

Introduced by Ms W S Machin, MP

First print



New South Wales

# Fair Trading (Petroleum Retail Marketing) Bill 1995

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The objects of this Bill are to prevent the control of petrol filling stations being restricted to a small number of operators and to prohibit oil companies from increasing the number of petrol filling stations they operate.

### Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the day occurring 7 days after the date of assent to the proposed Act.

**Clause 3** defines certain terms for the purposes of the proposed Act. The sites from which and the agreements under which petrol is retailed are already subject to regulation under Commonwealth legislation. For consistency, the terms franchise agreement, marketing premises, prescribed

---

corporation, prescribed oil company and retail site are given the same meaning in the proposed Act as they have in the *Petroleum Retail Marketing Franchise Act 1980* and the *Petroleum Retail Marketing Sites Act 1980* of the Commonwealth.

**Clause 4** makes an agreement illegal if, under the agreement, a person holding a franchise to operate a petrol filling station grants someone else a franchise to operate another such station (the instrument under which franchises are granted is referred to as a **franchise agreement for marketing premises**) and, as a result, a person becomes the franchisee of both petrol filling stations. A franchise agreement relating to more than one such station on different sites is also made illegal.

**Clause 5** makes an agreement illegal if, under the agreement, 50% or more of an operator's interest under a franchise agreement is assigned to a franchisee under another franchise agreement.

Clauses 4 and 5 do not apply to agreements entered into after 31 December 1996.

**Clause 6** explains how the scope of proposed sections 4 and 5 is extended to companies controlled by franchisees, a body corporate related to another body corporate and persons who are associates.

**Clause 7** limits the maximum number of sites at which petrol may be sold by retail (**retail sites**) which may be operated by oil companies prescribed by regulations made under the *Petroleum Retail Marketing Sites Act 1980* of the Commonwealth to the number they operated when the proposed Act commences.

The restriction does not apply after 31 December 1996.

**Clause 8** allows the Minister to except agreements from being made illegal by proposed sections 4 and 5 and to except oil companies from the restriction imposed by proposed clause 7.

**Clause 9** empowers the Industrial Court to grant injunctions for the purpose of ensuring compliance with the proposed Act.

**Clause 10** empowers the Industrial Court to impose, on an oil company that contravenes proposed section 7, a pecuniary penalty of not more than \$100,000 for each site exceeding the maximum number allowed. Such a contravention is not a criminal offence.

