

FIRST PRINT

**BUSINESS FRANCHISE LICENCES (PETROLEUM
PRODUCTS) AMENDMENT BILL 1985**

EXPLANATORY NOTE

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

The object of this Bill is to amend the Business Franchise Licences (Petroleum Products) Act 1982, so as—

- (a) to provide for certain penalty payments in case of late payment of licence fees and to make further provision with respect to assessment and payment of licence fees (Schedule 1); and
- (b) to make further provision with respect to the powers of the Chief Commissioner and inspectors under the Principal Act to obtain information and evidence (Schedule 2),

and for other purposes (Schedule 3).

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with a minor exception, commence on the day on which it receives the Royal Assent.

Clause 3 provides that for the purposes of the proposed Act the Business Franchise Licences (Petroleum Products) Act 1982 may be referred to as the Principal Act.

Clause 4 sets out the Schedules to the proposed Act.

Clause 5 gives effect to the Schedules of Amendments.

Clause 6 gives effect to Schedule 4 (savings, transitional and other provisions).

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Clause 4 sets out the Schedules to the proposed Act.

Clause 5 gives effect to the Schedules of Amendments.

Clause 6 gives effect to Schedule 4 (savings, transitional and other provisions).

Schedule 1 (1) (a)–(c) amends section 19 of the Principal Act, under which the Chief Commissioner of Business Franchise Licences (Petroleum Products) is empowered, where the Chief Commissioner is satisfied that a fee has been incorrectly assessed, to reassess the fee for a licence. The effect of the amendments is to provide that the licensee is obliged to pay not only the amount of the necessary fee adjustment but a further amount (equal to twice the amount of the adjustment) by way of penalty.

Schedule 1 (1) (d) amends section 19 of the Principal Act to enable an amount payable under that section to be paid by instalments.

Schedule 1 (2) amends section 25 of the Principal Act to make it clear that a person objecting to or appealing against a reassessment by the Chief Commissioner under section 19 of that Act must pay the amount of the adjustment (and any associated penalty payment) before proceeding with the objection or appeal.

Schedule 1 (3) (a)–(c) amends section 35 of the Principal Act to provide that where a person has illegally sold petroleum products without a licence, the Chief Commissioner may recover, in addition to the fee that would have been payable by the person if the person had had a licence, an amount by way of penalty equal to twice that amount.

Schedule 1 (3) (d) amends section 35 of the Principal Act to provide for the payment by instalments of amounts payable under that section.

Schedule 1 (3) (e) amends section 35 of the Principal Act to allow the Chief Commissioner, in an appropriate case, to remit the whole or part of an amount payable under that section.

Schedule 1 (4) inserts a new section 35A into the Principal Act, which provides for a sliding scale of interest and penalty payments in cases where licence fees are not paid in due time.

Schedule 2 (1) amends section 13 of the Principal Act to confer on licensing inspectors a right of access to any premises (other than residential premises) in order to examine and deal with records for the purposes of the Principal Act.

Schedule 2 (2) inserts a new section 13A into the Principal Act to provide for the issue of a warrant to search residential premises suspected to contain records or documents to which an inspector requires access for the purposes of the Principal Act.

Schedule 2 (3) amends section 14 of the Principal Act to enable the Chief Commissioner to require from any person information which that person has in relation to trading in petroleum products and other matters relevant to the operation of the Principal Act.

Schedule 2 (4) inserts Schedule 2 into the Principal Act to make provision with respect to search warrants issued under new section 13A (inserted by Schedule 2 (2)).

Schedule 3 (1) omits section 18 (6) of the Principal Act. The effect is to enable regard to be had, for the purpose of calculating licence fees, to sales between licensed wholesalers.

Schedule 3 (2) amends section 21 (1) of the Principal Act to oblige a licensee, upon ceasing to trade, to surrender his or her licence.

Schedule 3 (3) amends section 28 of the Principal Act to require a wholesaler to issue invoices in proper form and to retain, for at least 5 years, a copy of every issued invoice.

Schedule 3 (4) amends section 30 of the Principal Act to increase the penalties for offences under that section.

Schedule 3 (5) amends section 32 of the Principal Act to permit proceedings for an offence against the Principal Act or the regulations to be taken before a Local Court or before the Supreme Court in its summary jurisdiction and to provide that, where proceedings for any such offence are taken before a Local Court, the maximum penalty which the Local Court may impose, in respect of an offence for which the maximum penalty would otherwise exceed \$10,000, is limited to \$10,000.

Schedule 4 enacts certain savings and transitional provisions in connection with the proposed Act and provides for further amendment of the Principal Act in anticipation of the commencement of the Search Warrants Act 1985.

**BUSINESS FRANCHISE LICENCES (PETROLEUM
PRODUCTS) AMENDMENT BILL 1985**

No. , 1985

A BILL FOR

An Act to amend the Business Franchise Licences (Petroleum Products) Act
1982 with respect to the assessment and payment of licence fees and
for other purposes.

Business Franchise Licences (Petroleum Products) Amendment 1985

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

5 Short title

1. This Act may be cited as the "Business Franchise Licences (Petroleum Products) Amendment Act 1985".

Commencement

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

(2) Schedule 2 (3), and section 5 in its application to that provision, shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Principal Act

15 3. The Business Franchise Licences (Petroleum Products) Act 1982 is referred to in this Act as the Principal Act.

Schedules

4. This Act contains the following Schedules:

20 SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO LICENCE FEES

SCHEDULE 2—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO THE POWERS OF THE CHIEF
COMMISSIONER AND INSPECTORS

25 SCHEDULE 3—FURTHER AMENDMENTS TO THE PRINCIPAL
ACT

SCHEDULE 4—SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS

Amendment of Act No. 92, 1982

30 5. The Principal Act is amended in the manner set forth in Schedules
1-3.

Savings, transitional and other provisions

6. Schedule 4 has effect.

SCHEDULE 1

(Sec. 5)

5 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LICENCE FEES

- (1) (a) Section 19 (3)—

After “reassessment” where secondly occurring, insert “, together with an amount by way of penalty equal to twice that amount,”.

- 10 (b) Section 19 (4)—

Omit “the additional amount is payable”, insert instead “amounts are payable by way of additional fee and penalty under this section”.

- (c) Section 19 (4)—

- 15 Omit “additional amount shall”, insert instead “amounts shall, subject to subsection (4A),”.

- (d) Section 19 (4A), (4B)—

After section 19 (4), insert:

- 20 (4A) A person by whom any amounts are payable by way of additional fee and penalty under this section may, within 14 days after the service on the person of notice of the reassessment by virtue of which the amounts became payable, apply to the Chief Commissioner for approval to pay the amounts by instalments, and if the Chief Commissioner approves of the amounts being
25 so paid, the amounts shall be due and payable by the person by such instalments payable at such times as are specified in the instrument of the Chief Commissioner’s approval.

