” means the Business Franchise Licence Fees (Petroleum) Appeals Tribunal appointed under section 13;

- 25 “value”, in relation to any petroleum product, means the value of that product determined in accordance with section 10.

(2) A reference in this Act to a licensee or the holder of a licence includes a reference to a person to whom a licence is transferred in accordance with section 16.

- (3) A reference in this Act to—
- 30 (a) a person who sells petroleum products; or

(b)

*Business Franchise Licences (Petroleum).*

- (b) a person who carries on the business of selling petroleum products,

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

4. (1) There shall be a Commissioner for Business Franchise Licences (Petroleum) and an Assistant Commissioner for Business Franchise Licences (Petroleum), each of whom shall be appointed under, and shall hold office subject to, the Public Service Act, 1902.

Commissioner and Assistant Commissioner for Business Franchise Licences (Petroleum).

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

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

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

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

5. (1) On and after 2nd March, 1975, a person shall not carry on the business of selling petroleum products unless he is the holder of a licence.

Sale of petroleum products by unlicensed persons prohibited.

Penalty : \$1,000 for every day on which the person carries on the business.



*Business Franchise Licences (Petroleum).*

(2) A licensee the fee for whose licence was fixed under section 9 (10) shall not carry on the business of selling petroleum products at any place unless that place is specified in the licence held by him as the place at which he may carry  
5 on that business.

Penalty : \$1,000 for every day on which the licensee carries on the business.

(3) A licensee shall not sell petroleum products except as authorised by the licence held by him.

10 Penalty : \$5,000.

(4) Where a licensee the fee for whose licence was assessed under section 9 (10) sells petroleum products to a purchaser who does not, at the time of the sale, produce to that licensee a licence held by that purchaser, the sale shall,  
15 for the purposes of subsection (3) and section 6 (3) (i), be deemed to be a sale to a person who is not a licensee.

(5) Nothing in this Act requires any person to hold a licence if his sales of petroleum products during any prescribed period consist only of sales of one or more than  
20 one petroleum product—

(a) where his sales consist only of sales of one petroleum product, the quantity of which petroleum product;  
or

25 (b) where his sales consist of more than one petroleum product, the quantity of each of which petroleum products,

does not exceed the quantity prescribed in respect of that product.

6. (1) The Commissioner shall—

30 (a) upon application made therefor in a form approved by him;

Issue of  
licence.

(b)

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*Business Franchise Licences (Petroleum).*

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(b) on receipt of the particulars, if any, required by him to be furnished by the applicant under section 7; and

(c) upon payment of—

- 5 (i) the fee assessed by the Commissioner in accordance with section 9; or
- (ii) where the applicant has made an election under section 12 (1), the first instalment of that fee,

10 issue to the applicant a Business Franchise Licence (Petroleum) or refuse to issue to the applicant such a licence.

(2) An application for a licence may not be made earlier than two months before the commencement of the period in respect of which the licence is applied for or, except 15 with the approval of the Commissioner, later than one month before the commencement of that period.

(3) A licence authorises the licensee—

- 20 (a) where the fee in respect of the licence is assessed under section 9 (2), to carry on the business of selling petroleum products manufactured by him and no other petroleum products and to sell them only to other licensees;
- 25 (b) where the fee in respect of the licence is assessed under section 9 (3), to carry on the business of selling petroleum products manufactured by him and no other petroleum products and to sell them to other licensees or to persons who are not licensees;
- 30 (c) where the fee in respect of the licence is assessed under section 9 (4), to carry on the business of selling petroleum products manufactured by him and no other petroleum products and to sell them only to persons who are not licensees;

(d)



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*Business Franchise Licences (Petroleum).*

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- 5 (d) where the fee in respect of the licence is assessed under section 9 (5), to carry on the business of selling petroleum products manufactured by him and petroleum products not manufactured by him and to sell them only to other licensees;
- 10 (e) where the fee in respect of the licence is assessed under section 9 (6), to carry on the business of selling petroleum products manufactured by him and petroleum products not manufactured by him and to sell them to other licensees or to persons who are not licensees;
- 15 (f) where the fee in respect of the licence is assessed under section 9 (7), to carry on the business of selling petroleum products manufactured by him and petroleum products not manufactured by him and to sell them only to persons who are not licensees;
- 20 (g) where the fee in respect of the licence is assessed under section 9 (8), to carry on the business of selling petroleum products not manufactured by him and to sell them only to other licensees;
- 25 (h) where the fee in respect of the licence is assessed under section 9 (9), to carry on the business of selling petroleum products not manufactured by him and to sell them to other licensees or to a person who is not a licensee, if, in the case of the sale of any petroleum product prescribed for the purpose of this paragraph to such a person, the quantity of that petroleum product is not less than the quantity of that petroleum product prescribed for that purpose; or

30

(i)

*Business Franchise Licences (Petroleum).*

5 (i) where the fee in respect of the licence is assessed under section 9 (10), to carry on the business of selling, at the place specified in the licence, petroleum products not manufactured by him and not manufactured at that place and to sell them only to persons who are not licensees, if he may otherwise lawfully do so at that place.

(4) A licence shall be in force on and from the date specified in the licence as the date on which the licence  
10 commences—

- (a) until the first day of March next following that date;
- 15 (b) where the applicant for the licence made an election referred to in section 12 (1) in respect of the fee payable in respect of that licence or referred to in section 15 (3) in respect of any additional amount payable by him under section 15 (3), until any instalment (valuation as originally assessed or as reduced under section 14 or 15) of that fee or  
20 additional amount that is due and payable under section 12 (2) or section 15 (3) is unpaid; or
- (c) until the date endorsed on an instrument of surrender relating to the licence pursuant to subsection (6),

whichever first occurs.

25 (5) A licensee may deliver to the Commissioner an instrument of surrender, in a form approved by the Commissioner, in respect of the licence held by him together with the licence.

(6) Where a licence is delivered to the Commissioner  
30 together with an instrument referred to in subsection (5), the Commissioner shall endorse on the instrument a date, not being earlier than the dates specified in the instrument as the date of surrender.



*Business Franchise Licences (Petroleum).*

7. (1) The Commissioner may, by instrument in writing, require any person who is carrying on or has carried on the business of selling any petroleum products to furnish, within such period as is specified in the instrument or such further period as the Commissioner may, in writing, allow, to the Commissioner particulars with respect to such sales or purchases of petroleum products as are specified in the instrument, being sales or purchases made in any year ended on the thirtieth day of June (not being a year after the date of the requirement) in the course of carrying on that business.

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

Penalty: \$5,000.

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

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

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

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

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*Business Franchise Licences (Petroleum).*

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9. (1) A reference in this section to the quantity of a **Fees.**  
petroleum product non-accountable in respect of a relevant  
period in relation to which any part of a fee for a licence is  
assessed is a reference to the quantity, if any, of a petroleum  
5 product, being a petroleum product which was sold by that  
licensee to another licensee, whether or not during that period,  
and—

- (a) which was resold by that other licensee during that  
period;
- 10 (b) which, in the opinion of the Commissioner, was  
wasted or lost by spillage, evaporation, theft or fire  
by that other licensee during that period; or
- (c) which at the end of that period was, in the opinion  
of the Commissioner, held for resale by that other  
15 licensee,

reduced by the quantity, if any, of petroleum products which  
at the end of the next preceding relevant period was, in the  
opinion of the Commissioner, held for resale by that other  
licensee.

20 (2) Where the applicant for a licence proposes to sell  
petroleum products manufactured by him and no other  
petroleum products and to sell them only to licensees, the  
fee payable for the licence shall be—

- (a) \$500; and
- 25 (b) 10 per centum of the value of the quantity of  
petroleum products sold by the applicant during the  
relevant period other than the quantity of a  
petroleum product non-accountable in respect of  
that period.

30 (3) Where the applicant for a licence proposes to sell  
petroleum products manufactured by him and no other  
petroleum products and to sell them to licensees and to  
persons who are not licensees, the fee payable for the licence  
shall be—

- 35 (a) \$500; and

(b)



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*Business Franchise Licences (Petroleum).*

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5 (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(4) Where the applicant for a licence proposes to sell petroleum products manufactured by him and no other petroleum products and to sell them only to persons who are not licensees, the fee payable for the licence shall be—

10 (a) \$500; and

15 (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(5) Where the applicant for a licence proposes to sell petroleum products manufactured by him and petroleum products not manufactured by him and to sell them only to licensees, the fee payable for the licence shall be—

20 (a) \$500; and

25 (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(6) Where the applicant for a licence proposes to sell petroleum products manufactured by him and petroleum products not manufactured by him and to sell them to licensees and to persons who are not licensees, the fee payable 30 for the licence shall be—

(a) \$500; and

35 (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(7)

*Business Franchise Licences (Petroleum).*

(7) Where the applicant for a licence proposes to sell petroleum products manufactured by him and petroleum products not manufactured by him and to sell them only to persons who are not licensees, the fee payable for the licence shall be—

- (a) \$500; and
- (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(8) Where the applicant for a licence proposes to sell petroleum products not manufactured by him and to sell them only to licensees, the fee payable for the licence shall be—

- (a) \$100; and
- (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(9) Where the applicant for a licence proposes to sell petroleum products not manufactured by him and to sell them to licensees and to persons who are not licensees, the fee payable for the licence shall be—

- (a) \$100; and
- (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.



*Business Franchise Licences (Petroleum).*

(10) Where the applicant for a licence proposes to sell petroleum products not manufactured by him and to sell them only to persons who are not licensees, the fee payable for the licence shall be—

- 5 (a) \$50; and
- (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period.

(11) Where an application is made for a licence to be  
10 in force on and from 2nd March, 1975, and the applicant carried on the business of selling petroleum products during the whole of the relevant period ended on 30th June, 1974, the fee payable by the applicant in respect of the licence shall be such amount as is assessed by the Commissioner as being  
15 just and reasonable in the circumstances of the case, having regard only to—

- (a) the sales of petroleum products that in the opinion of the Commissioner were made by the applicant during that relevant period; and
- 20 (b) the principles of assessing fees under whichever of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10) the Commissioner considers appropriate,

but where the Commissioner has regard to the principles of  
25 assessing fees under subsection (10) he shall not have regard to any such sales of petroleum products other than any such sales of petroleum products that were in his opinion made at the place to be specified in the licence as the place at which the holder of the licence may carry on the business of selling  
30 petroleum products.

