

Western Australia

Petroleum Legislation Amendment Act 2001

As at 13 Jul 2001

No. 11 of 2001

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Petroleum Legislation Amendment Act 2001

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Western Australia

Petroleum Legislation Amendment Act 2001

No. 11 of 2001

An Act to amend the *Petroleum Retailers Rights and Liabilities Act 1982* and the *Petroleum Products Pricing Act 1983* and for related purposes.

[Assented to 13 July 2001]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Petroleum Legislation Amendment Act 2001*.

2. Commencement

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) The day fixed under subsection (1) for section 20 may be different from the day fixed for the other provisions.

**Part 2 — *Petroleum Retailers Rights and Liabilities*
Act 1982**

3. The Act amended

The amendments in this Part are to the *Petroleum Retailers Rights and Liabilities Act 1982**.

[* *Act No. 105 of 1982.*

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 338.]

4. Long title amended

The long title is amended by deleting “Persons occupying Land for the purpose of” and inserting instead the following —

“ **certain persons** ”.

5. Section 3 amended

Section 3(1) is amended as follows:

- (a) by deleting the definition of “dispensing equipment” and inserting instead the following definition —

“

“**dispensing equipment**” means —

- (a) in relation to petrol or diesel fuel, a pump that transfers motor fuel from any bulk storage into the part of a road vehicle designed to hold that kind of motor fuel for use in the propulsion of that vehicle;
- (b) in relation to LPG fuel, a device that transfers LPG fuel from any bulk storage into the part of a road vehicle designed to hold LPG fuel for use in the propulsion of that vehicle;

”;

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- (b) by deleting the definition of “franchise agreement”;
- (c) by deleting the definition of “landlord” and inserting instead the following definition —

“

“landlord” means, in relation to a site at which the retailer is a tenant, the person who has granted to the retailer the right to occupy the site;

”;

- (d) in the definition of “motor fuel”, by inserting before “petrol” the following —

“ LPG (liquefied petroleum gas), ”;

- (e) by deleting the definition of “primary supplier” and inserting instead the following definition —

“

“primary supplier”, in relation to a particular kind and, where applicable, grade of motor fuel, means the person, if any, from whom the retailer would, but for this Act, be obliged to purchase more than 50% of that kind and, where applicable, grade of motor fuel for the site concerned;

”;

- (f) by inserting, in its appropriate alphabetical position, the following definition —

“

“retailer” means a person who sells motor fuel by retail at a site;

”;

- (g) by deleting the definition of “tenant” and inserting instead the following definition —

“

“tenant” means, in relation to a site, a retailer whose right to occupy the site at which motor fuel is sold

is not as the owner of the site but derives through another person.

”;

- (h) by deleting the definition of “underground storage” and inserting instead, in its appropriate alphabetical position, the following definition —

“

“bulk storage” means a storage tank or a number of storage tanks for motor fuel installed at a site;

”.

6. Section 3A inserted

After section 3 the following section is inserted —

“

3A. Contracts not terminated or breached

Nothing in this Act, or done under this Act, causes an agreement to be terminated or amounts to a breach of contract.

”.

7. Section 4 amended

- (1) Section 4(1) is repealed and the following subsections are inserted instead —

“

- (1) A retailer at a site may —
- (a) purchase motor fuel, for resale at the site, from a supplier other than the primary supplier for that kind and, where applicable, grade of motor fuel for that site; and
 - (b) if, under paragraph (a) or otherwise, the retailer is lawfully able to purchase motor fuel for resale at the site from a supplier other than the

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primary supplier for that kind and, where applicable, grade of motor fuel for that site —

- (i) use, for the storage of that motor fuel, any bulk storage at the site that is suitable; and
 - (ii) use, for the dispensing of that motor fuel, any dispensing equipment on the site that is suitable.
- (1a) Subsection (1) applies subject to this section but, except as stated in subsection (1b), despite —
- (a) any Act or law affecting the contractual relationship between a landlord and a tenant; or
 - (b) any agreement to the contrary, whether made between the primary supplier and the retailer or not.
- (1b) Subsection (1)(a) does not apply if a purchase under that paragraph would be contrary to an agreement that was entered into before 10 February 2001.
- (1c) An agreement resulting from the modification, continuation, or renewal of an agreement entered into before 10 February 2001 is to be considered, when applying subsection (1b), to have been entered into on the day on which it was most recently modified, continued, or renewed, but —
- (a) a modification is not to be taken into consideration if it had no necessary connection with the duration of the agreement; and
 - (b) a modification, continuation, or renewal is not to be taken into consideration if the retailer was the only party who had a choice about whether the modification, continuation, or renewal would be made.