- 30 (4B) The Chief Commissioner may, for reasons which to the Chief Commissioner appear sufficient, remit the whole or part of any amount payable by way of additional fee or penalty under this section.

Business Franchise Licences (Petroleum Products) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LICENCE
FEES—*continued*

(2) Section 25—

After “served”, insert “and who has paid any amount payable under section 19 in respect of the reassessment”.

(3) (a) Section 35 (1)—

5 After “licence” where lastly occurring, insert “, together with an amount by way of penalty equal to twice the amount of the fee assessed for the purposes of this section”.

(b) Section 35 (4)—

10 Omit “assessed under this section or, if varied under section 26, as so varied”, insert instead “which is due and payable under this section”.

(c) Section 35 (5)—

Omit “assessed”, insert instead “payable”.

(d) Section 35 (6A)—

15 After section 35 (6), insert:

(6A) A person by whom any amounts are payable by way of fee and penalty under this section may, within 14 days after the service on the person of notice of the assessment under this section, apply to the Chief Commissioner for approval to pay the amounts by instalments, and if the Chief Commissioner approves of the amounts being so paid, the amounts shall be due and payable by the person by such instalments payable at such times as are specified in the instrument of the Chief Commissioner’s approval.

20

25 (e) Section 35 (8)—

After section 35 (7) insert:

(8) The Chief Commissioner may, for reasons which to the Chief Commissioner appear sufficient, remit the whole or part of any amount payable under this section.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LICENCE
FEES—*continued*

(4) Section 35A—

After section 35, insert:

Penalties for late fees in certain cases

5 35A. (1) If an amount payable under section 19 or 35 (in this section referred to as the “principal amount”) is not paid before the expiration of the time allowed by or under the relevant section, there shall be payable to the Chief Commissioner by the person liable to pay the principal amount—

10 (a) where the principal amount is paid not later than the 14th day after the time so allowed—interest at the rate of 20 per cent per annum of the principal amount, to be computed from the expiration of that time until (and including) the date of payment; or

(b) where—

15 (i) the principal amount is paid later than that day but not later than 1 month after that day—a penalty equal to 10 per cent;

20 (ii) the principal amount is paid later than 1 month after that day but not later than 2 months after that day—a penalty equal to 25 per cent; or

(iii) the principal amount is paid later than 2 months after that day—a penalty equal to 100 per cent,

of the principal amount.

25 (2) The provisions of subsection (1) apply to and in respect of the unpaid balance for the time being of any principal amount in the same way as they apply to and in respect of a principal amount for the time being unpaid.

30 (3) The Chief Commissioner may, in a particular case, for reasons which to the Chief Commissioner appear sufficient, remit the whole or part of any interest or penalty payable under this section.

*Business Franchise Licences (Petroleum Products) Amendment 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LICENCE
FEES—*continued*

(4) Any interest or penalty payable under this section and which is unpaid may be recovered by the Chief Commissioner, as a debt, in any court of competent jurisdiction.

SCHEDULE 2

5

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS

(1) (a) Section 13 (1)–(4d)—

Omit section 13 (2)–(4), insert instead:

10

(1) An inspector shall at all reasonable times have full and free access to all premises, records and documents for any of the purposes of this Act or the regulations and for any such purpose may make extracts from or copies of any such records and documents.

15

(2) Subsection (1) does not authorise an inspector to enter that part of any premises being used for residential purposes without the consent of the occupier of that part of the premises.

20

(3) Without affecting the generality of subsection (1), an inspector may require any bank manager or other person to do any one or more of the following:

25

(a) to produce for inspection by the inspector any records and documents in the custody or under the control of the bank manager or other person, being records and documents relating to, or which the inspector reasonably believes relate to, the carrying on by any specified person of any business of manufacture, distribution, transportation, sale or purchase of petroleum products or to financial transactions in connection with or arising out of the carrying on by a specified person of any such business;

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LICENCE FEES—*continued*

- 5 (b) to produce to the inspector a statement in writing in the English language setting out particulars of any records in the custody or under the control of the bank manager or other person, being records that are not written or that are not written in English, and which relate to, or which the inspector reasonably believes relate to, the carrying on by a specified person of any business referred to in paragraph (a) or to any financial transactions in connection with or arising out of the carrying on by a specified person of any such business;
- 10 (c) to answer any question with respect to any records and documents in the custody or under the control of the bank manager or other person or with respect to any statement produced in accordance with paragraph (b).
- 15 (4) An inspector may make extracts from or copies of any statement produced in accordance with subsection (3) (b).
- (4A) An inspector may—
- 20 (a) for the purpose of making extracts from or copies of any records or documents to which the inspector is entitled to have access or any statements which are produced to the inspector, take away and retain (for such time as may for that purpose be reasonably necessary) any such records, documents or statements; or
- 25 (b) where the inspector reasonably believes that any such records, documents or statements are evidence of an offence against this Act or the regulations, take away and retain those records, documents or statements until proceedings for any such offence have been heard and dealt with.
- 30 (4B) An inspector shall, when taking away any records, documents or statements, tender an appropriate receipt to the person from whose possession they are taken.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LICENCE FEES—*continued*

(4C) A person who—

- 5 (a) denies an inspector access, or hinders or obstructs the access of an inspector, to any premises, records or documents to which the inspector is entitled to have access;
- (b) hinders or obstructs an inspector in the exercise of any of the powers and authorities conferred on an inspector by this section; or
- 10 (c) fails or refuses to comply with any requirement under this section,

is guilty of an offence against this Act.

15 Penalty: \$1,000 or imprisonment for 3 months, or both, and in the case of any offence under paragraph (c) an additional penalty not exceeding \$200 for every day on which the offence continues.

(4D) A person—

- 20 (a) is not guilty of an offence under subsection (4C) (a) unless it is established that the person was informed by the inspector, or otherwise knew, that the inspector was entitled to access to the premises, records or documents, as the case may be;
- 25 (b) is not guilty of an offence under subsection (4C) (c) unless it is established that the inspector warned the person that a failure or refusal to comply with the requirement was an offence;
- 30 (c) is not guilty of an offence under subsection (4C) (c) by reason of a failure or refusal to answer a question put to the person by the inspector, if the person satisfies the court that the person did not know, and could not with reasonable diligence ascertain, the answer to the question; and

Business Franchise Licences (Petroleum Products) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LICENCE FEES—*continued*

(d) is not guilty of an offence under subsection (4C) (a), (b) or (c) unless it is established that the inspector identified himself or herself as an inspector.