(12) Where an application is made for a licence and, during the whole or any part of the period ended the thirtieth day of June in the year ended the thirty-first day of December next preceding the date on and from which the  
35 licence if granted would be in force, the applicant did not

carry

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*Business Franchise Licences (Petroleum).*

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carry on the business of selling petroleum products in the manner authorised which would be by the licence which he is applying for, the fee payable by the applicant in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard only to—

- 5
- 10
- 15
- 20
- (a) the sales of petroleum products that in the opinion of the Commissioner would have been made by the applicant had he been carrying on the business of selling petroleum products during that period;
  - (b) the principles of assessing fees under whichever of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10) the Commissioner considers appropriate; and
  - (c) any fee already paid by the applicant for a licence which has been surrendered by him and but for its surrender would have authorised him to carry on the business of selling petroleum products during any part of the period in respect of which the licence applied for by him would, if granted, be in force,

but where the Commissioner has regard to the principles of assessing fees under subsection (10) he shall not have regard to any such sales of petroleum products other than any such sales of petroleum products that would in his opinion have been made by the applicant had he been carrying on the business of selling petroleum products during that period at the place to be specified in the licence as the place at which the holder of the licence may carry on the business of selling petroleum products.

30 (13) Where—

- (a) an application is made for a licence;
- (b) during the whole of the relevant period the applicant carried on the business of selling petroleum products; and

(c)



*Business Franchise Licences (Petroleum).*

- (c) the Commissioner is of the opinion that he is unable for any reason accurately to assess the fee payable by the applicant under subsection (2), (3), (4), (5), (6), (7), (8), (9) or (10),
- 5 the fee payable by the applicant in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard only to—
- 10 (d) the sales of petroleum products that in the opinion of the Commissioner were made by the applicant during that period; and
- (e) the principles of assessing fees under whichever of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10) he considers appropriate,
- 15 but where the Commissioner has regard to the principles of assessing fees under subsection (10) he shall not have regard to any such sales of petroleum products other than any such sales of petroleum products that were in his opinion made at the place to be specified in the licence as the place at which the
- 20 holder of the licence may carry on the business of selling petroleum products.
- (14) The provisions of subsections (11), (12) and (13) have effect notwithstanding the provisions of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10).
- 25 (15) Where the fee for a licence is assessed under subsection (11), (12) or (13), the Commissioner shall specify in the licence which of subsection (2), (3), (4), (5), (6), (7), (8), (9) and (10) he considered appropriate in applying subsection (11) (b), (12) (b) or (13) (e), as
- 30 the case may be, and for the purposes of sections 5 (3) and 6 (3) the fee shall be deemed to have been assessed under the subsection so specified.

*Business Franchise Licences (Petroleum).*

(16) Notwithstanding any other provision of this section, where a licence is to be in force for a period of less than six months, the amount of the fee that, but for this subsection, would be payable shall be reduced by one-half.

5     **10.** For the purposes of sections 9 and 14 the value of any petroleum product during any period by reference to which a licence fee is assessed shall be deemed to be such amount as is determined by the Minister in respect of that period, having regard to the average retail price at which in the opinion of  
10 the Minister that petroleum product was sold in the County of Cumberland during that period.

Value of  
petroleum  
products.

11. (1) Notwithstanding section 9, where during any period by reference to which a licence fee is assessed petroleum products were delivered to any purchaser at a place  
15 in any zone fixed by the Minister under subsection (2), the fee payable in respect of the licence shall be reduced by such amount as the Minister thinks fit.

Reduced  
fees in  
respect of  
petroleum  
products  
delivered in  
certain  
zones.

(2) For the purpose of subsection (1) the Minister may by notification in the Gazette declare any part of New  
20 South Wales to be a zone.

**12.** (1) An applicant for a licence which is to be in force for more than three months may, in his application, elect to pay the licence fee payable in respect of that licence by instalments in accordance with this section.

Payment of  
fees by  
instalments.

25     (2) Where the licence—

(a) is to be in force for a period of more than nine months, the licence fee may be paid by four equal instalments, the first instalment being due and payable as required by section 6 (1) and each of  
30 the remaining three instalments being due and payable respectively on the second day of June, the

second



*Business Franchise Licences (Petroleum).*

second day of September and the second day of December next following the date of issue of the licence;

5 (b) is to be in force for a period of more than six months but not more than nine months, the licence fee may be paid by three equal instalments, the first instalment being due and payable as required by section 6 (1) and each of the remaining two instalments being due and payable respectively on 10 the second day of September and the second day of December next following the date of issue of the licence; or

15 (c) is to be in force for a period of more than three months but not more than six months, the licence fee may be paid by two equal instalments, the first instalment being due and payable as required by section 6 (1) and the remaining instalment being due and payable on the second day of December next following the date of issue of the licence.

20 (3) For the purpose of calculating the amount of instalments under subsection (2), where the quotient obtained by dividing the licence fee by the appropriate number of instalments results in a remaining fraction of a cent, that fraction shall be ignored.

25 13. (1) There shall be a tribunal to be called the "Business Franchise Licence Fees (Petroleum) Appeals Tribunal" which shall consist of a person appointed by the Governor on the recommendation of the Minister.

Business  
Franchise  
Licence  
Fees  
(Petroleum)  
Appeals  
Tribunal.

(2) A person shall not be appointed under subsection 30 (1) unless he is under the age of seventy years.

(3) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment of a person referred to in subsection (1) or to such a person in his capacity as the Business Franchise Licence Fees (Petroleum) Appeals Tribunal.

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*Business Franchise Licences (Petroleum).*

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

(5) The person so appointed shall be paid such fees and allowances as may from time to time be fixed by the Governor.

14. (1) A licensee who has paid the fee assessed in  
10 respect of his licence or, where he has made an election under section 12 (1), the first instalment of that fee, may within one month after the issue of the licence object to the Commissioner against the assessment of the fee on the ground that the fee  
15 was excessive by reason that it was incorrectly assessed by the Commissioner under section 9 and on no other ground.

Objection  
to and  
appeal  
against  
assessment.

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

(3) If the licensee is not satisfied with the determination of the Commissioner on his objection or if within one  
20 month after the objection was lodged the Commissioner has not given a determination with respect to the objection, the licensee may appeal to the Tribunal against the assessment of the fee on the ground referred to in subsection (1).

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

(a) where the licensee is not satisfied with the determination of the Commissioner on his objection, within  
30 one month after his being notified by the Commissioner of that determination; or

(b) where the Commissioner has not, within one month after the objection was lodged, given a determination with respect to the objection, within two months after the objection was lodged.

(5)



*Business Franchise Licences (Petroleum).*

(5) The Tribunal shall hear and determine the appeal and assess the fee payable and the provisions of section 9 apply to the Tribunal's assessment of that fee in the same way as that section applies to the assessment of fees by the  
5 Commissioner.

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

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

(8) Where on an objection or appeal made under this section, the Commissioner or Tribunal upholds the objection or appeal, in whole or in part—

- 15 (a) the Commissioner shall, where the whole of the fee as originally assessed has been paid, refund to the licensee any amount overpaid; or
- (b) where the licensee in his application for the licence made an election under section 12 (1), each of the remaining instalments payable by the licensee shall  
20 be reduced by an amount that bears to the difference between the fee as originally assessed and the fee as determined on the objection or appeal the same proportion as one bears to the number of those remaining instalments.

25 (9) Section 12 (3) applies to the calculation of reductions under subsection (7) in the same way as it applies to the calculation of instalments under section 12 (2).

15. (1) Where, in the opinion of the Commissioner, the Adjustment fee assessed in respect of any licence was assessed incorrectly, of fee.  
30 the Commissioner may at any time reassess the fee.

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*Business Franchise Licences (Petroleum).*

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(2) Where on a reassessment of a fee under subsection (1), the fee is reduced—

- 5 (a) the Commissioner shall, where the whole of the fee as originally assessed has been paid, refund to the licensee any amount overpaid; or
- 10 (b) then if the licensee in his application for the licence made an election under section 12 (1), each of the remaining instalments payable by the licensee shall be reduced by an amount that bears to the difference between the fee as originally assessed and the fee as reassessed the same proportion as one bears to the number of those remaining instalments.

(3) Where within fourteen days after notice of a reassessment made under subsection (1) is served on the  
15 licensee, the licensee notifies the Commissioner that he elects to pay any amount payable by virtue of the reassessment by instalments—

- 20 (a) an amount that bears to the additional amount payable by the licensee by reason of the reassessment the same proportion as the number of instalments already paid by the licensee under the original assessment bears to the total number of instalments paid or payable by the licensee under the original assessment shall be due and payable within fourteen  
25 days after notice of the reassessment was so served; and
- 30 (b) the remaining part of the additional amount payable by the licensee by reason of the reassessment shall be payable by such number of equal instalments (in this paragraph referred to as "further instalments") as is equal to the number of remaining instalments payable by the licensee under section  
35 12 (2) in respect of the licence fee as originally assessed and those further instalments shall respectively be due and payable at the same time as those remaining instalments.

(4)



*Business Franchise Licences (Petroleum).*

(4) A licensee who has paid the additional amount assessed in respect of his licence under this section or, where he has made an election referred to in subsection (3), the first instalment of that additional amount may object to and  
 5 appeal against that assessment as if that assessment were an assessment to or against which an objection or appeal may be made under section 14 and the provisions of section 14 apply accordingly.

(5) Section 12 (3) applies to the calculation of  
 10 reductions or instalments under subsection (2) or (3) in the same way as it applies to the calculation of instalments under section 12 (2).

**16.** (1) The holder of a licence and any person to whom  
 15 that holder proposes to transfer the licence may, by application made in a form approved by the Commissioner and accompanied by a fee of ten dollars, jointly request the Commissioner to enter in his records the transfer of the licence from the holder to that person on and from such day as may be specified in the application.

(2) The Commissioner shall comply with the  
 20 request or refuse to comply with the request and, where he complies with the request, shall notify the persons making the request that he has made an entry in his records in accordance with the request.

(3) A transfer of a licence in accordance with a  
 25 request made under subsection (1) shall, after the transfer is recorded in accordance with the request, take effect on and from the day specified in the request as the day upon which the licence is transferred.

(4) Any person who has made a request under sub-  
 30 section (1) may without fee inspect in the office of the Commissioner the entry in the records of the Commissioner of the transfer.

(5)

*Business Franchise Licences (Petroleum).*

(5) Where the Commissioner refuses to comply with a request made under subsection (1), either of the persons making the request may appeal against the refusal to the District Court and the provisions of section 8 apply to and in respect of the appeal as if it were an appeal against a refusal to grant a licence.

17. A person who carries on the business of selling petroleum products shall keep such accounts, records, books and documents as may be prescribed containing such particulars as may be prescribed relating to petroleum products and shall preserve each of those accounts, records, books and documents for a period of five years after the last entry was made in it. Records to be kept.

Penalty : \$5,000.

18. (1) The Governor may, under and subject to the Public Service Act, 1902, appoint inspectors for the purposes of this Act. Inspectors.