- (1d) Nothing in this section limits any right that the retailer may, independently of this section, have to purchase motor fuel, for resale at the site, from a supplier other than the primary supplier for that kind and, where applicable, grade of motor fuel for that site. ”.
- (2) Section 4(2) is repealed and the following subsection is inserted instead —
- “
- (2) A right conferred on the retailer by subsection (1) is not exercisable until 7 days after notice in writing of the intention to exercise it has been given —
- (a) if it is a right conferred by subsection (1)(a), to the retailer’s primary supplier, if any, for the kind and, where applicable, grade of motor fuel concerned;
 - (b) if it is a right conferred by subsection (1)(b), to the retailer’s landlord, if the retailer is a tenant, and to the retailer’s primary supplier, if any, for the kind and, where applicable, grade of motor fuel concerned.
- ”.
- (3) Section 4(3)(a) is amended by inserting before “grade” the following —
- “ , where applicable, ”.
- (4) Section 4(3)(b)(i) and (ii) are each amended as follows:
- (a) by inserting after “purchases motor fuel” the following —
“ of a particular kind and, where applicable, grade ”;

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- (b) by inserting after “other than his primary supplier” the following —

“

for that kind and, where applicable,
grade of motor fuel

”;

- (c) by deleting “each kind or grade from” and inserting instead the following —

“ that kind and, where applicable, grade from ”.

- (5) Section 4(3)(b)(ii) is amended by deleting “each kind or grade as” and inserting instead the following —

“ that kind and, where applicable, grade that ”.

- (6) Section 4(3)(c) is amended by deleting “does not display” and inserting instead the following —

“

for the kind and, where applicable, grade of
fuel dispensed does not, and any bulk storage
on the site that is not underground and is used
to store motor fuel other than motor fuel
supplied by the primary supplier for the kind
and, where applicable, grade of fuel stored does
not, display

”.

- (7) Section 4(3)(h) is amended by deleting “petrol and diesel fuel” and inserting instead the following —

“

different kinds or grades of motor fuel, but may contain
a mixture of different brands of motor fuel

”.

- (8) Section 4(3)(i) is amended by deleting “that”.
- (9) At the foot of section 4(3), the following is inserted —
“ Penalty: \$20 000. ”.
- (10) After section 4(3) the following subsection is inserted —
“
(3a) For the purposes of deciding whether a retailer has, as required by subsection (3)(a), ensured, so far as is practicable, that motor fuel that the retailer is obliged to purchase from the primary supplier is available for sale at the site, the lack of availability of storage is not relevant if more than one kind or, where applicable, grade of motor fuel is being stored, under subsection (1)(b)(i), in bulk storage provided at the site for the storage of motor fuel purchased from the primary supplier.
”.
- (11) Section 4(4) is repealed and the following subsection is inserted instead —
“
(4) Subsection (3)(b) does not apply for a particular kind or grade of motor fuel in any 6 month period if —
(a) the primary supplier has not, as reasonably requested by the retailer, supplied the reasonable requirements of the retailer for that kind or grade of motor fuel in that period; and
(b) after the failure to supply —
(i) the retailer has given the primary supplier notice in writing that it is intended to rely on this subsection if the supply requested is not made within a

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further time reasonably specified in the notice; and

- (ii) the primary supplier does not make the supply within that further time.

”.

(12) After section 4(4), the following subsection is inserted —

“

- (4a) For the purposes of deciding whether a person has, as required by subsection (3)(g) or (h), ensured, so far as is practicable, that bulk storage does not contain a particular motor fuel, the lack of availability of other storage is not relevant.

”.

(13) Section 4(5) is amended as follows:

- (a) by deleting “Where a term of provision of a franchise agreement” and inserting instead the following —
 - “ If a provision of an agreement ”;
- (b) in paragraph (a) —
 - (i) by inserting before “or any colour” the following —
 - “ of a kind or grade of motor fuel ”; and
 - (ii) by inserting after “dispensing equipment” the following —
 - “ or on bulk storage that is not underground ”;
- (c) in paragraph (c) —
 - (i) by deleting “or” after “landlord” and inserting instead the following —
 - “ , if the retailer is a tenant, or a ”; and
 - (ii) by inserting after “operated” the following —
 - “ , or bulk storage being used, ”;

- (d) by deleting “term or”;
 - (e) by deleting “tenant’s” and inserting instead the following —
“ retailer’s ”.
- (14) Section 4(6) is amended by inserting before “purchased” the following —
“ of the kind and, where applicable, grade concerned ”.
- (15) At the foot of section 4(6), the following is inserted —
“ Penalty: \$20 000. ”.
- (16) Section 4(7) is amended by deleting “who fails to make an entry in a register as required by this Act or”.
- (17) At the foot of section 4(7), the following is inserted —
“ Penalty for an offence under subsection (7): \$20 000. ”.