(b) Section 13 (5), (6)—

5 Omit “subsection (2) (b) (iii)” wherever occurring, insert instead “subsection (3) (c)”.

(c) Section 13 (6)—

After “distributing,” insert “transporting.”

(d) Section 13 (5)—

10 Omit “subsection (3)”, insert instead “subsection (4C)”.

(e) Section 13 (8)—

After section 13 (7), insert:

15 (8) To the extent to which a member of the police force is not so authorised by any other law, a member of the police force is by this subsection authorised to provide an inspector with such assistance as the inspector may in a particular case require for or in connection with the exercise by the inspector of any of the inspector’s powers and authorities under this section.

(2) Section 13A—

20 After section 13, insert:

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LICENCE
FEES—*continued***Search warrants**

13A. (1) In this section, “authorised justice” means—

(a) a Magistrate; or

(b) a justice of the peace employed in Local Courts Administration, Attorney General’s Department.

(2) An inspector may apply to an authorised justice for a warrant to search any premises (or a part of any premises) being used for residential purposes if the inspector has reasonable grounds to believe that any records or documents are to be found there, being records or documents to which the inspector would have access if they were kept on premises to which the inspector had access.

(3) An authorised justice to whom an application is made under subsection (2) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the inspector to enter and search the premises.

(4) Schedule 2 has effect.

(5) A person shall not, without reasonable cause, obstruct or hinder a person executing a search warrant under this section.

Penalty: \$2,000 or imprisonment for 2 years, or both.

(3) (a) Section 14 (1)–(1B)—

Omit section 14 (1), insert instead:

(1) The Chief Commissioner may by notice in writing require any person—

(a) to furnish to the Chief Commissioner such information, in such form, as the Chief Commissioner requires; or

(b) to attend and give evidence before the Chief Commissioner or before any officer of the Public Service employed in the administration or execution of this Act and authorised by the Chief Commissioner in that behalf,

*Business Franchise Licences (Petroleum Products) Amendment 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LICENCE FEES—*continued*

for the purpose of—

- (c) inquiring into any business of manufacturing, distributing, transporting, selling or purchasing petroleum products;
- 5 (d) inquiring into or ascertaining that person's or any other person's liability or entitlement under any of the provisions of this Act; or
- (e) ascertaining for the purposes of this Act the identity of any person who—
- 10 (i) may have a liability or entitlement under any of the provisions of this Act; or
- (ii) may, by reason of being related to or associated or connected with another person, affect the liability of that other person,

15 and may by the same or a subsequent notice require that person to produce to the Chief Commissioner, at a specified place and at or within a specified time, any records or documents of any specified kind relating to any such information.

20 (1A) The Chief Commissioner may require the information or evidence to be given on oath, and either orally or in writing, for which purpose either the Chief Commissioner or the authorised officer may administer an oath.

(1B) The regulations may prescribe scales of expenses to be allowed to persons whose attendance is required under this section.

25 (b) Section 14 (2)—

Omit "subsection (1)", insert instead "this section".

(c) Section 14 (4)—

After section 14 (3), insert:

*Business Franchise Licences (Petroleum Products) Amendment 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LICENCE
FEES—*continued*

5 (4) A person is not excused from complying with a requirement under this section to supply information on the ground that the information might tend to criminate the person or make the person liable to a penalty, but the information supplied by the person shall not be admissible against the person in any proceedings, civil or criminal, except proceedings under subsection (2) or section 30 or proceedings for an offence in connection with the verification by oath of the information.

(4) Schedule 2—

10 After Schedule 1, insert:

SCHEDULE 2

(Sec. 13A (4))

PROVISIONS RELATING TO SEARCH WARRANTS ISSUED UNDER THIS ACT

Interpretation

15 1. In this Schedule, except in so far as the context or subject-matter otherwise indicates or requires—

“authorised justice” has the same meaning as in section 13A;

“occupier”, in relation to any premises, includes a person in charge of the premises;

20 “occupier’s notice” means an occupier’s notice referred to in clause 4;

“search warrant” means a search warrant issued under section 13A.

Application for warrant

2. (1) An application for a search warrant shall be made in writing.

(2) An authorised justice shall not issue a search warrant unless—

25 (a) the application for the warrant sets out the grounds on which the warrant is being sought;

(b) the applicant has given the authorised justice, either orally or in writing, such further information (if any) as the authorised justice requires concerning the grounds on which the warrant is being sought; and

30 (c) the information given by the applicant is verified before the authorised justice on oath or affirmation or by affidavit.

(3) An authorised justice may administer an oath or affirmation or take an affidavit for the purposes of an application for a search warrant.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LICENCE
FEES—*continued***Record of proceedings before authorised justice**

3. (1) An authorised justice who issues a search warrant shall cause a record to be made of all relevant particulars of the grounds the authorised justice has relied on to justify the issue of the warrant.

5 (2) Any matter that might disclose the identity of a person shall not be recorded pursuant to this clause if the authorised justice is satisfied that the safety of any person might thereby be jeopardised.

Notice to occupier of premises entered pursuant to warrant

10 4. (1) An authorised justice shall prepare and furnish an occupier's notice to the person to whom the authorised justice issues a search warrant.

(2) An occupier's notice furnished in relation to a search warrant—

(a) shall specify—

- 15 (i) the name of the person who applied for the warrant;
 (ii) the name of the authorised justice who issued the warrant;
 (iii) the date and the time when the warrant was issued; and
 (iv) the address or other description of the premises the subject of the warrant; and

(b) shall contain a summary of the nature of the warrant and the powers conferred by the warrant.

20 (3) A person executing a search warrant shall—

- (a) upon entry into or on to the premises or as soon as practicable thereafter, serve the occupier's notice on a person who appears to be an occupier of the premises and to be of or above the age of 18 years; or
 25 (b) if no such person is then present in or on the premises, serve the occupier's notice on the occupier of the premises, either personally or in such other manner as the authorised justice who issued the warrant may direct, as soon as practicable after executing the warrant.

30 (4) Service of an occupier's notice pursuant to subclause (3) (b) may be postponed by the authorised justice who issued the search warrant if that authorised justice is satisfied that there are reasonable grounds for the postponement.

35 (5) Service of an occupier's notice pursuant to subclause (3) (b) may be postponed on more than one occasion, but shall not be postponed on any one occasion for a period exceeding 6 months.

*Business Franchise Licences (Petroleum Products) Amendment 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LICENCE
FEES—*continued***Duty to show warrant**

5. A person executing a search warrant shall produce the warrant for inspection by an occupier of the premises if requested to do so by that occupier.

5 **Use of force to enter premises, etc.**

6. (1) A person authorised to enter premises pursuant to a search warrant may use such force as is reasonably necessary for the purpose of entering the premises.