(2) For the purposes of this Act, an inspector, on production of written evidence of his appointment as an inspector, may at any reasonable time—

(a) enter and remain in any place at which or at which he reasonably suspects the business of selling petroleum products is carried on or which is or which he reasonably suspects is being used for the storage or custody of any accounts, records, books or documents relating to the sale or purchase of petroleum products;

(b) take copies of, or extracts or notes from, any such accounts, records, books or documents; and

(c)



*Business Franchise Licences (Petroleum).*

(c) request any person found in or upon any premises used for the sale or purchase of petroleum products or on which petroleum products are stored for sale—

- 5 (i) to produce any accounts, records, books or documents which relate to or which the inspector reasonably suspects relate to the sale or purchase of petroleum products and which at the time of the request are in the possession or under the control of that person; and
- 10 (ii) to answer any question with respect to any such accounts, records, books or documents or the sale or purchase of any petroleum products.
- 15

(3) A person shall not—

- (a) prevent or attempt to prevent an inspector from exercising any power conferred on him by subsection (2);
- 20 (b) hinder or obstruct any inspector in the exercise of any such power;
- (c) fail to comply with a request of an inspector under subsection (2) (c); or
- 25 (d) furnish to an inspector information which is false or misleading in a material particular.

Penalty : \$500 or imprisonment for a term not exceeding six months, or both, and in the case of an offence under paragraph (c) an additional penalty not exceeding \$100 for every day on which the offence continues.

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

(5)

*Business Franchise Licences (Petroleum).*

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

(6) Where an answer to a question referred to in subsection (2) (c) (ii) or any information whatsoever is given to an inspector by an officer of a corporation within the meaning of the Companies Act, 1961, which is carrying on or has carried on the business of selling petroleum products, the answer and information are, for the purposes of any proceedings against the corporation under any of the provisions of this Act, binding upon and admissible in evidence against the corporation unless it is proved that the answer or information was given in relation to a matter in respect of which the officer had no authority to bind the corporation.

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

(8) Any matter or thing done by an inspector bona fide for the purpose or purported purpose of executing this Act shall not subject the inspector personally to any action, liability, claim or demand.

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

(a) with the consent of the person from whom the information or document was obtained;

(b)



*Business Franchise Licences (Petroleum).*

- (b) in connection with the administration or execution of this Act or the regulations; or
- (c) for the purpose of any legal proceedings arising out of this Act or the regulations or of any report of any such proceedings.

Penalty : \$5,000.

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

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

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

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

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

*Business Franchise Licences (Petroleum).*

(3) The provisions of this section are in addition to and not in derogation of the provisions of section 362 of the Companies Act, 1961.

21. (1) All proceedings for offences against this Act or  
5 the regulations may be taken in a summary manner before a  
stipendiary magistrate sitting in petty sessions. <sup>Proceedings on prosecutions.</sup>

(2) An information for an offence against any provision of this Act may not be laid without the approval in writing of the Minister.

10 (3) Any information laid for an offence against any provision of this Act shall in the absence of evidence to the contrary be deemed to have been laid with the approval in writing of the Minister.

22. (1) An information for an offence against any  
15 provision of this Act or the regulations may be laid in the  
name of the Commissioner by any officer of the Public Service  
employed in the administration or execution of this Act and  
authorised to lay informations on behalf of the Commissioner,  
and any prosecution instituted in the name of the Commis-  
20 sioner shall, in the absence of evidence to the contrary, be  
deemed to have been instituted by his authority. <sup>Institution of prosecutions.</sup>

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

25 23. (1) The Governor may make regulations, not  
inconsistent with this Act, prescribing any matter which is  
necessary or convenient to be prescribed for the carrying out  
or giving effect to this Act and in particular but without  
limiting the generality of the foregoing, the Governor may  
30 make regulations for or with respect to requiring persons, or

persons



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*Business Franchise Licences (Petroleum).*

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persons belonging to classes of persons, specified in the regulations to make returns in such form and manner and containing such information relating to sales or purchases of petroleum products as is indicated by the regulations and to  
 5 furnish the returns to the Commissioner within such time as may be so specified.

(2) The regulations may impose a penalty not exceeding \$1,000 for an offence arising under the regulations.

(3) Regulations may be made so as to apply dif-  
 10 ferently to or in respect of different classes of persons or different classes of petroleum products or according to such other different factors as may be specified in the regulations.

(4) A regulation made for the purpose of excluding any substance from the definition of "petroleum products"  
 15 in section 3 (1) may exclude that substance from that definition in respect of such period as may be specified in the regulation, whether that period is before, after or partly before and partly after the date on which that regulation takes effect.

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1974

United States (Continued)

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# New South Wales



ANNO VICESIMO TERTIO

**ELIZABETHÆ II REGINÆ**

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## Act No. 67, 1974.

An Act to make provision for the issue of licences to be called "Business Franchise Licences (Petroleum)"; to prohibit the sale of petroleum products except by a person who is enfranchised to sell those products by such a licence; and for purposes connected therewith.  
[Assented to, 18th October, 1974.]

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*Business Franchise Licences (Petroleum).*

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**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Business Franchise Licences (Petroleum) Act, 1974".

Commence-  
ment.

2. This Act shall commence upon 1st December, 1974.

Interpre-  
tation.

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

"Assistant Commissioner" means the Assistant Commissioner for Business Franchise Licences (Petroleum) referred to in section 4;

"Commissioner" means the Commissioner for Business Franchise Licences (Petroleum) referred to in section 4;

"licence" means a Business Franchise Licence (Petroleum) in force under this Act;

"petroleum products" means—

- (a) a liquid obtained by refining or processing petroleum;
- (b) a liquid obtained by refining or processing a liquid referred to in paragraph (a);
- (c) any grease obtained by refining or processing petroleum or a liquid referred to in paragraph (a), (b), (d) or (e) or any mixture of any such grease and any other substance;

(d)



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*Business Franchise Licences (Petroleum).*

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(d) a liquid which is the residue after refining or processing—

(i) petroleum;

(ii) any liquid referred to in paragraph (a), (b) or (e); or

(iii) any grease referred to in paragraph (c); or

(e) a liquid which is a mixture of all or any of the liquids referred to in paragraphs (a), (b) and (d) and any other substance,

but does not include liquefied petroleum gas, petroleum bitumen, mineral pitch or mineral tar or such other substances as may be prescribed;

“regulations” means regulations under this Act;

“relevant period” means, in relation to an applicant for a licence, the period of one year ended on the thirtieth day of June that last preceded the date on and from which the licence, if granted, would be in force;

“Tribunal” means the Business Franchise Licence Fees (Petroleum) Appeals Tribunal appointed under section 13;

“value”, in relation to any petroleum product, means the value of that product determined in accordance with section 10.

(2) A reference in this Act to a licensee or the holder of a licence includes a reference to a person to whom a licence is transferred in accordance with section 16.

(3) A reference in this Act to—

(a) a person who sells petroleum products; or

(b)

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*Business Franchise Licences (Petroleum).*

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- (b) a person who carries on the business of selling petroleum products,

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

Commissioner and Assistant Commissioner for Business Franchise Licences (Petroleum).

4. (1) There shall be a Commissioner for Business Franchise Licences (Petroleum) and an Assistant Commissioner for Business Franchise Licences (Petroleum), each of whom shall be appointed under, and shall hold office subject to, the Public Service Act, 1902.

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

- (a) where the Commissioner is absent from office or the office of Commissioner is vacant, all the powers, authorities, duties and functions conferred or imposed on the Commissioner by this Act or the regulations; or
- (b) where the Commissioner has directed the Assistant Commissioner to exercise or perform any of those powers, authorities, duties or functions, such of those powers, authorities, duties or functions as are specified in the direction.

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

Sale of petroleum products by unlicensed persons prohibited.

5. (1) On and after 2nd March, 1975, a person shall not carry on the business of selling petroleum products unless he is the holder of a licence.

Penalty: \$500 for every day on which the person carries on the business.

(2) A licensee the fee for whose licence was fixed under section 9 (10) shall not carry on the business of selling petroleum products at any place unless that place is specified

in



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*Business Franchise Licences (Petroleum).*

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in the licence held by him as the place at which he may carry on that business.

Penalty: \$500 for every day on which the licensee carries on the business.

(3) A licensee shall not sell petroleum products except as authorised by the licence held by him.

Penalty: \$2,500.

(4) Where a licensee the fee for whose licence was assessed under section 9 (10) sells petroleum products to a purchaser who does not, at the time of the sale, produce to that licensee a licence held by that purchaser, the sale shall, for the purposes of subsection (3) and section 6 (3) (i), be deemed to be a sale to a person who is not a licensee.

(5) Nothing in this Act requires any person to hold a licence if—

(a) his sales of petroleum products during any prescribed period consist only of sales of one or more than one petroleum product—

(i) where his sales consist only of sales of one petroleum product, the quantity of which petroleum product; or

(ii) where his sales consist of more than one petroleum product, the quantity of each of which petroleum products,

does not exceed the quantity prescribed in respect of that product; or

(b) the quantity of all petroleum products prescribed for the purpose of this paragraph, sold by him during the prescribed period, does not exceed the quantity prescribed for the purpose of this paragraph.

(6)

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*Business Franchise Licences (Petroleum).*

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(6) A regulation made for the purposes of subsection (5) (b) prescribing petroleum products may prescribe any petroleum products except petroleum products referred to in paragraph (c) of the definition of "petroleum products" in section 3 (1).

**Issue of  
licence.**

**6. (1) The Commissioner shall—**

- (a) upon application made therefor in a form approved by him;
- (b) on receipt of the particulars, if any, required by him to be furnished by the applicant under section 7; and
- (c) upon payment of—
  - (i) the fee assessed by the Commissioner in accordance with section 9; or
  - (ii) where the applicant has made an election under section 12 (1), the first instalment of that fee,

issue to the applicant a Business Franchise Licence (Petroleum) or refuse to issue to the applicant such a licence.

(2) An application for a licence may not be made earlier than two months before the commencement of the period in respect of which the licence is applied for or, except with the approval of the Commissioner, later than one month before the commencement of that period.

**(3) A licence authorises the licensee—**

- (a) where the fee in respect of the licence is assessed under section 9 (2), to carry on the business of selling petroleum products manufactured by him and no other petroleum products and to sell them only to other licensees;
- (b) where the fee in respect of the licence is assessed under section 9 (3), to carry on the business of selling petroleum products manufactured by him

**and**



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*Business Franchise Licences (Petroleum).*

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and no other petroleum products and to sell them to other licensees or to persons who are not licensees;

(c) where the fee in respect of the licence is assessed under section 9 (4), to carry on the business of selling petroleum products manufactured by him and no other petroleum products and to sell them only to persons who are not licensees;

(d) where the fee in respect of the licence is assessed under section 9 (5), to carry on the business of selling petroleum products manufactured by him and petroleum products not manufactured by him and to sell them only to other licensees;

(e) where the fee in respect of the licence is assessed under section 9 (6), to carry on the business of selling petroleum products manufactured by him and petroleum products not manufactured by him and to sell them to other licensees or to persons who are not licensees;

(f) where the fee in respect of the licence is assessed under section 9 (7), to carry on the business of selling petroleum products manufactured by him and petroleum products not manufactured by him and to sell them only to persons who are not licensees;

(g) where the fee in respect of the licence is assessed under section 9 (8), to carry on the business of selling petroleum products not manufactured by him and to sell them only to other licensees;

(h) where the fee in respect of the licence is assessed under section 9 (9), to carry on the business of selling petroleum products not manufactured by him and to sell them to other licensees or to a person who is not a licensee, if, in the case of the sale of any petroleum product prescribed for the purpose of this paragraph to such a person, the quantity of that petroleum product is not less than the quantity of that petroleum product prescribed for that purpose; or

(i)

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*Business Franchise Licences (Petroleum).*

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(i) where the fee in respect of the licence is assessed under section 9 (10), to carry on the business of selling, at the place specified in the licence, petroleum products not manufactured by him and not manufactured at that place and to sell them only to persons who are not licensees, if he may otherwise lawfully do so at that place.