**Clause 11** allows the Minister to obtain information necessary in connection with the operation of the proposed Act.

Fair Trading (Petroleum Retail Marketing) Bill 1995

Explanatory note

---

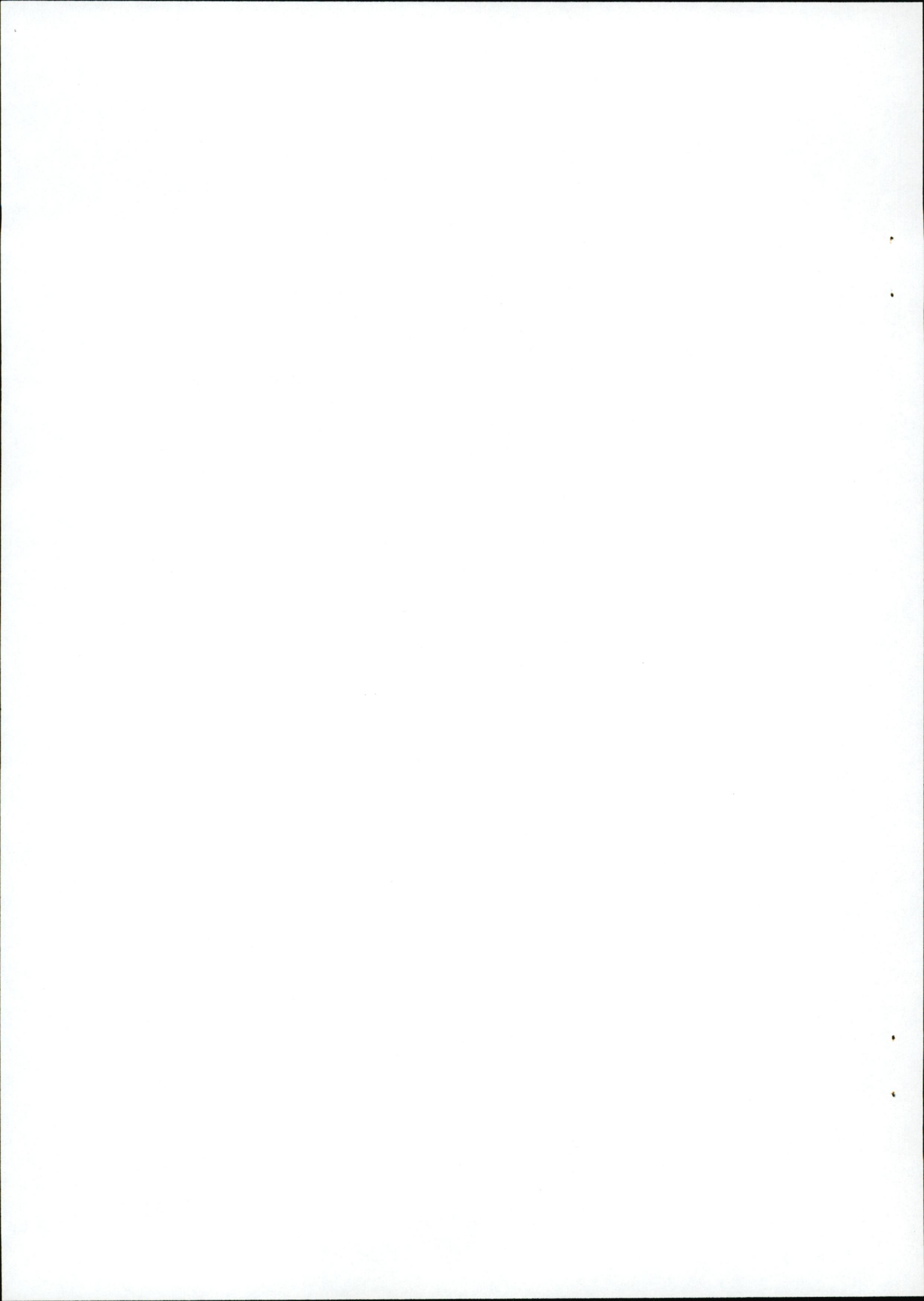
**Clause 12** restricts the use of any information obtained by the Minister under the proposed Act.

**Clause 13** provides for proceedings for offences against the proposed Act to be brought in a Local Court or in the Industrial Court.

**Clause 14** allows an appeal to be made to the Industrial Court against a conviction or penalty of a Local Court and for cases to be stated by a Local Court for the opinion of the Industrial Court.

**Clause 15** provides that regulations may be made for the purposes of the proposed Act.

**Clause 16** provides that the proposed Act binds the Crown.



Introduced by Ms W S Machin, MP

First print



New South Wales

## Fair Trading (Petroleum Retail Marketing) Bill 1995

### Contents

---

	Page
1 Name of Act	2
2 Commencement	2
3 Definitions	2
4 Entry into franchise agreements restricted	2
5 Assignment of franchisee's interest restricted	3
6 Control and association	4
7 Operation of retail sites restricted	4
8 Minister may lift restrictions	4
9 Injunctions	6
10 Pecuniary penalties	7
11 Power to obtain information	8
12 Use of information	9
13 Proceedings for offences	9
14 Appeals from Local Court	9
15 Regulations	10
16 Act binds Crown	10

---





New South Wales

## **Fair Trading (Petroleum Retail Marketing) Bill 1995**

No. , 1995

---

### **A Bill for**

An Act relating to the regulation of retail marketing of motor fuel in New South Wales and for related purposes.