10 (2) A person authorised to search premises pursuant to a search warrant may, if it is reasonably necessary to do so, break open any receptacle in or upon the premises for the purposes of that search.

Use of assistants to execute warrant

7. A person may execute a search warrant with the aid of such assistants as the person considers necessary.

15 **Execution of warrant by day or night**

8. (1) A search warrant may be executed by day, but shall not be executed by night unless the authorised justice, by the warrant, authorises its execution by night.

(2) In subclause (1)—

20 “by day” means during the period between 6 a.m. and 9 p.m. on any day;

“by night” means during the period between 9 p.m. on any day and 6 a.m. on the following day.

Expiry of warrant

9. A search warrant ceases to have effect—

25 (a) on the expiration of the period of 1 month after its issue;

(b) if it is withdrawn by the authorised justice who issued the warrant; or

(c) when it is executed,

whichever first occurs.

*Business Franchise Licences (Petroleum Products) Amendment 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LICENCE
FEES—*continued***Report to authorised justice on execution of warrant, etc.**

10. (1) The person to whom a search warrant is issued shall furnish a report in writing to the authorised justice who issued the warrant—

- (a) stating whether or not the warrant was executed;
- 5 (b) if the warrant was executed—setting out briefly the result of the execution of the warrant (including a brief description of anything seized);
- (c) if the warrant was not executed—setting out briefly the reasons why the warrant was not executed; and
- 10 (d) stating whether or not an occupier's notice has been served in connection with the execution of the warrant.

(2) A report with respect to a search warrant shall be made within 10 days after the execution of the warrant or the expiry of the warrant, whichever first occurs.

15 **Death, absence, etc., of authorised justice who issued warrant**

11. Where the authorised justice who issued a search warrant has died, has ceased to be an authorised justice or is absent—

- (a) a report required to be furnished to that authorised justice pursuant to clause 10; or
- 20 (b) a power exercisable by that authorised justice under clause 4 (3) (b) or (4),

shall be furnished to, or may be exercised by, as the case may be, any other authorised justice.

Defects in warrants

25 12 A search warrant is not invalidated by any defect, other than a defect which affects the substance of the warrant in a material particular.

Telephone search warrant

13. (1) In this clause—

“telephone” includes radio, telex and any other communication device.

30 (2) A person may make application by telephone for a search warrant.

(3) An authorised justice shall not issue a search warrant upon an application made by telephone unless the authorised justice is satisfied that the warrant is required urgently and that it is not practicable for the application to be made in person.

*Business Franchise Licences (Petroleum Products) Amendment 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LICENCE
FEES—*continued*

5 (4) If it is not practicable for an application for a search warrant to be made by telephone directly to an authorised justice, the application may be transmitted to the authorised justice by another person on behalf of the applicant.

(5) An authorised justice who issues a search warrant upon an application made by telephone shall—

(a) complete and sign the warrant;

10 (b) inform the person who made the application of the terms of the warrant and of the date and the time when it was signed; and

(c) prepare and furnish an occupier's notice to the person who made the application or inform that person of the terms of an occupier's notice.

(6) Where a search warrant is issued upon an application made by telephone, the applicant—

15 (a) shall complete a form of search warrant in the terms indicated by the authorised justice under subclause (5) and write on it the name of that authorised justice and the date and the time when the warrant was signed; and

20 (b) where the applicant was not furnished with an occupier's notice—shall complete a form of occupier's notice in the terms indicated by the authorised justice under subclause (5).

(7) A form of search warrant and a form of occupier's notice completed in accordance with subclause (6) shall be deemed to be a search warrant issued, and an occupier's notice prepared and furnished, in accordance with this Act.

 SCHEDULE 3

(Sec. 5)

FURTHER AMENDMENTS TO THE PRINCIPAL ACT

(1) Section 18 (6)—

Omit the subsection.

SCHEDULE 3—*continued*FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(2) (a) Section 21 (1)—

Omit the subsection, insert instead:

- 5 (1) A holder of a licence who has ceased to carry on the business authorised by the licence shall, within 30 days of ceasing to carry on that business, by notice in writing to the Chief Commissioner, surrender the licence and advise the address of premises where records relating to that business will in future be kept.

Penalty: \$200.

10 (b) Section 21 (2)—

After “if”, insert “surrendered under subsection (1) or if”.

(c) Section 21 (2)—

Omit “additional”.

(3) Section 28 (3)—

15 After section 28 (2), insert:

(3) A holder of a petroleum wholesalers licence or a group petroleum wholesalers licence—

- 20 (a) shall issue, or cause to be issued, an invoice for and in relation to any sale of petroleum products by the holder for the purpose of resale;
- (b) shall number, or cause to be numbered, each such invoice consecutively in order of issue; and
- 25 (c) shall make, or cause to be made, a copy of each such invoice and shall preserve it for a period of 5 years after it was made.

Penalty: \$5,000.

*Business Franchise Licences (Petroleum Products) Amendment 1985*SCHEDULE 3—*continued*FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(4) (a) Section 30—

(a) Omit “\$1,000” wherever occurring, insert instead “\$5,000”.

5

(b) Omit “3 months” wherever occurring, insert instead “12 months”.

(5) Section 32 (1)–(1B)—

Omit section 32 (1), insert instead:

10

(1) Proceedings for an offence against this Act or the regulations may be taken before a Local Court constituted by a Magistrate sitting alone or before the Supreme Court in its summary jurisdiction.

15

(1A) If proceedings for an offence against this Act or the regulations are taken before a Local Court, the maximum penalty that that Court may impose in respect of the offence is, notwithstanding any provision of this Act, \$10,000 (including any daily penalty) or the maximum penalty provided by this Act or the regulations in respect of the offence, whichever is the lesser.

20

(1B) If proceedings against this Act or the regulations are taken before the Supreme Court, that Court may impose a penalty not exceeding the maximum penalty provided by this Act or the regulations in respect of the offence.

SCHEDULE 4

(Sec. 6)

25

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Reassessed licence fees

30

1. Notwithstanding this Act, section 19 of the Principal Act, as in force immediately before the date of assent to this Act, continues to apply to and in respect of a reassessment of which notice was given, before the date of assent to this Act, in accordance with that section, as so in force.

Business Franchise Licences (Petroleum Products) Amendment 1985

SCHEDULE 4—*continued*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

Licensees ceasing to trade

2. Section 21 of the Principal Act, as amended by this Act, does not apply to or in respect of a person who, before the date of assent to this Act, ceased to carry on a business referred to in that section, as so amended.

5 Assessed unpaid fees

3. Notwithstanding this Act, section 35 of the Principal Act, as in force immediately before the date of assent to this Act, continues to apply to and in respect of an assessment under that section of which notice was given, before the date of assent to this Act, in accordance with that section, as so in force.