(4) A licence shall be in force on and from the date specified in the licence as the date on which the licence commences—

- (a) until the first day of March next following that date;
- (b) where the applicant for the licence made an election referred to in section 12 (1) in respect of the fee payable in respect of that licence, until any instalment (whether as originally assessed or as reduced under section 14 or 15) of that fee that is due and payable under section 12 (2) is unpaid;
- (c) until any additional amount that is due and payable under section 15 by the holder of the licence is unpaid; or
- (d) until the date endorsed on an instrument of surrender relating to the licence pursuant to subsection (6),

whichever first occurs.

(5) A licensee may deliver to the Commissioner an instrument of surrender, in a form approved by the Commissioner, in respect of the licence held by him together with the licence.

(6) Where a licence is delivered to the Commissioner together with an instrument referred to in subsection (5), the Commissioner shall endorse on the instrument a date, not being earlier than the date specified in the instrument as the date of surrender.

(7) Where the Commissioner refuses to issue a licence he shall, in writing, inform the applicant of the reasons for the refusal and refund to the applicant any fee paid by the applicant and referred to in subsection (1) (c).



*Business Franchise Licences (Petroleum).*

7. (1) The Commissioner may, by instrument in writing, require any person who is carrying on or has carried on the business of selling any petroleum products to furnish, within such period as is specified in the instrument or such further period as the Commissioner may, in writing, allow, to the Commissioner particulars with respect to such sales, purchases or stocks of, or dealings with, petroleum products as are specified in the instrument, being sales, purchases or dealings made, or stocks held, in any year ended on the thirtieth day of June (not being a year after the date of the requirement) in the course of carrying on that business.

Particulars  
of sales  
and  
purchases of  
petroleum  
products.

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

Penalty: \$5,000.

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

Appeal  
against  
refusal  
to grant  
licence.

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

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

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

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*Business Franchise Licences (Petroleum).*

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Fees.

9. (1) A reference in this section to the quantity of a petroleum product non-accountable in respect of a relevant period in relation to which any part of a fee for a licence is assessed is a reference to the quantity, if any, of a petroleum product, being a petroleum product which was sold by that licensee to another licensee, whether or not during that period, and—

- (a) which was resold by that other licensee during that period;
- (b) which, in the opinion of the Commissioner, was wasted or lost by spillage, evaporation, theft or fire by that other licensee during that period; or
- (c) which at the end of that period was, in the opinion of the Commissioner, held for resale by that other licensee,

reduced by the quantity, if any, of that petroleum product which was sold by the firstmentioned licensee to that other licensee and which at the end of the next preceding relevant period was, in the opinion of the Commissioner, held for resale by that other licensee.

(2) Where the applicant for a licence proposes to sell petroleum products manufactured by him and no other petroleum products and to sell them only to licensees, the fee payable for the licence shall be—

- (a) \$500; and
- (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(3) Where the applicant for a licence proposes to sell petroleum products manufactured by him and no other petroleum products and to sell them to licensees and to persons who are not licensees, the fee payable for the licence shall be—

- (a) \$500; and

(b)



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*Business Franchise Licences (Petroleum).*

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(b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(4) Where the applicant for a licence proposes to sell petroleum products manufactured by him and no other petroleum products and to sell them only to persons who are not licensees, the fee payable for the licence shall be—

(a) \$500; and

(b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(5) Where the applicant for a licence proposes to sell petroleum products manufactured by him and petroleum products not manufactured by him and to sell them only to licensees, the fee payable for the licence shall be—

(a) \$500; and

(b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(6) Where the applicant for a licence proposes to sell petroleum products manufactured by him and petroleum products not manufactured by him and to sell them to licensees and to persons who are not licensees, the fee payable for the licence shall be—

(a) \$500; and

(b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(7)

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*Business Franchise Licences (Petroleum).*

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(7) Where the applicant for a licence proposes to sell petroleum products manufactured by him and petroleum products not manufactured by him and to sell them only to persons who are not licensees, the fee payable for the licence shall be—

(a) \$500; and

(b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(8) Where the applicant for a licence proposes to sell petroleum products not manufactured by him and to sell them only to licensees, the fee payable for the licence shall be—

(a) \$100; and

(b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(9) Where the applicant for a licence proposes to sell petroleum products not manufactured by him and to sell them to licensees and to persons who are not licensees, the fee payable for the licence shall be—

(a) \$100; and

(b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(10)



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*Business Franchise Licences (Petroleum).*

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(10) Where the applicant for a licence proposes to sell petroleum products not manufactured by him and to sell them only to persons who are not licensees, the fee payable for the licence shall be—

- (a) \$50; and
- (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period.

(11) Where an application is made for a licence to be in force before 2nd March, 1976, and the applicant carried on the business of selling petroleum products during the whole of the relevant period ended on 30th June, 1974, the fee payable by the applicant in respect of the licence shall, except where subsection (12) is applicable, be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard only to—

- (a) the sales of petroleum products that in the opinion of the Commissioner were made by the applicant during that relevant period; and
- (b) the principles of assessing fees under whichever of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10) the Commissioner considers appropriate,

but where the Commissioner has regard to the principles of assessing fees under subsection (10) he shall not have regard to any such sales of petroleum products other than any such sales of petroleum products that were in his opinion made at the place to be specified in the licence as the place at which the holder of the licence may carry on the business of selling petroleum products.

(12) Where an application is made for a licence and, during the whole or any part of the period of twelve months ended the thirtieth day of June next preceding the

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*Business Franchise Licences (Petroleum).*

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second day of March which next precedes the day on which the licence if granted would commence to be in force, the applicant did not carry on the business of selling petroleum products in the manner which would be authorised by the licence which he is applying for, the fee payable by the applicant in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard only to—

- (a) the sales of petroleum products that in the opinion of the Commissioner would have been made by the applicant had he been carrying on the business of selling petroleum products during that period;
- (b) the principles of assessing fees under whichever of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10) the Commissioner considers appropriate; and
- (c) any fee already paid by the applicant for a licence which has been surrendered by him and but for its surrender would have authorised him to carry on the business of selling petroleum products during any part of the period in respect of which the licence applied for by him would, if granted, be in force,

but where the Commissioner has regard to the principles of assessing fees under subsection (10) he shall not have regard to any such sales of petroleum products other than any such sales of petroleum products that would in his opinion have been made by the applicant had he been carrying on the business of selling petroleum products during that period at the place to be specified in the licence as the place at which the holder of the licence may carry on the business of selling petroleum products.

(13) Where—

- (a) an application is made for a licence;
- (b) during the whole of the relevant period the applicant carried on the business of selling petroleum products; and

(c)



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*Business Franchise Licences (Petroleum).*

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- (c) the Commissioner is of the opinion that he is unable for any reason accurately to assess the fee payable by the applicant under subsection (2), (3), (4), (5), (6), (7), (8), (9) or (10),

the fee payable by the applicant in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard only to—

- (d) the sales of petroleum products that in the opinion of the Commissioner were made by the applicant during that period; and
- (e) the principles of assessing fees under whichever of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10) he considers appropriate,

but where the Commissioner has regard to the principles of assessing fees under subsection (10) he shall not have regard to any such sales of petroleum products other than any such sales of petroleum products that were in his opinion made at the place to be specified in the licence as the place at which the holder of the licence may carry on the business of selling petroleum products.

(14) The provisions of subsections (11), (12) and (13) have effect notwithstanding the provisions of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10).

(15) Where the fee for a licence is assessed under subsection (11), (12) or (13), the Commissioner shall specify in the licence which of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10) he considered appropriate in applying subsection (11) (b), (12) (b) or (13) (e), as the case may be, and for the purposes of sections 5 (3) and 6 (3) the fee shall be deemed to have been assessed under the subsection so specified.

(16)

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*Business Franchise Licences (Petroleum).*

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(16) Notwithstanding any other provision of this section, where a licence is to be in force for a period of less than six months, the amount of the fee that, but for this subsection, would be payable shall be reduced by one-half.

Value of  
petroleum  
products.

**10.** For the purposes of sections 9 and 14 the value of any petroleum product during any period by reference to which a licence fee is assessed shall be deemed to be such amount as is determined by the Minister in respect of that period, having regard to the average retail price at which in the opinion of the Minister that petroleum product was sold in the County of Cumberland during that period.

Reduced  
fees in  
respect of  
petroleum  
products  
delivered in  
certain  
zones.

**11.** (1) Notwithstanding section 9, where during any period by reference to which a licence fee is assessed petroleum products were delivered to any purchaser at a place in any zone fixed by the Minister under subsection (2), the fee payable in respect of the licence shall be reduced by such amount as the Minister thinks fit.

(2) For the purpose of subsection (1) the Minister may by notification in the Gazette declare any part of New South Wales to be a zone.

Payment of  
fees by  
instalments.

**12.** (1) An applicant for a licence which is to be in force for more than three months may, in his application, elect to pay the licence fee payable in respect of that licence by instalments in accordance with this section.

(2) Where the licence—

- (a) is to be in force for a period of more than nine months, the licence fee may be paid by four equal instalments, the first instalment being due and payable as required by section 6 (1) and each of the remaining three instalments being due and payable respectively on the second day of June, the

second



*Business Franchise Licences (Petroleum).*

second day of September and the second day of December next following the date of issue of the licence;

- (b) is to be in force for a period of more than six months but not more than nine months, the licence fee may be paid by three equal instalments, the first instalment being due and payable as required by section 6 (1) and each of the remaining two instalments being due and payable respectively on the second day of September and the second day of December next following the date of issue of the licence; or
- (c) is to be in force for a period of more than three months but not more than six months, the licence fee may be paid by two equal instalments, the first instalment being due and payable as required by section 6 (1) and the remaining instalment being due and payable on the second day of December next following the date of issue of the licence.

(3) For the purpose of calculating the amount of instalments under subsection (2), where the quotient obtained by dividing the licence fee by the appropriate number of instalments results in a remaining fraction of a cent, that fraction shall be ignored.

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

Business  
Franchise  
Licence  
Fees  
(Petroleum)  
Appeals  
Tribunal.