---

**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Fair Trading (Petroleum Retail Marketing) Act 1995*.

**2 Commencement**

5

This Act commences on the day occurring 7 days after the date of assent.

**3 Definitions**

In this Act:

*Franchise Act* means the *Petroleum Retail Marketing Franchise Act 1980* of the Commonwealth. 10

*franchise agreement* means a franchise agreement to which the Franchise Act applies.

*marketing premises* has the same meaning as in the Franchise Act. 15

*prescribed corporation* means a corporation of the kind referred to in paragraph (a), (b) or (c) of the definition of *prescribed corporation* in section 3 (1) of the Sites Act.

*prescribed oil company* has the same meaning as in the Sites Act.

*retail site* has the same meaning as in the Sites Act. 20

*Sites Act* means the *Petroleum Retail Marketing Sites Act 1980* of the Commonwealth.

**4 Entry into franchise agreements restricted**

- (1) A franchise agreement relating to marketing premises situated in the State that is entered into after the commencement of this Act is illegal if, immediately before the agreement is entered into, there is in force another franchise agreement relating to other marketing premises, whether situated in the State or elsewhere, under which: 25



- 
- (a) the franchisor is:
- (i) the franchisor under the first-mentioned agreement, or
  - (ii) a corporation related to that person, and
- (b) the franchisee is any of the following: 5
- (i) the franchisee under the first-mentioned agreement,
  - (ii) a company controlled by that person,
  - (iii) a body corporate related to that person,
  - (iv) an associate of that person,
  - (v) a consortium, joint venture, partnership or other group of persons, however described, being a group in which the person referred to in paragraph (a) (i) holds an interest at least equal to any other interest held in the group. 10
- (2) A franchise agreement relating to marketing premises on two or more sites at least one of which is situated in the State that is entered into after the commencement of this Act is illegal. 15
- (3) This section does not apply to a franchise agreement entered into after 31 December 1996.
- 5 Assignment of franchisee's interest restricted 20**
- (1) An agreement under which a franchisee assigns 50% or more of the franchisee's interest under a franchise agreement (in this Act called an *assignment agreement*) is illegal if:
- (a) the assignment agreement is entered into after the commencement of this Act, and 25
  - (b) the assignee under that agreement is one of the following:
    - (i) a franchisee under another franchise agreement,
    - (ii) a company controlled by that person,
    - (iii) a body corporate related to that person,
    - (iv) an associate of that person, 30
    - (v) a consortium, joint venture, partnership or other group of persons, however described, being a group in which a franchisor holds an interest at least equal to any other interest held in the group.
- (2) This section does not apply to an assignment agreement entered into after 31 December 1996. 35
-

## 6 Control and association

For the purposes of sections 4 and 5:

- (a) a company is controlled by a franchisee if it is a company controlled by a franchisee for the purposes of the Franchise Act, and 5
- (b) bodies corporate are related to each other if they are related to each other for the purposes of the Franchise Act, and
- (c) a person is an associate of another person if the person is an associate of that other person for the purposes of the Franchise Act. 10

## 7 Operation of retail sites restricted

- (1) A prescribed oil company that is not a member of a group of prescribed corporations must not operate in the State a number of retail sites exceeding the number of retail sites operated in the State by that company immediately before the commencement of this Act. 15
- (2) A member of a group of prescribed corporations, one of which is a prescribed oil company, must not operate a retail site in the State if the total number of retail sites (including that site) that would be operated in the State by the members of that group would exceed the total number of retail sites operated in the State by those members immediately before the commencement of this Act. 20
- (3) A prescribed corporation operates a retail site for the purposes of this section if it operates the site for the purposes of the Sites Act. 25
- (4) A prescribed corporation is *a member of a group of prescribed corporations* for the purposes of this section if it is a member of a group of prescribed corporations for the purposes of the Sites Act. 30
- (5) This section does not restrict the number of retail sites operated after 31 December 1996.