10 Late fees

4. Section 35A of the Principal Act, as amended by this Act, applies to and in respect of an amount payable under section 19 or 35 of the Principal Act, as in force immediately before the date of assent to this Act, being an amount—

(a) due and payable before the date of assent to this Act; and

15 (b) unpaid, as at that date,

but so applies as if the amount were due and payable on that date.

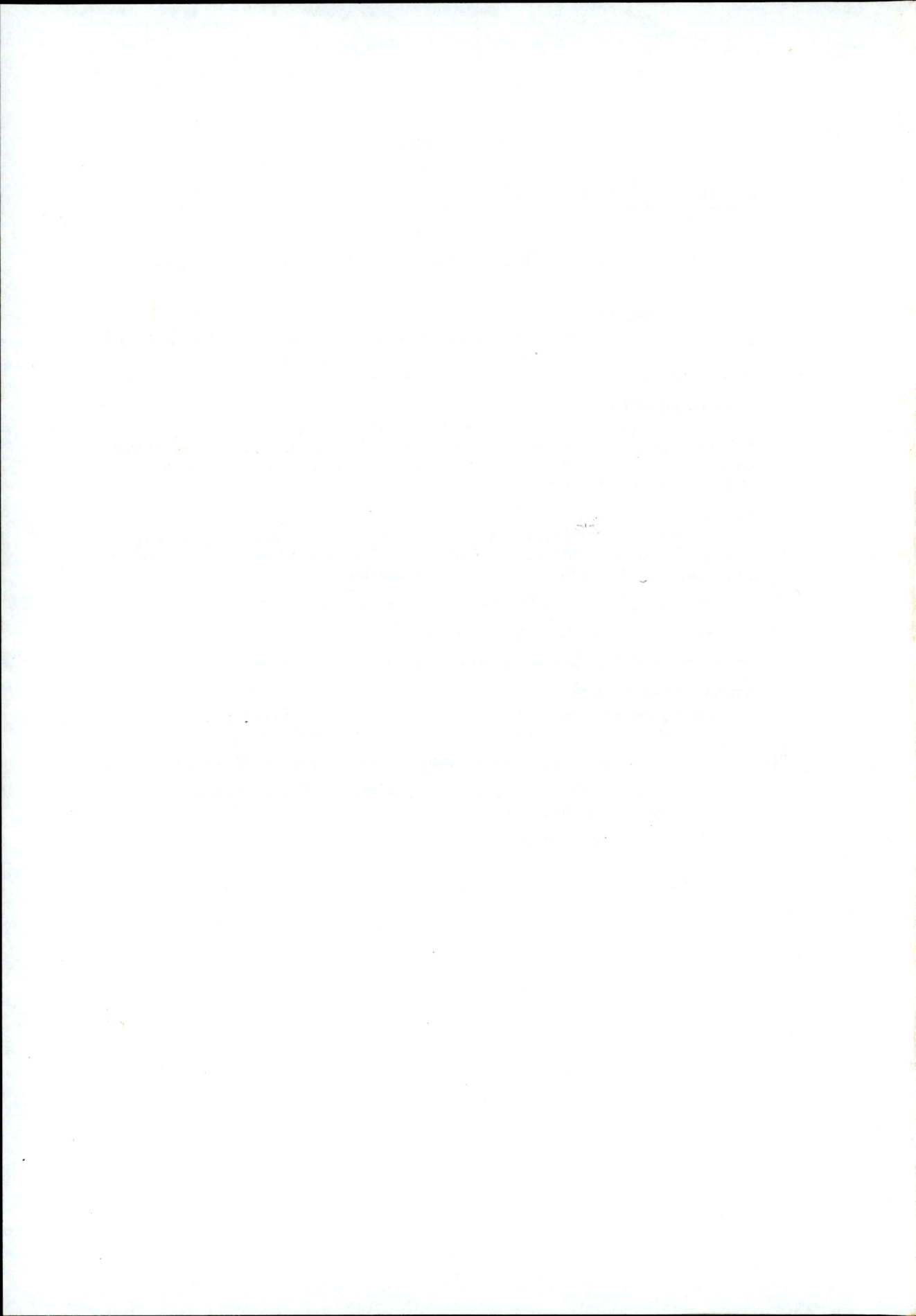
Repeals and amendments

5. On the date of assent to this Act or on the commencement of the Search Warrants Act 1985 (whichever is the later), the Principal Act is amended—

20 (a) by omitting section 13A (4) and by inserting instead the following subsection:

(4) Part III of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(b) by omitting Schedule 2.



**BUSINESS FRANCHISE LICENCES (PETROLEUM PRODUCTS)
AMENDMENT ACT 1985 No. 184**

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

* * * * *

Act No. 184, 1985

An Act to amend the Business Franchise Licences (Petroleum Products) Act 1982 with respect to the assessment and payment of licence fees and for other purposes. [Assented to, 4th December, 1985.]

Business Franchise Licences (Petroleum Products) Amendment 1985

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

Short title

1. This Act may be cited as the "Business Franchise Licences (Petroleum Products) Amendment Act 1985".

Commencement

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

(2) Schedule 2 (3), and section 5 in its application to that provision, shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Principal Act

3. The Business Franchise Licences (Petroleum Products) Act 1982 is referred to in this Act as the Principal Act.

Schedules

4. This Act contains the following Schedules:

SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO LICENCE FEES

SCHEDULE 2—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO THE POWERS OF THE CHIEF
COMMISSIONER AND INSPECTORS

SCHEDULE 3—FURTHER AMENDMENTS TO THE PRINCIPAL
ACT

SCHEDULE 4—SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS

Amendment of Act No. 92, 1982

5. The Principal Act is amended in the manner set forth in Schedules 1-3.

Business Franchise Licences (Petroleum Products) Amendment 1985

Savings, transitional and other provisions

6. Schedule 4 has effect.

SCHEDULE 1

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LICENCE FEES

- (1) (a) Section 19 (3)—

After “reassessment” where secondly occurring, insert “, together with an amount by way of penalty equal to twice that amount,”.

- (b) Section 19 (4)—

Omit “the additional amount is payable”, insert instead “amounts are payable by way of additional fee and penalty under this section”.

- (c) Section 19 (4)—

Omit “additional amount shall”, insert instead “amounts shall, subject to subsection (4A),”.

- (d) Section 19 (4A), (4B)—

After section 19 (4), insert:

(4A) A person by whom any amounts are payable by way of additional fee and penalty under this section may, within 14 days after the service on the person of notice of the reassessment by virtue of which the amounts became payable, apply to the Chief Commissioner for approval to pay the amounts by instalments, and if the Chief Commissioner approves of the amounts being so paid, the amounts shall be due and payable by the person by such instalments payable at such times as are specified in the instrument of the Chief Commissioner’s approval.