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

(3) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment of a person referred to in subsection (1) or to such a person in his capacity as the Business Franchise Licence Fees (Petroleum) Appeals Tribunal.

(4)

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*Business Franchise Licences (Petroleum).*

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

(5) The person so appointed shall be paid such fees and allowances as may from time to time be fixed by the Governor.

Objection  
to and  
appeal  
against  
assessment.

**14.** (1) A licensee who has paid the fee assessed in respect of his licence or, where he has made an election under section 12 (1), the first instalment of that fee, may within one month after the issue of the licence object to the Commissioner against the assessment of the fee on the ground that the fee was excessive by reason that it was incorrectly assessed by the Commissioner under section 9 and on no other ground.

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

(3) If the licensee is not satisfied with the determination of the Commissioner on his objection or if within one month after the objection was lodged the Commissioner has not given a determination with respect to the objection, the licensee may appeal to the Tribunal against the assessment of the fee on the ground referred to in subsection (1).

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

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

(5)



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*Business Franchise Licences (Petroleum).*

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(5) The Tribunal shall hear and determine the appeal and assess the fee payable and the provisions of section 9 apply to the Tribunal's assessment of that fee in the same way as that section applies to the assessment of fees by the Commissioner.

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

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

(8) Where on an objection or appeal made under this section, the Commissioner or Tribunal upholds the objection or appeal, in whole or in part—

- (a) the Commissioner shall, where the whole of the fee as determined on the objection or appeal has been paid, refund any amount overpaid to the person who paid the whole of the fee as originally assessed or the first instalment of the fee as originally assessed; or
- (b) if in the application for the licence the applicant made an election under section 12 (1), any instalment payable by virtue of that election has not become due and payable and—
  - (i) the applicant is, when the appeal is determined, the holder of the licence, each of the remaining instalments payable in respect of the licence shall be reduced by an amount that bears to the difference between the fee as originally assessed and the fee as determined on the objection or appeal the same proportion as one bears to the number of those remaining instalments; or
  - (ii) during the period between the date on which the licence commenced to be in force and the date on which the objection or appeal was determined the licence was held by two or more persons, the Commissioner shall

refund

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*Business Franchise Licences (Petroleum).*

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refund to that applicant an amount that bears to the difference between the fee as originally assessed and the fee as determined on the objection or appeal the same proportion as the period, in days, for which the licence was in force up to the date on which the objection or appeal was determined bears to the period, in days, from the date on which the licence commenced to be in force until the first day of March next following and each of the remaining instalments payable in respect of the licence shall be reduced by an amount that bears to the balance of that difference the same proportion as one bears to the number of those remaining instalments.

(9) Section 12 (3) applies to the calculation of reductions under subsection (8) in the same way as it applies to the calculation of instalments under section 12 (2).

**Adjustment  
of fee.**

**15.** (1) Where, in the opinion of the Commissioner, the fee assessed in respect of any licence was assessed incorrectly, the Commissioner may at any time reassess the fee in accordance with the principles of assessing fees under whichever of subsections (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13) of section 9 the Commissioner considers appropriate.

(2) Where on a reassessment of a fee under subsection (1) the fee is reduced, the amount overpaid shall be refunded by the Commissioner in accordance with the provisions of subsections (3) and (4).

(3) Where—

- (a) during the whole of the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by one person, the amount to be refunded shall be refunded to that person; or

(b)



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*Business Franchise Licences (Petroleum).*

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- (b) during the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by two or more persons, the amount to be refunded shall be refunded to those persons in proportion to the periods, in days, for which they held the licence.

(4) Notwithstanding subsection (3), in a case where—

- (a) the licence has not ceased to be in force;
- (b) in the application for the licence the applicant made an election under section 12 (1);
- (c) any instalment payable by virtue of that election has not become due and payable; and
- (d) the instalments paid do not exceed the amount of the fee as reassessed,

a refund shall not be made to the holder of the licence in accordance with subsection (3) (a) or (b) but in that case each of the remaining instalments payable in respect of the licence shall be reduced by an amount that bears to the amount that but for this subsection would be required to be refunded to that holder under subsection (3) the same proportion as one bears to the number of those remaining instalments.

(5) Where on a reassessment of a fee under subsection (1) the fee is increased, the additional amount payable by virtue of the reassessment shall be due and payable in accordance with the provisions of subsections (6) and (7).

(6) For the purposes of subsection (5) where—

- (a) during the whole of the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by one person, the additional amount shall be due and payable within fourteen days after notice of the reassessment is served on that person; or

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*Business Franchise Licences (Petroleum).*

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- (b) during the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by two or more persons, the additional amount shall be due and payable, within fourteen days after notice of the reassessment is served on them, by those persons in proportion to the periods, in days, for which they held the licence,

unless, in respect of that additional amount or any part of that additional amount so due and payable by that person or any of those persons, approval has been given under subsection (7) for the payment of that amount or part by instalments.

(7) A person by whom any additional amount or part is payable under subsection (6) may, within fourteen days after the service on him of notice of the reassessment by virtue of which the additional amount or part became so payable by him, apply to the Commissioner for approval to pay that amount or part by instalments, and if the Commissioner approves of the amount or part being so paid, it shall be due and payable by that person by such instalments payable at such times as are specified in the instrument of the Commissioner's approval.

(8) For the purposes of making the apportionment referred to in subsection (3) (b) or subsection (6) (b), where the licence has not ceased to be in force the period, in days, for which the licensee who was the holder of the licence at the time of the reassessment has held the licence together with the unexpired period, in days, of the licence shall be deemed to be the period for which that licensee held the licence.

(9) A person on whom notice of the reassessment of a licence fee is served may, within fourteen days after service of the notice, object to and appeal against the reassessment



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*Business Franchise Licences (Petroleum).*

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as if the reassessment were an assessment to or against which an objection or appeal may be made under section 14 and the provisions of section 14 apply accordingly.

(10) Any amount which is due and payable by any person under subsection (6) or (7) and which is unpaid may be recovered by the Commissioner, as a debt, in any court of competent jurisdiction.

**16.** (1) The holder of a licence and any person to whom that holder proposes to transfer the licence may, by application made in a form approved by the Commissioner and accompanied by a fee of ten dollars, jointly request the Commissioner to enter in his records the transfer of the licence from the holder to that person on and from such day as may be specified in the application. Transfer of licences.

(2) The Commissioner shall comply with the request or refuse to comply with the request and, where he complies with the request, shall notify the persons making the request that he has made an entry in his records in accordance with the request.

(3) A transfer of a licence in accordance with a request made under subsection (1) shall, after the transfer is recorded in accordance with the request, take effect on and from the day specified in the request as the day upon which the licence is transferred.

(4) Any person who has made a request under subsection (1) may without fee inspect in the office of the Commissioner the entry in the records of the Commissioner of the transfer.

(5)

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*Business Franchise Licences (Petroleum).*

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(5) Where the Commissioner refuses to comply with a request made under subsection (1), he shall, in writing, inform the persons making the request of the reasons for the refusal and either of those persons may appeal against the refusal to the District Court and the provisions of section 8 apply to and in respect of the appeal as if it were an appeal against a refusal to grant a licence.

Records to  
be kept.

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

Penalty: \$2,500.

Inspectors.

18. (1) The Governor may, under and subject to the Public Service Act, 1902, appoint inspectors for the purposes of this Act.

(2) For the purposes of this Act, an inspector, on production of written evidence of his appointment as an inspector, may at any reasonable time—

- (a) enter and remain in any place at which or at which he reasonably suspects the business of selling petroleum products is carried on or which is or which he reasonably suspects is being used for the storage or custody of any accounts, records, books or documents relating to the sale or purchase of petroleum products;
- (b) take copies of, or extracts or notes from, any such accounts, records, books or documents; and

(c)



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*Business Franchise Licences (Petroleum).*

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- (c) request any person found in or upon any premises used for the sale or purchase of petroleum products or on which petroleum products are stored for sale—
  - (i) to produce any accounts, records, books or documents which relate to or which the inspector reasonably suspects relate to the sale or purchase of petroleum products and which at the time of the request are in the possession or under the control of that person; and
  - (ii) to answer any question with respect to any such accounts, records, books or documents or the sale or purchase of any petroleum products.

(3) A person shall not—

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

Penalty: \$250 or imprisonment for a term not exceeding three months, or both, and in the case of an offence under paragraph (c) an additional penalty not exceeding \$50 for every day on which the offence continues.

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

(5)

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*Business Franchise Licences (Petroleum).*

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

(6) Where an answer to a question referred to in subsection (2) (c) (ii) or any information whatsoever is given to an inspector by an officer of a corporation within the meaning of the Companies Act, 1961, which is carrying on or has carried on the business of selling petroleum products, the answer and information are, for the purposes of any proceedings against the corporation under any of the provisions of this Act, binding upon and admissible in evidence against the corporation unless it is proved that the answer or information was given in relation to a matter in respect of which the officer had no authority to bind the corporation.

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

(8) Any matter or thing done by an inspector bona fide for the purpose or purported purpose of executing this Act shall not subject the inspector personally to any action, liability, claim or demand.

Disclosure  
of  
informa-  
tion.

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

(a) with the consent of the person from whom the information or document was obtained;

(b)



*Business Franchise Licences (Petroleum).*

- (b) in connection with the administration or execution of this Act or the regulations; or
- (c) for the purpose of any legal proceedings arising out of this Act or the regulations or of any report of any such proceedings.

Penalty: \$2,500.

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

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

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

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

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

(3)

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*Business Franchise Licences (Petroleum).*

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(3) The provisions of this section are in addition to and not in derogation of the provisions of section 362 of the Companies Act, 1961.

Proceedings  
on  
prosecu-  
tions.

**21.** (1) All proceedings for offences against this Act or the regulations may be taken in a summary manner before a stipendiary magistrate sitting in petty sessions.

(2) An information for an offence against any provision of this Act may not be laid without the approval in writing of the Minister.

(3) Any information laid for an offence against any provision of this Act shall in the absence of evidence to the contrary be deemed to have been laid with the approval in writing of the Minister.

Institution  
of  
prosecu-  
tions.

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

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

Regulations.

**23.** (1) The Governor may make regulations, not inconsistent with this Act, prescribing any matter which is necessary or convenient to be prescribed for the carrying out or giving effect to this Act and in particular but without limiting the generality of the foregoing, the Governor may make regulations for or with respect to requiring persons, or

persons



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*Business Franchise Licences (Petroleum).*

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

(2) The regulations may impose a penalty not exceeding \$500 for an offence arising under the regulations.

(3) Regulations may be made so as to apply differently to or in respect of different classes of persons or different classes of petroleum products or according to such other different factors as may be specified in the regulations.

(4) A regulation made for the purpose of excluding any substance from the definition of "petroleum products" in section 3 (1) may exclude that substance from that definition in respect of such period as may be specified in the regulation, whether that period is before, after or partly before and partly after the date on which that regulation takes effect.