8. Section 5 amended

- (1) Section 5(1) is amended as follows:
- (a) in paragraph (a), by inserting after “site” the following —
“ if the retailer is a tenant ”;
 - (b) by deleting paragraphs (b) and (c), and “and” between those paragraphs, and inserting instead the following —
“
(b) may —
 - (i) with the permission of the owner of any bulk storage, if the retailer does not own it, isolate from the bulk storage any other bulk storage;
 - (ii) with the permission of the landlord of the site if the retailer is a tenant and, if neither the retailer nor the landlord owns the bulk storage to which the

dispensing equipment is to be connected, the permission of the owner of the bulk storage, install additional dispensing equipment; and

- (iii) with the permission of the owner of the dispensing equipment, if the retailer does not own it, connect any existing dispensing equipment to any bulk storage installed by the retailer;

and

- (c) may, with the permission of the owner of the dispensing equipment, if the retailer does not own it, replace any dispensing equipment connected to any existing bulk storage.

”.

- (2) Section 5(2) is amended by deleting all of the subsection before “notice” and inserting instead the following —

“

A retailer at a site intending to exercise a right under subsection (1) that is exercisable only with another person’s permission may give to the other person

”.

- (3) Section 5(3) is amended as follows:

- (a) by deleting “14” and inserting instead the following —

“ 28 ”;

- (b) by deleting paragraph (b) and inserting the following paragraph instead —

“

- (b) refuse to give permission, or give permission subject to any condition, and state the ground upon which permission is refused or any condition is imposed.

”.

- (4) Section 5(3) and (4) are each amended by deleting “landlord or a primary supplier” and inserting instead the following —
- “ person ”.
- (5) Section 5(4) is amended as follows:
- (a) by deleting “or unreasonably refuses to give permission to the tenant under that subsection”;
 - (b) by deleting “to the tenant” after “given”.
- (6) After section 5(4), the following subsections are inserted —
- “
- (4a) A retailer who, under subsection (3), is refused permission to exercise a right under subsection (1) is deemed to have been given that permission if —
 - (a) the person who refused to give permission concedes that the refusal was unreasonable; or
 - (b) the Commissioner has determined under subsection (9) that the refusal was unreasonable.
 - (4b) A retailer who, under subsection (3), is given permission to exercise a right under subsection (1) subject to any condition —
 - (a) is deemed to have been given that permission unconditionally if —
 - (i) the person who gave permission concedes that any condition was unreasonable; or
 - (ii) the Commissioner has determined under subsection (9) that any condition was unreasonable without specifying conditions to which the retailer and the person giving permission have agreed;
 - (b) if the Commissioner has determined under subsection (9) that any condition was
- ”

unreasonable but specifies conditions to which the retailer and the person giving permission have agreed, is deemed to have been given that permission subject to those conditions.

- (4c) A determination of the Commissioner does not take effect for the purposes of subsection (4a) or (4b) unless —
- (a) the time within which an appeal against the determination may be made under subsection (10) has elapsed without an appeal having been made; or
 - (b) although an appeal against the determination was made under subsection (10), the appeal has been withdrawn or has been finally disposed of without a finding that the refusal or condition that the Commissioner found to be unreasonable was reasonable.

”.

- (7) Section 5(5) is amended by inserting after “have been given” the following —

“

nor contrary to any condition to which the permission is subject

”.

- (8) Section 5(6)(a) is amended by inserting after “manner” the following —

“

and, subject to this paragraph, in accordance with any relevant proposal given under subsection (2)

”.

- (9) Section 5(6)(b) is amended by deleting “insure” and inserting instead —

“ ensure ”.

- (10) At the foot of section 5(6), the following is inserted —
“ Penalty: \$20 000. ”.
- (11) Section 5(7) is amended as follows:
- (a) by inserting after “under this section” the following —
“ with the permission of another person ”;
 - (b) by deleting “and hold harmless the landlord and the primary supplier” and inserting instead the following —
“ that person and hold that person harmless ”;
 - (c) by deleting “either” and inserting instead the following —
“ the person ”.
- (12) After section 5(7) the following subsection is inserted —
“

 (7a) Where a retailer exercises a right under this section with the permission of another person the retailer has no claim or suit against that person in relation to any loss or damage which the retailer or another person may suffer by reason of the workmanship or materials employed in the exercise of such right or arising in respect of or from the use of the bulk storage or dispensing equipment, as the case may be, affected by that exercise.
”.
- (13) Section 5(8)(a) is amended by deleting “the landlord or primary supplier may reasonably require;” and inserting instead —
“ is prescribed by the regulations; ”.
- (14) Section 5(8)(b) is amended by deleting “landlord or primary supplier” and inserting instead the following —
“ person indemnified ”.