(4B) The Chief Commissioner may, for reasons which to the Chief Commissioner appear sufficient, remit the whole or part of any amount payable by way of additional fee or penalty under this section.

Business Franchise Licences (Petroleum Products) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LICENCE
FEES—*continued*

(2) Section 25—

After “served”, insert “and who has paid any amount payable under section 19 in respect of the reassessment”.

(3) (a) Section 35 (1)—

After “licence” where lastly occurring, insert “, together with an amount by way of penalty equal to twice the amount of the fee assessed for the purposes of this section”.

(b) Section 35 (4)—

Omit “assessed under this section or, if varied under section 26, as so varied”, insert instead “which is due and payable under this section”.

(c) Section 35 (5)—

Omit “assessed”, insert instead “payable”.

(d) Section 35 (6A)—

After section 35 (6), insert:

(6A) A person by whom any amounts are payable by way of fee and penalty under this section may, within 14 days after the service on the person of notice of the assessment under this section, apply to the Chief Commissioner for approval to pay the amounts by instalments, and if the Chief Commissioner approves of the amounts being so paid, the amounts shall be due and payable by the person by such instalments payable at such times as are specified in the instrument of the Chief Commissioner’s approval.

(e) Section 35 (8)—

After section 35 (7) insert:

(8) The Chief Commissioner may, for reasons which to the Chief Commissioner appear sufficient, remit the whole or part of any amount payable under this section.

Business Franchise Licences (Petroleum Products) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LICENCE
FEES—*continued*

(4) Section 35A—

After section 35, insert:

Penalties for late fees in certain cases

35A. (1) If an amount payable under section 19 or 35 (in this section referred to as the “principal amount”) is not paid before the expiration of the time allowed by or under the relevant section, there shall be payable to the Chief Commissioner by the person liable to pay the principal amount—

- (a) where the principal amount is paid not later than the 14th day after the time so allowed—interest at the rate of 20 per cent per annum of the principal amount, to be computed from the expiration of that time until (and including) the date of payment; or
- (b) where—
 - (i) the principal amount is paid later than that day but not later than 1 month after that day—a penalty equal to 10 per cent;
 - (ii) the principal amount is paid later than 1 month after that day but not later than 2 months after that day—a penalty equal to 25 per cent; or
 - (iii) the principal amount is paid later than 2 months after that day—a penalty equal to 100 per cent,

of the principal amount.

(2) The provisions of subsection (1) apply to and in respect of the unpaid balance for the time being of any principal amount in the same way as they apply to and in respect of a principal amount for the time being unpaid.

(3) The Chief Commissioner may, in a particular case, for reasons which to the Chief Commissioner appear sufficient, remit the whole or part of any interest or penalty payable under this section.

Business Franchise Licences (Petroleum Products) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LICENCE
FEES—*continued*

(4) Any interest or penalty payable under this section and which is unpaid may be recovered by the Chief Commissioner, as a debt, in any court of competent jurisdiction.

SCHEDULE 2

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS

(1) (a) Section 13 (1)–(4D)—

Omit section 13 (2)–(4), insert instead:

(1) An inspector shall at all reasonable times have full and free access to all premises, records and documents for any of the purposes of this Act or the regulations and for any such purpose may make extracts from or copies of any such records and documents.

(2) Subsection (1) does not authorise an inspector to enter that part of any premises being used for residential purposes without the consent of the occupier of that part of the premises.

(3) Without affecting the generality of subsection (1), an inspector may require any bank manager or other person to do any one or more of the following:

(a) to produce for inspection by the inspector any records and documents in the custody or under the control of the bank manager or other person, being records and documents relating to, or which the inspector reasonably believes relate to, the carrying on by any specified person of any business of manufacture, distribution, transportation, sale or purchase of petroleum products or to financial transactions in connection with or arising out of the carrying on by a specified person of any such business;

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued

- (b) to produce to the inspector a statement in writing in the English language setting out particulars of any records in the custody or under the control of the bank manager or other person, being records that are not written or that are not written in English, and which relate to, or which the inspector reasonably believes relate to, the carrying on by a specified person of any business referred to in paragraph (a) or to any financial transactions in connection with or arising out of the carrying on by a specified person of any such business;
 - (c) to answer any question with respect to any records and documents in the custody or under the control of the bank manager or other person or with respect to any statement produced in accordance with paragraph (b).
- (4) An inspector may make extracts from or copies of any statement produced in accordance with subsection (3) (b).
- (4A) An inspector may—
- (a) for the purpose of making extracts from or copies of any records or documents to which the inspector is entitled to have access or any statements which are produced to the inspector, take away and retain (for such time as may for that purpose be reasonably necessary) any such records, documents or statements; or
 - (b) where the inspector reasonably believes that any such records, documents or statements are evidence of an offence against this Act or the regulations, take away and retain those records, documents or statements until proceedings for any such offence have been heard and dealt with.
- (4B) An inspector shall, when taking away any records, documents or statements, tender an appropriate receipt to the person from whose possession they are taken.

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued

(4C) A person who—

- (a) denies an inspector access, or hinders or obstructs the access of an inspector, to any premises, records or documents to which the inspector is entitled to have access;
- (b) hinders or obstructs an inspector in the exercise of any of the powers and authorities conferred on an inspector by this section; or
- (c) fails or refuses to comply with any requirement under this section,

is guilty of an offence against this Act.

Penalty: \$1,000 or imprisonment for 3 months, or both, and in the case of any offence under paragraph (c) an additional penalty not exceeding \$200 for every day on which the offence continues.

(4D) A person—

- (a) is not guilty of an offence under subsection (4C) (a) unless it is established that the person was informed by the inspector, or otherwise knew, that the inspector was entitled to access to the premises, records or documents, as the case may be;
- (b) is not guilty of an offence under subsection (4C) (c) unless it is established that the inspector warned the person that a failure or refusal to comply with the requirement was an offence;
- (c) is not guilty of an offence under subsection (4C) (c) by reason of a failure or refusal to answer a question put to the person by the inspector, if the person satisfies the court that the person did not know, and could not with reasonable diligence ascertain, the answer to the question; and

Business Franchise Licences (Petroleum Products) Amendment 1985

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued

(d) is not guilty of an offence under subsection (4c) (a), (b) or (c) unless it is established that the inspector identified himself or herself as an inspector.

(b) Section 13 (5), (6)—

Omit “subsection (2) (b) (iii)” wherever occurring, insert instead “subsection (3) (c)”.

(c) Section 13 (6)—

After “distributing,” insert “transporting.”

(d) Section 13 (5)—

Omit “subsection (3)”, insert instead “subsection (4c)”.