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1974

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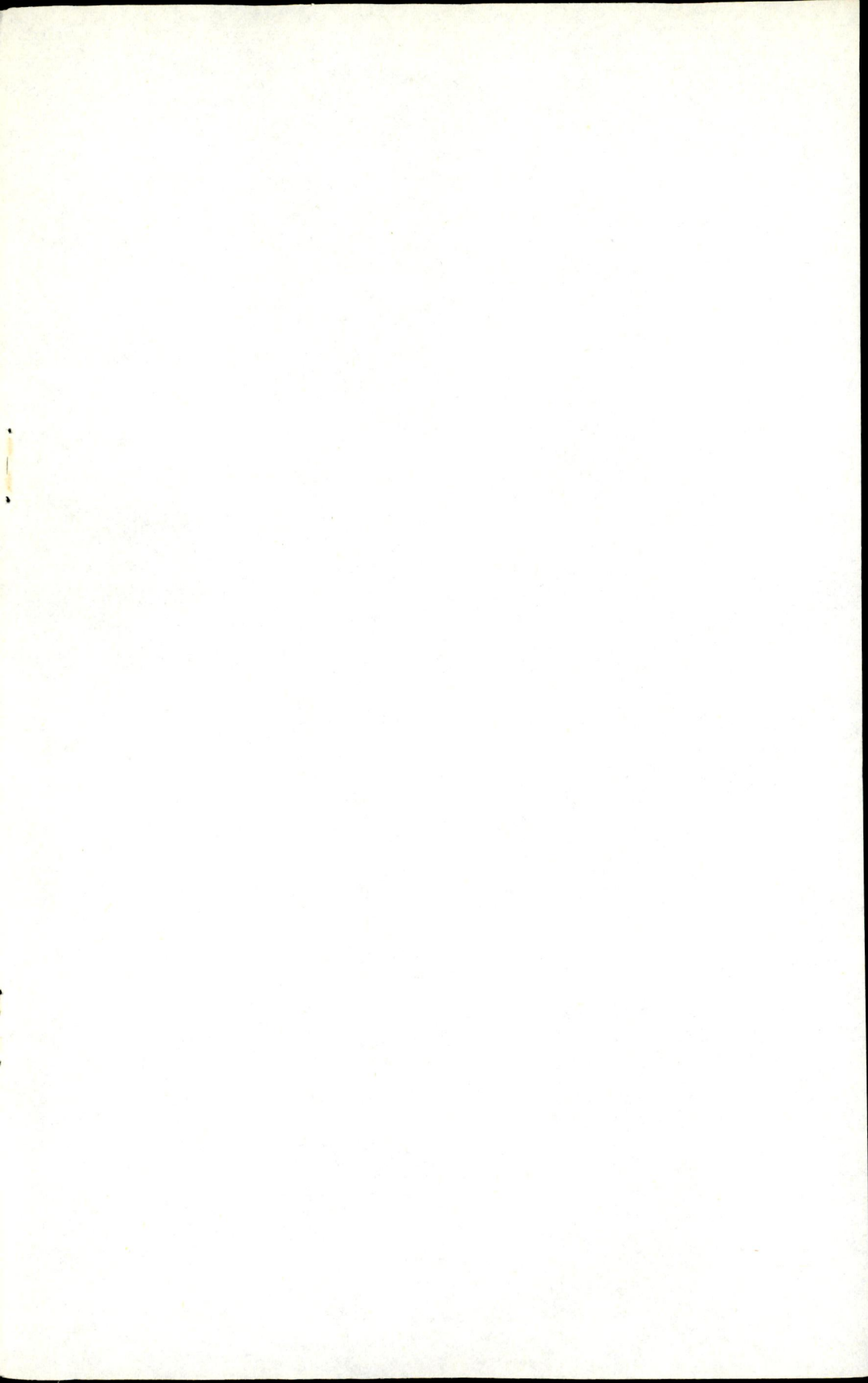
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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

**R. E. WARD,**  
*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,  
Sydney, 9 October, 1974.*

## **New South Wales**



**ANNO VICESIMO TERTIO**

**ELIZABETHÆ II REGINÆ**

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**Act No. 67, 1974.**

An Act to make provision for the issue of licences to be called "Business Franchise Licences (Petroleum)"; to prohibit the sale of petroleum products except by a person who is enfranchised to sell those products by such a licence; and for purposes connected therewith.  
[Assented to, 18th October, 1974.]

**BE**

*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

**J. H. BROWN,**  
*Chairman of Committees of the Legislative Assembly.*

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*Business Franchise Licences (Petroleum).*

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**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.      1. This Act may be cited as the "Business Franchise Licences (Petroleum) Act, 1974".

Commence-      2. This Act shall commence upon 1st December, 1974.  
ment.

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

“Assistant Commissioner” means the Assistant Commissioner for Business Franchise Licences (Petroleum) referred to in section 4;

“Commissioner” means the Commissioner for Business Franchise Licences (Petroleum) referred to in section 4;

“licence” means a Business Franchise Licence (Petroleum) in force under this Act;

“petroleum products” means—

- (a) a liquid obtained by refining or processing petroleum;
- (b) a liquid obtained by refining or processing a liquid referred to in paragraph (a);
- (c) any grease obtained by refining or processing petroleum or a liquid referred to in paragraph (a), (b), (d) or (e) or any mixture of any such grease and any other substance;

(d)



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*Business Franchise Licences (Petroleum).*

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(d) a liquid which is the residue after refining or processing—

(i) petroleum;

(ii) any liquid referred to in paragraph (a), (b) or (e); or

(iii) any grease referred to in paragraph (c); or

(e) a liquid which is a mixture of all or any of the liquids referred to in paragraphs (a), (b) and (d) and any other substance,

but does not include liquefied petroleum gas, petroleum bitumen, mineral pitch or mineral tar or such other substances as may be prescribed;

“regulations” means regulations under this Act;

“relevant period” means, in relation to an applicant for a licence, the period of one year ended on the thirtieth day of June that last preceded the date on and from which the licence, if granted, would be in force;

“Tribunal” means the Business Franchise Licence Fees (Petroleum) Appeals Tribunal appointed under section 13;

“value”, in relation to any petroleum product, means the value of that product determined in accordance with section 10.

(2) A reference in this Act to a licensee or the holder of a licence includes a reference to a person to whom a licence is transferred in accordance with section 16.

(3) A reference in this Act to—

(a) a person who sells petroleum products; or

(b)

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*Business Franchise Licences (Petroleum).*

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- (b) a person who carries on the business of selling petroleum products,

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

Commissioner and Assistant Commissioner for Business Franchise Licences (Petroleum).

4. (1) There shall be a Commissioner for Business Franchise Licences (Petroleum) and an Assistant Commissioner for Business Franchise Licences (Petroleum), each of whom shall be appointed under, and shall hold office subject to, the Public Service Act, 1902.

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

- (a) where the Commissioner is absent from office or the office of Commissioner is vacant, all the powers, authorities, duties and functions conferred or imposed on the Commissioner by this Act or the regulations; or
- (b) where the Commissioner has directed the Assistant Commissioner to exercise or perform any of those powers, authorities, duties or functions, such of those powers, authorities, duties or functions as are specified in the direction.

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

Sale of petroleum products by unlicensed persons prohibited.

5. (1) On and after 2nd March, 1975, a person shall not carry on the business of selling petroleum products unless he is the holder of a licence.

Penalty: \$500 for every day on which the person carries on the business.

(2) A licensee the fee for whose licence was fixed under section 9 (10) shall not carry on the business of selling petroleum products at any place unless that place is specified

in



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*Business Franchise Licences (Petroleum).*

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in the licence held by him as the place at which he may carry on that business.

Penalty: \$500 for every day on which the licensee carries on the business.

(3) A licensee shall not sell petroleum products except as authorised by the licence held by him.

Penalty: \$2,500.

(4) Where a licensee the fee for whose licence was assessed under section 9 (10) sells petroleum products to a purchaser who does not, at the time of the sale, produce to that licensee a licence held by that purchaser, the sale shall, for the purposes of subsection (3) and section 6 (3) (i), be deemed to be a sale to a person who is not a licensee.

(5) Nothing in this Act requires any person to hold a licence if—

- (a) his sales of petroleum products during any prescribed period consist only of sales of one or more than one petroleum product—
  - (i) where his sales consist only of sales of one petroleum product, the quantity of which petroleum product; or
  - (ii) where his sales consist of more than one petroleum product, the quantity of each of which petroleum products, does not exceed the quantity prescribed in respect of that product; or
- (b) the quantity of all petroleum products prescribed for the purpose of this paragraph, sold by him during the prescribed period, does not exceed the quantity prescribed for the purpose of this paragraph.

(6)

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*Business Franchise Licences (Petroleum).*

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(6) A regulation made for the purposes of subsection (5) (b) prescribing petroleum products may prescribe any petroleum products except petroleum products referred to in paragraph (c) of the definition of "petroleum products" in section 3 (1).

**Issue of  
licence.**

**6. (1) The Commissioner shall—**

- (a) upon application made therefor in a form approved by him;
- (b) on receipt of the particulars, if any, required by him to be furnished by the applicant under section 7; and
- (c) upon payment of—
  - (i) the fee assessed by the Commissioner in accordance with section 9; or
  - (ii) where the applicant has made an election under section 12 (1), the first instalment of that fee,

issue to the applicant a Business Franchise Licence (Petroleum) or refuse to issue to the applicant such a licence.

(2) An application for a licence may not be made earlier than two months before the commencement of the period in respect of which the licence is applied for or, except with the approval of the Commissioner, later than one month before the commencement of that period.

(3) A licence authorises the licensee—

- (a) where the fee in respect of the licence is assessed under section 9 (2), to carry on the business of selling petroleum products manufactured by him and no other petroleum products and to sell them only to other licensees;
- (b) where the fee in respect of the licence is assessed under section 9 (3), to carry on the business of selling petroleum products manufactured by him

and



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*Business Franchise Licences (Petroleum).*

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and no other petroleum products and to sell them to other licensees or to persons who are not licensees;

- (c) where the fee in respect of the licence is assessed under section 9 (4), to carry on the business of selling petroleum products manufactured by him and no other petroleum products and to sell them only to persons who are not licensees;
- (d) where the fee in respect of the licence is assessed under section 9 (5), to carry on the business of selling petroleum products manufactured by him and petroleum products not manufactured by him and to sell them only to other licensees;
- (e) where the fee in respect of the licence is assessed under section 9 (6), to carry on the business of selling petroleum products manufactured by him and petroleum products not manufactured by him and to sell them to other licensees or to persons who are not licensees;
- (f) where the fee in respect of the licence is assessed under section 9 (7), to carry on the business of selling petroleum products manufactured by him and petroleum products not manufactured by him and to sell them only to persons who are not licensees;
- (g) where the fee in respect of the licence is assessed under section 9 (8), to carry on the business of selling petroleum products not manufactured by him and to sell them only to other licensees;
- (h) where the fee in respect of the licence is assessed under section 9 (9), to carry on the business of selling petroleum products not manufactured by him and to sell them to other licensees or to a person who is not a licensee, if, in the case of the sale of any petroleum product prescribed for the purpose of this paragraph to such a person, the quantity of that petroleum product is not less than the quantity of that petroleum product prescribed for that purpose; or

(i)



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*Business Franchise Licences (Petroleum).*

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- (i) where the fee in respect of the licence is assessed under section 9 (10), to carry on the business of selling, at the place specified in the licence, petroleum products not manufactured by him and not manufactured at that place and to sell them only to persons who are not licensees, if he may otherwise lawfully do so at that place.