## 8 Minister may lift restrictions

- (1) Sections 4, 5 and 7 have effect subject to any order in force under subsection (2). 35

- 
- (2) The Minister may, by order published in the Gazette, declare that:
- (a) section 4 does not apply in relation to a franchise agreement, or
  - (b) section 5 does not apply in relation to an assignment agreement, or 5
  - (c) section 7 does not apply in relation to:
    - (i) a prescribed oil company that is not a member of a group of prescribed corporations, or
    - (ii) the members of a group of prescribed corporations,and such an order has effect according to its tenor. 10
- (3) An order may:
- (a) apply generally or be limited in its application by reference to specified exceptions or factors (for example, it may be made so as to apply for a period of time specified in the order), or 15
  - (b) apply differently according to different factors of a specified kind,
- or may do any combination of those things.
- (4) The Minister may make an order on the application of a franchisee if the franchisee establishes any one or more of the following: 20
- (a) that failure to make the order would result in substantial financial hardship to the franchisee,
  - (b) that the personal circumstances (such as illness or injury) of the franchisee to whom the order would apply, or of any joint franchisee, justify making the order, 25
  - (c) that there is no reasonable likelihood of a sale or assignment of the franchise concerned if section 4, 5 or 7 applied.
- (5) Before making an order, the Minister must take into consideration any guidelines for the granting of exemptions that are prescribed by the regulations. 30
-

---

## 9 Injunctions

- (1) Where, on the application of the Minister or any other person, the Industrial Court is satisfied that:
- (a) a franchisor or franchisee has engaged, or is proposing to engage, in conduct for the purpose of giving effect to a franchise agreement that is illegal by virtue of section 4, or 5
  - (b) an assignor or assignee has engaged, or is proposing to engage, in conduct for the purpose of giving effect to an assignment agreement that is illegal by virtue of section 5, or 10
  - (c) a prescribed corporation has engaged, or is proposing to engage, in conduct that constitutes or would constitute a contravention of section 7,
- the court may grant an injunction in such terms as the court determines to be appropriate. 15
- (2) Where in the opinion of the Industrial Court it is desirable to do so, the court may grant an interim injunction pending determination of an application under subsection (1).
- (3) The Industrial Court may rescind or vary, or suspend the operation of, an injunction granted under subsection (1) or (2). 20
- (4) The power of the Industrial Court to grant an injunction under this section restraining a person from engaging in conduct may be exercised:
- (a) whether or not it appears to the court that the person intends to engage again, or continue to engage, in conduct of that kind, and 25
  - (b) whether or not the person has previously engaged in conduct of that kind, and
  - (c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind. 30
- (5) A person who contravenes an injunction granted under this section is guilty of an offence punishable, on conviction, by a penalty not exceeding: 35

- 
- (a) in the case of a natural person—50 penalty units or imprisonment for 6 months, or both, or
  - (b) in the case of a body corporate—250 penalty units.

### 10 Pecuniary penalties

- (1) If the Industrial Court is satisfied that a prescribed corporation has contravened section 7, the court may, subject to subsection (2), order the corporation to pay to the State such pecuniary penalty as the court determines to be appropriate having regard to all relevant matters, including: 5
  - (a) the circumstances in which the contravention took place, and 10
  - (b) whether the corporation has previously been found by the court in proceedings under this section to have contravened section 7.
- (2) The court must not order the payment of a pecuniary penalty under subsection (1) that exceeds: 15
  - (a) in the case of a contravention of section 7 (1)—\$100,000 for each retail site exceeding the maximum number of retail sites permitted to be operated by the prescribed oil company under that subsection, or 20
  - (b) in the case of a contravention of section 7 (2)—\$100,000 for each retail site exceeding the maximum number of retail sites permitted to be operated by the members of the relevant group of prescribed corporations under that subsection. 25
- (3) A pecuniary penalty ordered to be paid under subsection (1) is a debt due and payable to the Crown by the prescribed corporation.
- (4) Criminal proceedings cannot be brought against a prescribed corporation for a contravention of section 7.
- (5) In this section: 30