(e) Section 13 (8)—

After section 13 (7), insert:

(8) To the extent to which a member of the police force is not so authorised by any other law, a member of the police force is by this subsection authorised to provide an inspector with such assistance as the inspector may in a particular case require for or in connection with the exercise by the inspector of any of the inspector’s powers and authorities under this section.

(2) Section 13A—

After section 13, insert:

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
*continued***Search warrants**

13A. (1) In this section, “authorised justice” means—

- (a) a Magistrate; or
- (b) a justice of the peace employed in Local Courts Administration, Attorney General’s Department.

(2) An inspector may apply to an authorised justice for a warrant to search any premises (or a part of any premises) being used for residential purposes if the inspector has reasonable grounds to believe that any records or documents are to be found there, being records or documents to which the inspector would have access if they were kept on premises to which the inspector had access.

(3) An authorised justice to whom an application is made under subsection (2) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the inspector to enter and search the premises.

(4) Schedule 2 has effect.

(5) A person shall not, without reasonable cause, obstruct or hinder a person executing a search warrant under this section.

Penalty: \$2,000 or imprisonment for 2 years, or both.

(3) (a) Section 14 (1)–(1B)—

Omit section 14 (1), insert instead:

(1) The Chief Commissioner may by notice in writing require any person—

- (a) to furnish to the Chief Commissioner such information, in such form, as the Chief Commissioner requires; or
- (b) to attend and give evidence before the Chief Commissioner or before any officer of the Public Service employed in the administration or execution of this Act and authorised by the Chief Commissioner in that behalf,

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued

for the purpose of—

- (c) inquiring into any business of manufacturing, distributing, transporting, selling or purchasing petroleum products;
- (d) inquiring into or ascertaining that person's or any other person's liability or entitlement under any of the provisions of this Act; or
- (e) ascertaining for the purposes of this Act the identity of any person who—
 - (i) may have a liability or entitlement under any of the provisions of this Act; or
 - (ii) may, by reason of being related to or associated or connected with another person, affect the liability of that other person,

and may by the same or a subsequent notice require that person to produce to the Chief Commissioner, at a specified place and at or within a specified time, any records or documents of any specified kind relating to any such information.

(1A) The Chief Commissioner may require the information or evidence to be given on oath, and either orally or in writing, for which purpose either the Chief Commissioner or the authorised officer may administer an oath.

(1B) The regulations may prescribe scales of expenses to be allowed to persons whose attendance is required under this section.

(b) Section 14 (2)—

Omit “subsection (1)”, insert instead “this section”.

(c) Section 14 (4)—

After section 14 (3), insert:

*Business Franchise Licences (Petroleum Products) Amendment 1985*SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued

(4) A person is not excused from complying with a requirement under this section to supply information on the ground that the information might tend to criminate the person or make the person liable to a penalty, but the information supplied by the person shall not be admissible against the person in any proceedings, civil or criminal, except proceedings under subsection (2) or section 30 or proceedings for an offence in connection with the verification by oath of the information.

(4) Schedule 2—

After Schedule 1, insert:

SCHEDULE 2

(Sec. 13A (4))

PROVISIONS RELATING TO SEARCH WARRANTS ISSUED UNDER
THIS ACT**Interpretation**

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

“authorised justice” has the same meaning as in section 13A;

“occupier”, in relation to any premises, includes a person in charge of the premises;

“occupier’s notice” means an occupier’s notice referred to in clause 4;

“search warrant” means a search warrant issued under section 13A.

Application for warrant

2. (1) An application for a search warrant shall be made in writing.

(2) An authorised justice shall not issue a search warrant unless—

- (a) the application for the warrant sets out the grounds on which the warrant is being sought;
- (b) the applicant has given the authorised justice, either orally or in writing, such further information (if any) as the authorised justice requires concerning the grounds on which the warrant is being sought; and
- (c) the information given by the applicant is verified before the authorised justice on oath or affirmation or by affidavit.

Business Franchise Licences (Petroleum Products) Amendment 1985

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued

(3) An authorised justice may administer an oath or affirmation or take an affidavit for the purposes of an application for a search warrant.

Record of proceedings before authorised justice

3. (1) An authorised justice who issues a search warrant shall cause a record to be made of all relevant particulars of the grounds the authorised justice has relied on to justify the issue of the warrant.

(2) Any matter that might disclose the identity of a person shall not be recorded pursuant to this clause if the authorised justice is satisfied that the safety of any person might thereby be jeopardised.

Notice to occupier of premises entered pursuant to warrant

4. (1) An authorised justice shall prepare and furnish an occupier's notice to the person to whom the authorised justice issues a search warrant.

(2) An occupier's notice furnished in relation to a search warrant—

(a) shall specify—

(i) the name of the person who applied for the warrant;

(ii) the name of the authorised justice who issued the warrant;

(iii) the date and the time when the warrant was issued; and

(iv) the address or other description of the premises the subject of the warrant; and

(b) shall contain a summary of the nature of the warrant and the powers conferred by the warrant.

(3) A person executing a search warrant shall—

(a) upon entry into or on to the premises or as soon as practicable thereafter, serve the occupier's notice on a person who appears to be an occupier of the premises and to be of or above the age of 18 years; or

(b) if no such person is then present in or on the premises, serve the occupier's notice on the occupier of the premises, either personally or in such other manner as the authorised justice who issued the warrant may direct, as soon as practicable after executing the warrant.

Business Franchise Licences (Petroleum Products) Amendment 1985

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued

(4) Service of an occupier's notice pursuant to subclause (3) (b) may be postponed by the authorised justice who issued the search warrant if that authorised justice is satisfied that there are reasonable grounds for the postponement.

(5) Service of an occupier's notice pursuant to subclause (3) (b) may be postponed on more than one occasion, but shall not be postponed on any one occasion for a period exceeding 6 months.

Duty to show warrant

5. A person executing a search warrant shall produce the warrant for inspection by an occupier of the premises if requested to do so by that occupier.

Use of force to enter premises, etc.

6. (1) A person authorised to enter premises pursuant to a search warrant may use such force as is reasonably necessary for the purpose of entering the premises.

(2) A person authorised to search premises pursuant to a search warrant may, if it is reasonably necessary to do so, break open any receptacle in or upon the premises for the purposes of that search.

Use of assistants to execute warrant

7. A person may execute a search warrant with the aid of such assistants as the person considers necessary.

Execution of warrant by day or night

8. (1) A search warrant may be executed by day, but shall not be executed by night unless the authorised justice, by the warrant, authorises its execution by night.

(2) In subclause (1)—

“by day” means during the period between 6 a.m. and 9 p.m. on any day;

“by night” means during the period between 9 p.m. on any day and 6 a.m. on the following day.