(4) A licence shall be in force on and from the date specified in the licence as the date on which the licence commences—

- (a) until the first day of March next following that date;
- (b) where the applicant for the licence made an election referred to in section 12 (1) in respect of the fee payable in respect of that licence, until any instalment (whether as originally assessed or as reduced under section 14 or 15) of that fee that is due and payable under section 12 (2) is unpaid;
- (c) until any additional amount that is due and payable under section 15 by the holder of the licence is unpaid; or
- (d) until the date endorsed on an instrument of surrender relating to the licence pursuant to subsection (6),

whichever first occurs.

(5) A licensee may deliver to the Commissioner an instrument of surrender, in a form approved by the Commissioner, in respect of the licence held by him together with the licence.

(6) Where a licence is delivered to the Commissioner together with an instrument referred to in subsection (5), the Commissioner shall endorse on the instrument a date, not being earlier than the date specified in the instrument as the date of surrender.

(7) Where the Commissioner refuses to issue a licence he shall, in writing, inform the applicant of the reasons for the refusal and refund to the applicant any fee paid by the applicant and referred to in subsection (1) (c).



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*Business Franchise Licences (Petroleum).*

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7. (1) The Commissioner may, by instrument in writing, require any person who is carrying on or has carried on the business of selling any petroleum products to furnish, within such period as is specified in the instrument or such further period as the Commissioner may, in writing, allow, to the Commissioner particulars with respect to such sales, purchases or stocks of, or dealings with, petroleum products as are specified in the instrument, being sales, purchases or dealings made, or stocks held, in any year ended on the thirtieth day of June (not being a year after the date of the requirement) in the course of carrying on that business.

Particulars  
of sales  
and  
purchases of  
petroleum  
products.

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

Penalty: \$5,000.

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

Appeal  
against  
refusal  
to grant  
licence.

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

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

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

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*Business Franchise Licences (Petroleum).*

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**Fees.**

9. (1) A reference in this section to the quantity of a petroleum product non-accountable in respect of a relevant period in relation to which any part of a fee for a licence is assessed is a reference to the quantity, if any, of a petroleum product, being a petroleum product which was sold by that licensee to another licensee, whether or not during that period, and—

- (a) which was resold by that other licensee during that period;
- (b) which, in the opinion of the Commissioner, was wasted or lost by spillage, evaporation, theft or fire by that other licensee during that period; or
- (c) which at the end of that period was, in the opinion of the Commissioner, held for resale by that other licensee,

reduced by the quantity, if any, of that petroleum product which was sold by the firstmentioned licensee to that other licensee and which at the end of the next preceding relevant period was, in the opinion of the Commissioner, held for resale by that other licensee.

(2) Where the applicant for a licence proposes to sell petroleum products manufactured by him and no other petroleum products and to sell them only to licensees, the fee payable for the licence shall be—

- (a) \$500; and
- (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(3) Where the applicant for a licence proposes to sell petroleum products manufactured by him and no other petroleum products and to sell them to licensees and to persons who are not licensees, the fee payable for the licence shall be—

- (a) \$500; and

(b)



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*Business Franchise Licences (Petroleum).*

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(b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(4) Where the applicant for a licence proposes to sell petroleum products manufactured by him and no other petroleum products and to sell them only to persons who are not licensees, the fee payable for the licence shall be—

(a) \$500; and

(b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(5) Where the applicant for a licence proposes to sell petroleum products manufactured by him and petroleum products not manufactured by him and to sell them only to licensees, the fee payable for the licence shall be—

(a) \$500; and

(b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(6) Where the applicant for a licence proposes to sell petroleum products manufactured by him and petroleum products not manufactured by him and to sell them to licensees and to persons who are not licensees, the fee payable for the licence shall be—

(a) \$500; and

(b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(7)

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*Business Franchise Licences (Petroleum).*

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(7) Where the applicant for a licence proposes to sell petroleum products manufactured by him and petroleum products not manufactured by him and to sell them only to persons who are not licensees, the fee payable for the licence shall be—

- (a) \$500; and
- (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(8) Where the applicant for a licence proposes to sell petroleum products not manufactured by him and to sell them only to licensees, the fee payable for the licence shall be—

- (a) \$100; and
- (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(9) Where the applicant for a licence proposes to sell petroleum products not manufactured by him and to sell them to licensees and to persons who are not licensees, the fee payable for the licence shall be—

- (a) \$100; and
- (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period other than the quantity of a petroleum product non-accountable in respect of that period.

(10)



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*Business Franchise Licences (Petroleum).*

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(10) Where the applicant for a licence proposes to sell petroleum products not manufactured by him and to sell them only to persons who are not licensees, the fee payable for the licence shall be—

- (a) \$50; and
- (b) 10 per centum of the value of the quantity of petroleum products sold by the applicant during the relevant period.

(11) Where an application is made for a licence to be in force before 2nd March, 1976, and the applicant carried on the business of selling petroleum products during the whole of the relevant period ended on 30th June, 1974, the fee payable by the applicant in respect of the licence shall, except where subsection (12) is applicable, be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard only to—

- (a) the sales of petroleum products that in the opinion of the Commissioner were made by the applicant during that relevant period; and
- (b) the principles of assessing fees under whichever of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10) the Commissioner considers appropriate,

but where the Commissioner has regard to the principles of assessing fees under subsection (10) he shall not have regard to any such sales of petroleum products other than any such sales of petroleum products that were in his opinion made at the place to be specified in the licence as the place at which the holder of the licence may carry on the business of selling petroleum products.

(12) Where an application is made for a licence and, during the whole or any part of the period of twelve months ended the thirtieth day of June next preceding the

second

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*Business Franchise Licences (Petroleum).*

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second day of March which next precedes the day on which the licence if granted would commence to be in force, the applicant did not carry on the business of selling petroleum products in the manner which would be authorised by the licence which he is applying for, the fee payable by the applicant in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard only to—

- (a) the sales of petroleum products that in the opinion of the Commissioner would have been made by the applicant had he been carrying on the business of selling petroleum products during that period;
- (b) the principles of assessing fees under whichever of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10) the Commissioner considers appropriate; and
- (c) any fee already paid by the applicant for a licence which has been surrendered by him and but for its surrender would have authorised him to carry on the business of selling petroleum products during any part of the period in respect of which the licence applied for by him would, if granted, be in force,

but where the Commissioner has regard to the principles of assessing fees under subsection (10) he shall not have regard to any such sales of petroleum products other than any such sales of petroleum products that would in his opinion have been made by the applicant had he been carrying on the business of selling petroleum products during that period at the place to be specified in the licence as the place at which the holder of the licence may carry on the business of selling petroleum products.

(13) Where—

- (a) an application is made for a licence;
- (b) during the whole of the relevant period the applicant carried on the business of selling petroleum products; and
- (c)



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*Business Franchise Licences (Petroleum).*

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- (c) the Commissioner is of the opinion that he is unable for any reason accurately to assess the fee payable by the applicant under subsection (2), (3), (4), (5), (6), (7), (8), (9) or (10),

the fee payable by the applicant in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard only to—

- (d) the sales of petroleum products that in the opinion of the Commissioner were made by the applicant during that period; and
- (e) the principles of assessing fees under whichever of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10) he considers appropriate.

but where the Commissioner has regard to the principles of assessing fees under subsection (10) he shall not have regard to any such sales of petroleum products other than any such sales of petroleum products that were in his opinion made at the place to be specified in the licence as the place at which the holder of the licence may carry on the business of selling petroleum products.

- (14) The provisions of subsections (11), (12) and (13) have effect notwithstanding the provisions of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10).

- (15) Where the fee for a licence is assessed under subsection (11), (12) or (13), the Commissioner shall specify in the licence which of subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10) he considered appropriate in applying subsection (11) (b), (12) (b) or (13) (e), as the case may be, and for the purposes of sections 5 (3) and 6 (3) the fee shall be deemed to have been assessed under the subsection so specified.

(16)

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*Business Franchise Licences (Petroleum).*

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(16) Notwithstanding any other provision of this section, where a licence is to be in force for a period of less than six months, the amount of the fee that, but for this subsection, would be payable shall be reduced by one-half.

Value of  
petroleum  
products.

**10.** For the purposes of sections 9 and 14 the value of any petroleum product during any period by reference to which a licence fee is assessed shall be deemed to be such amount as is determined by the Minister in respect of that period, having regard to the average retail price at which in the opinion of the Minister that petroleum product was sold in the County of Cumberland during that period.

Reduced  
fees in  
respect of  
petroleum  
products  
delivered in  
certain  
zones.

**11.** (1) Notwithstanding section 9, where during any period by reference to which a licence fee is assessed petroleum products were delivered to any purchaser at a place in any zone fixed by the Minister under subsection (2), the fee payable in respect of the licence shall be reduced by such amount as the Minister thinks fit.

(2) For the purpose of subsection (1) the Minister may by notification in the Gazette declare any part of New South Wales to be a zone.

Payment of  
fees by  
instalments.

**12.** (1) An applicant for a licence which is to be in force for more than three months may, in his application, elect to pay the licence fee payable in respect of that licence by instalments in accordance with this section.

(2) Where the licence—

- (a) is to be in force for a period of more than nine months, the licence fee may be paid by four equal instalments, the first instalment being due and payable as required by section 6 (1) and each of the remaining three instalments being due and payable respectively on the second day of June, the

second



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second day of September and the second day of December next following the date of issue of the licence;

- (b) is to be in force for a period of more than six months but not more than nine months, the licence fee may be paid by three equal instalments, the first instalment being due and payable as required by section 6 (1) and each of the remaining two instalments being due and payable respectively on the second day of September and the second day of December next following the date of issue of the licence; or
- (c) is to be in force for a period of more than three months but not more than six months, the licence fee may be paid by two equal instalments, the first instalment being due and payable as required by section 6 (1) and the remaining instalment being due and payable on the second day of December next following the date of issue of the licence.

(3) For the purpose of calculating the amount of instalments under subsection (2), where the quotient obtained by dividing the licence fee by the appropriate number of instalments results in a remaining fraction of a cent, that fraction shall be ignored.

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

Business  
Franchise  
Licence  
Fees  
(Petroleum)  
Appeals  
Tribunal.