**contravention** of a provision includes an attempt to contravene that provision.

---

**11 Power to obtain information**

- (1) Where the Minister believes, on reasonable grounds, that:
- (a) a person is a prescribed person, and
  - (b) that person is capable of furnishing information that the Minister considers to be necessary in connection with the operation of this Act, 5
- the Minister may by notice served on that person, require the person to furnish to the Minister, within the time and in the manner specified in the notice, such information as is specified in the notice. 10
- (2) A person must not:
- (a) without reasonable excuse, fail to comply with a notice under subsection (1), or
  - (b) in purported compliance with such a notice, knowingly furnish information that is false or misleading in a material particular. 15
- Maximum penalty:
- (a) in the case of a natural person—50 penalty units or imprisonment for 6 months, or both, or
  - (b) in the case of a body corporate—250 penalty units. 20
- (3) In this section:
- motor fuel*** means any fuel to be used in propelling road vehicles, other than diesel fuel or liquefied gas.
- prescribed person*** means:
- (a) a person, whether within or outside the State, who supplies motor fuel in the State, or 25
  - (b) a person, whether within or outside the State, who is a party to an agreement, arrangement or understanding to which this Act may apply.
- supply*** means to supply (including re-supply), or to offer to supply, by way of sale (whether by wholesale or by retail) or exchange. 30

---

**12 Use of information**

- (1) Information furnished to the Minister by a person in accordance with a requirement under section 11 (1) must not, without reasonable excuse, be used otherwise than in connection with the operation of this Act. 5
- (2) A person who contravenes subsection (1) is guilty of an offence punishable, on conviction, by a penalty not exceeding:
  - (a) in the case of a natural person—50 penalty units or imprisonment for 6 months, or both, or
  - (b) in the case of a body corporate—250 penalty units. 10
- (3) Subsection (1) does not apply to the communication of information, or the production of a document, to a court for the purposes of proceedings for an alleged offence against section 11 (2) (a) or (b).

**13 Proceedings for offences** 15

- (1) Proceedings for an offence against this Act are to be dealt with summarily:
  - (a) before a Local Court constituted by a Magistrate sitting alone, or
  - (b) before the Industrial Court. 20
- (2) The maximum penalty that may be imposed in those proceedings by a Local Court is a monetary penalty of 100 penalty units or the maximum monetary penalty provided in respect of the offence, whichever is the lesser.
- (3) The maximum penalty that may be imposed in those proceedings by the Industrial Court is the maximum penalty provided in respect of the offence. 25
- (4) Any such proceedings may be commenced not later than 12 months after the offence was alleged to be committed.

**14 Appeals from Local Court** 30

- (1) An appeal lies to the Industrial Court against any conviction or penalty imposed by the Local Court for an offence against this Act.
- (2) On the application of a party to any proceedings authorised by this Act to be brought before it, a Local Court may state a case for the opinion of the Industrial Court. 35

- (3) The provisions of the *Justices Act 1902* that relate to appeals to the District Court and to the stating of cases by justices for the opinion of the Supreme Court, the decisions of those Courts on those matters and the carrying out of any such decision apply, subject to the regulations under this Act, to appeals to, and cases stated for the opinion of, the Industrial Court. 5
- (4) No other proceedings in the nature of an appeal or for prohibition may be taken in respect of proceedings to which this section applies.

**15 Regulations** 10

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**16 Act binds Crown** 15

This Act binds the Crown in right of New South Wales and, as far as the legislative power of Parliament permits, in all its other capacities.