Expiry of warrant

9. A search warrant ceases to have effect—

(a) on the expiration of the period of 1 month after its issue;

(b) if it is withdrawn by the authorised justice who issued the warrant; or

*Business Franchise Licences (Petroleum Products) Amendment 1985***SCHEDULE 2—continued****AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued**

(c) when it is executed,
whichever first occurs.

Report to authorised justice on execution of warrant, etc.

10. (1) The person to whom a search warrant is issued shall furnish a report in writing to the authorised justice who issued the warrant—

- (a) stating whether or not the warrant was executed;
- (b) if the warrant was executed—setting out briefly the result of the execution of the warrant (including a brief description of anything seized);
- (c) if the warrant was not executed—setting out briefly the reasons why the warrant was not executed; and
- (d) stating whether or not an occupier's notice has been served in connection with the execution of the warrant.

(2) A report with respect to a search warrant shall be made within 10 days after the execution of the warrant or the expiry of the warrant, whichever first occurs.

Death, absence, etc., of authorised justice who issued warrant

11. Where the authorised justice who issued a search warrant has died, has ceased to be an authorised justice or is absent—

- (a) a report required to be furnished to that authorised justice pursuant to clause 10; or
- (b) a power exercisable by that authorised justice under clause 4 (3) (b) or (4),

shall be furnished to, or may be exercised by, as the case may be, any other authorised justice.

Defects in warrants

12. A search warrant is not invalidated by any defect, other than a defect which affects the substance of the warrant in a material particular.

Telephone search warrant

13. (1) In this clause—

“telephone” includes radio, telex and any other communication device.

(2) A person may make application by telephone for a search warrant.

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued

(3) An authorised justice shall not issue a search warrant upon an application made by telephone unless the authorised justice is satisfied that the warrant is required urgently and that it is not practicable for the application to be made in person.

(4) If it is not practicable for an application for a search warrant to be made by telephone directly to an authorised justice, the application may be transmitted to the authorised justice by another person on behalf of the applicant.

(5) An authorised justice who issues a search warrant upon an application made by telephone shall—

- (a) complete and sign the warrant;
- (b) inform the person who made the application of the terms of the warrant and of the date and the time when it was signed; and
- (c) prepare and furnish an occupier's notice to the person who made the application or inform that person of the terms of an occupier's notice.

(6) Where a search warrant is issued upon an application made by telephone, the applicant—

- (a) shall complete a form of search warrant in the terms indicated by the authorised justice under subclause (5) and write on it the name of that authorised justice and the date and the time when the warrant was signed; and
- (b) where the applicant was not furnished with an occupier's notice—shall complete a form of occupier's notice in the terms indicated by the authorised justice under subclause (5).

(7) A form of search warrant and a form of occupier's notice completed in accordance with subclause (6) shall be deemed to be a search warrant issued, and an occupier's notice prepared and furnished, in accordance with this Act.

Business Franchise Licences (Petroleum Products) Amendment 1985

SCHEDULE 3

(Sec. 5)

FURTHER AMENDMENTS TO THE PRINCIPAL ACT

(1) Section 18 (6)—

Omit the subsection.

(2) (a) Section 21 (1)—

Omit the subsection, insert instead:

(1) A holder of a licence who has ceased to carry on the business authorised by the licence shall, within 30 days of ceasing to carry on that business, by notice in writing to the Chief Commissioner, surrender the licence and advise the address of premises where records relating to that business will in future be kept.

Penalty: \$200.

(b) Section 21 (2)—

After “if”, insert “surrendered under subsection (1) or if”.

(c) Section 21 (2)—

Omit “additional”.

(3) Section 28 (3)—

After section 28 (2), insert:

(3) A holder of a petroleum wholesalers licence or a group petroleum wholesalers licence—

- (a) shall issue, or cause to be issued, an invoice for and in relation to any sale of petroleum products by the holder for the purpose of resale;
- (b) shall number, or cause to be numbered, each such invoice consecutively in order of issue; and
- (c) shall make, or cause to be made, a copy of each such invoice and shall preserve it for a period of 5 years after it was made.

Penalty: \$5,000.

Business Franchise Licences (Petroleum Products) Amendment 1985

SCHEDULE 3—*continued*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(4) (a) Section 30—

(a) Omit “\$1,000” wherever occurring, insert instead “\$5,000”.

(b) Omit “3 months” wherever occurring, insert instead “12 months”.

(5) Section 32 (1)–(1B)—

Omit section 32 (1), insert instead:

(1) Proceedings for an offence against this Act or the regulations may be taken before a Local Court constituted by a Magistrate sitting alone or before the Supreme Court in its summary jurisdiction.

(1A) If proceedings for an offence against this Act or the regulations are taken before a Local Court, the maximum penalty that that Court may impose in respect of the offence is, notwithstanding any provision of this Act, \$10,000 (including any daily penalty) or the maximum penalty provided by this Act or the regulations in respect of the offence, whichever is the lesser.

(1B) If proceedings against this Act or the regulations are taken before the Supreme Court, that Court may impose a penalty not exceeding the maximum penalty provided by this Act or the regulations in respect of the offence.

SCHEDULE 4

(Sec. 6)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Reassessed licence fees

1. Notwithstanding this Act, section 19 of the Principal Act, as in force immediately before the date of assent to this Act, continues to apply to and in respect of a reassessment of which notice was given, before the date of assent to this Act, in accordance with that section, as so in force.

Business Franchise Licences (Petroleum Products) Amendment 1985

SCHEDULE 4—*continued*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

Licensees ceasing to trade

2. Section 21 of the Principal Act, as amended by this Act, does not apply to or in respect of a person who, before the date of assent to this Act, ceased to carry on a business referred to in that section, as so amended.

Assessed unpaid fees

3. Notwithstanding this Act, section 35 of the Principal Act, as in force immediately before the date of assent to this Act, continues to apply to and in respect of an assessment under that section of which notice was given, before the date of assent to this Act, in accordance with that section, as so in force.

Late fees

4. Section 35A of the Principal Act, as amended by this Act, applies to and in respect of an amount payable under section 19 or 35 of the Principal Act, as in force immediately before the date of assent to this Act, being an amount—

- (a) due and payable before the date of assent to this Act; and
- (b) unpaid, as at that date,

but so applies as if the amount were due and payable on that date.

Repeals and amendments

5. On the date of assent to this Act or on the commencement of the Search Warrants Act 1985 (whichever is the later), the Principal Act is amended—

- (a) by omitting section 13A (4) and by inserting instead the following subsection:
 - (4) Part III of the Search Warrants Act 1985 applies to a search warrant issued under this section.
- (b) by omitting Schedule 2.