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

(3) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment of a person referred to in subsection (1) or to such a person in his capacity as the Business Franchise Licence Fees (Petroleum) Appeals Tribunal.

(4)



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*Business Franchise Licences (Petroleum).*

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

(5) The person so appointed shall be paid such fees and allowances as may from time to time be fixed by the Governor.

Objection  
to and  
appeal  
against  
assessment.

**14.** (1) A licensee who has paid the fee assessed in respect of his licence or, where he has made an election under section 12 (1), the first instalment of that fee, may within one month after the issue of the licence object to the Commissioner against the assessment of the fee on the ground that the fee was excessive by reason that it was incorrectly assessed by the Commissioner under section 9 and on no other ground.

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

(3) If the licensee is not satisfied with the determination of the Commissioner on his objection or if within one month after the objection was lodged the Commissioner has not given a determination with respect to the objection, the licensee may appeal to the Tribunal against the assessment of the fee on the ground referred to in subsection (1).

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

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

(5)



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*Business Franchise Licences (Petroleum).*

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(5) The Tribunal shall hear and determine the appeal and assess the fee payable and the provisions of section 9 apply to the Tribunal's assessment of that fee in the same way as that section applies to the assessment of fees by the Commissioner.

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

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

(8) Where on an objection or appeal made under this section, the Commissioner or Tribunal upholds the objection or appeal, in whole or in part—

(a) the Commissioner shall, where the whole of the fee as determined on the objection or appeal has been paid, refund any amount overpaid to the person who paid the whole of the fee as originally assessed or the first instalment of the fee as originally assessed; or

(b) if in the application for the licence the applicant made an election under section 12 (1), any instalment payable by virtue of that election has not become due and payable and—

(i) the applicant is, when the appeal is determined, the holder of the licence, each of the remaining instalments payable in respect of the licence shall be reduced by an amount that bears to the difference between the fee as originally assessed and the fee as determined on the objection or appeal the same proportion as one bears to the number of those remaining instalments; or

(ii) during the period between the date on which the licence commenced to be in force and the date on which the objection or appeal was determined the licence was held by two or more persons, the Commissioner shall

refund



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*Business Franchise Licences (Petroleum).*

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refund to that applicant an amount that bears to the difference between the fee as originally assessed and the fee as determined on the objection or appeal the same proportion as the period, in days, for which the licence was in force up to the date on which the objection or appeal was determined bears to the period, in days, from the date on which the licence commenced to be in force until the first day of March next following and each of the remaining instalments payable in respect of the licence shall be reduced by an amount that bears to the balance of that difference the same proportion as one bears to the number of those remaining instalments.

(9) Section 12 (3) applies to the calculation of reductions under subsection (8) in the same way as it applies to the calculation of instalments under section 12 (2).

**Adjustment  
of fee.**

**15.** (1) Where, in the opinion of the Commissioner, the fee assessed in respect of any licence was assessed incorrectly, the Commissioner may at any time reassess the fee in accordance with the principles of assessing fees under whichever of subsections (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13) of section 9 the Commissioner considers appropriate.

(2) Where on a reassessment of a fee under subsection (1) the fee is reduced, the amount overpaid shall be refunded by the Commissioner in accordance with the provisions of subsections (3) and (4).

(3) Where—

(a) during the whole of the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by one person, the amount to be refunded shall be refunded to that person; or

(b)



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*Business Franchise Licences (Petroleum).*

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- (b) during the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by two or more persons, the amount to be refunded shall be refunded to those persons in proportion to the periods, in days, for which they held the licence.

(4) Notwithstanding subsection (3), in a case where—

- (a) the licence has not ceased to be in force;
- (b) in the application for the licence the applicant made an election under section 12 (1);
- (c) any instalment payable by virtue of that election has not become due and payable; and
- (d) the instalments paid do not exceed the amount of the fee as reassessed,

a refund shall not be made to the holder of the licence in accordance with subsection (3) (a) or (b) but in that case each of the remaining instalments payable in respect of the licence shall be reduced by an amount that bears to the amount that but for this subsection would be required to be refunded to that holder under subsection (3) the same proportion as one bears to the number of those remaining instalments.

(5) Where on a reassessment of a fee under subsection (1) the fee is increased, the additional amount payable by virtue of the reassessment shall be due and payable in accordance with the provisions of subsections (6) and (7).

(6) For the purposes of subsection (5) where—

- (a) during the whole of the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by one person, the additional amount shall be due and payable within fourteen days after notice of the reassessment is served on that person; or

(b)

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*Business Franchise Licences (Petroleum).*

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- (b) during the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by two or more persons, the additional amount shall be due and payable, within fourteen days after notice of the reassessment is served on them, by those persons in proportion to the periods, in days, for which they held the licence,

unless, in respect of that additional amount or any part of that additional amount so due and payable by that person or any of those persons, approval has been given under subsection (7) for the payment of that amount or part by instalments.

(7) A person by whom any additional amount or part is payable under subsection (6) may, within fourteen days after the service on him of notice of the reassessment by virtue of which the additional amount or part became so payable by him, apply to the Commissioner for approval to pay that amount or part by instalments, and if the Commissioner approves of the amount or part being so paid, it shall be due and payable by that person by such instalments payable at such times as are specified in the instrument of the Commissioner's approval.

(8) For the purposes of making the apportionment referred to in subsection (3) (b) or subsection (6) (b), where the licence has not ceased to be in force the period, in days, for which the licensee who was the holder of the licence at the time of the reassessment has held the licence together with the unexpired period, in days, of the licence shall be deemed to be the period for which that licensee held the licence.

(9) A person on whom notice of the reassessment of a licence fee is served may, within fourteen days after service of the notice, object to and appeal against the reassessment

as



*Business Franchise Licences (Petroleum).*

as if the reassessment were an assessment to or against which an objection or appeal may be made under section 14 and the provisions of section 14 apply accordingly.

(10) Any amount which is due and payable by any person under subsection (6) or (7) and which is unpaid may be recovered by the Commissioner, as a debt, in any court of competent jurisdiction.

**16.** (1) The holder of a licence and any person to whom that holder proposes to transfer the licence may, by application made in a form approved by the Commissioner and accompanied by a fee of ten dollars, jointly request the Commissioner to enter in his records the transfer of the licence from the holder to that person on and from such day as may be specified in the application. Transfer of  
licences.

(2) The Commissioner shall comply with the request or refuse to comply with the request and, where he complies with the request, shall notify the persons making the request that he has made an entry in his records in accordance with the request.

(3) A transfer of a licence in accordance with a request made under subsection (1) shall, after the transfer is recorded in accordance with the request, take effect on and from the day specified in the request as the day upon which the licence is transferred.

(4) Any person who has made a request under subsection (1) may without fee inspect in the office of the Commissioner the entry in the records of the Commissioner of the transfer.

(5)



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(5) Where the Commissioner refuses to comply with a request made under subsection (1), he shall, in writing, inform the persons making the request of the reasons for the refusal and either of those persons may appeal against the refusal to the District Court and the provisions of section 8 apply to and in respect of the appeal as if it were an appeal against a refusal to grant a licence.

**Records to  
be kept.**

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

Penalty: \$2,500.

**Inspectors.**

**18.** (1) The Governor may, under and subject to the Public Service Act, 1902, appoint inspectors for the purposes of this Act.

(2) For the purposes of this Act, an inspector, on production of written evidence of his appointment as an inspector, may at any reasonable time—

- (a) enter and remain in any place at which or at which he reasonably suspects the business of selling petroleum products is carried on or which is or which he reasonably suspects is being used for the storage or custody of any accounts, records, books or documents relating to the sale or purchase of petroleum products;
- (b) take copies of, or extracts or notes from, any such accounts, records, books or documents; and

(c)



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- (c) request any person found in or upon any premises used for the sale or purchase of petroleum products or on which petroleum products are stored for sale—
  - (i) to produce any accounts, records, books or documents which relate to or which the inspector reasonably suspects relate to the sale or purchase of petroleum products and which at the time of the request are in the possession or under the control of that person; and
  - (ii) to answer any question with respect to any such accounts, records, books or documents or the sale or purchase of any petroleum products.

(3) A person shall not—

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

Penalty: \$250 or imprisonment for a term not exceeding three months, or both, and in the case of an offence under paragraph (c) an additional penalty not exceeding \$50 for every day on which the offence continues.

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

(5)



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

(6) Where an answer to a question referred to in subsection (2) (c) (ii) or any information whatsoever is given to an inspector by an officer of a corporation within the meaning of the Companies Act, 1961, which is carrying on or has carried on the business of selling petroleum products, the answer and information are, for the purposes of any proceedings against the corporation under any of the provisions of this Act, binding upon and admissible in evidence against the corporation unless it is proved that the answer or information was given in relation to a matter in respect of which the officer had no authority to bind the corporation.

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

(8) Any matter or thing done by an inspector bona fide for the purpose or purported purpose of executing this Act shall not subject the inspector personally to any action, liability, claim or demand.

Disclosure  
of  
informa-  
tion.

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

(a) with the consent of the person from whom the information or document was obtained;

(b)



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- (b) in connection with the administration or execution of this Act or the regulations; or
- (c) for the purpose of any legal proceedings arising out of this Act or the regulations or of any report of any such proceedings.

Penalty: \$2,500.

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

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

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

Service of documents by the Commissioner.

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

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

(3)

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*Business Franchise Licences (Petroleum).*

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(3) The provisions of this section are in addition to and not in derogation of the provisions of section 362 of the Companies Act, 1961.

Proceedings  
on  
prosecu-  
tions.

**21.** (1) All proceedings for offences against this Act or the regulations may be taken in a summary manner before a stipendiary magistrate sitting in petty sessions.

(2) An information for an offence against any provision of this Act may not be laid without the approval in writing of the Minister.

(3) Any information laid for an offence against any provision of this Act shall in the absence of evidence to the contrary be deemed to have been laid with the approval in writing of the Minister.

Institution  
of  
prosecu-  
tions.

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

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

Regulations.

**23.** (1) The Governor may make regulations, not inconsistent with this Act, prescribing any matter which is necessary or convenient to be prescribed for the carrying out or giving effect to this Act and in particular but without limiting the generality of the foregoing, the Governor may make regulations for or with respect to requiring persons, or

persons



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

(2) The regulations may impose a penalty not exceeding \$500 for an offence arising under the regulations.

(3) Regulations may be made so as to apply differently to or in respect of different classes of persons or different classes of petroleum products or according to such other different factors as may be specified in the regulations.

(4) A regulation made for the purpose of excluding any substance from the definition of "petroleum products" in section 3 (1) may exclude that substance from that definition in respect of such period as may be specified in the regulation, whether that period is before, after or partly before and partly after the date on which that regulation takes effect.

*In the name and on behalf of Her Majesty I assent to this Act.*

A. R. CUTLER,  
Governor.

*Government House,  
Sydney, 18th October, 1974.*