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- (15) At the foot of section 5(8), the following is inserted —
“ Penalty: \$20 000. ”.
- (16) Section 5(9) is amended by deleting “the landlord or primary supplier” and inserting instead the following —
“ a person ”.
- (17) Section 5(9) is further amended by inserting before “shall” the following —
“
or to the reasonableness of a condition subject to which
permission is given
”.
- (18) Section 5(10) is amended by deleting “tenant, landlord, or primary supplier” and inserting instead the following —
“ retailer or other person referred to in this section ”.

9. Section 6 amended

- (1) Section 6(1) is amended by deleting “or primary supplier” after “maintained by the landlord” and inserting instead the following —
“
, if the retailer is a tenant, or a primary supplier of any
kind or grade of motor fuel for the site
”.
- (2) Section 6(1) is further amended as follows:
(a) by deleting “50 per cent” and inserting instead the following —
“ 100% ”;

- (b) by inserting after “equipment” at the end of the subsection the following —

“

while it is being used for the dispensing of
motor fuel supplied otherwise than by the
primary supplier

”.

10. Section 7 amended

- (1) Section 7(1) is amended by deleting “or primary supplier of” and inserting instead the following —

“

of, or a primary supplier of any kind or grade of motor
fuel for,

”.

- (2) At the foot of section 7(1), the following is inserted —

“ Penalty: \$20 000. ”.

- (3) Section 7(2)(c) is amended by deleting “tenants” and inserting instead the following —

“ retailers ”.

11. Section 10 repealed

Section 10 is repealed.

12. Section 12 amended

Section 12 is amended by deleting “Permanent Head of the Department within the meaning of the *Consumer Affairs Act 1971*” and inserting instead the following —

“ Commissioner ”.

s. 13

13. Section 13 amended

- (1) Section 13 is amended by inserting before “The Governor” the subsection designation “(1)”.
- (2) At the end of section 13, the following subsection is inserted —
“
 - (2) The regulations may make contravention of any of their provisions an offence and may provide for a penalty for the offence not exceeding a fine of \$20 000 for an individual or \$100 000 for a body corporate.”.

14. Section 14 inserted

After section 13 the following section is inserted —

“

14. Review of Act

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 3 years from the commencement of Part 2 of the *Petroleum Legislation Amendment Act 2001*.
- (2) In the course of the review the Minister is to consider and have regard to any matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (3) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause it to be laid before each House of Parliament.

”.

15. Certain references to underground storage amended

A provision listed in the Table to this section is amended by deleting “underground” and inserting instead the following —

“ bulk ”.

Table

s. 4(3)(g) and (h)	s. 5(7)
s. 5(1)(a)	

16. Certain references to tenants amended

- (1) A provision listed in the Table to this subsection is amended by deleting “tenant” (including where, in section 4(5)(b), it is incorrectly spelt as “tentant”) and inserting instead the following —

“ retailer ”.

Table

s. 4(3) (in 2 places)	s. 5(7) and (8)
s. 4(5)(a), (b), and (c)	s. 6(1) and (2)
s. 4(6) (in 2 places)	s. 7(1) (in 2 places)
s. 5(3)(a)	

- (2) Each of section 5(1), (5), and (6) is amended by deleting “tenant of” and inserting instead the following —

“ retailer at ”.

17. Certain references to power corrected

- (1) Section 5(9) is amended by deleting “of power” and “of a power” and in each case inserting instead the following —

“ of a right ”.

- (2) Section 7(1) is amended by deleting “or power”.

s. 17

- (3) A provision listed in the Table to this subsection is amended by deleting “power” and inserting instead the following —

“ right ”.

Table

s. 4(3)(g) and (h)	s. 5(6) (in 4 places)
s. 5(3)(a) and (5)	s. 5(7) (in 2 places)

Part 3 — Petroleum Products Pricing Act 1983

18. The Act amended

The amendments in this Part are to the *Petroleum Products Pricing Act 1983**.

[* *Act No. 1 of 1983.*

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 337.]

19. Section 22H amended

Section 22H is amended by deleting the definition of “kind of motor fuel” and inserting the following definition instead —

“

“kind of motor fuel” refers to the type of motor fuel and, if there are different grades or brands of a particular type of motor fuel, motor fuel of that type has to be of the same grade and brand for it to be the same kind of motor fuel;

”.

20. Section 22J replaced

Section 22J is repealed and the following section is inserted instead —

“

22J. Regulations requiring notification of, and restricting change of, price

- (1) The regulations may —
- (a) require a person who offers motor fuel for retail sale at a particular place to have notified the Commissioner, in accordance with the regulations, of the standard retail price at which each kind of motor fuel is to be offered for sale at that place for a period fixed by the regulations;

s. 21

- (b) prohibit a person from offering motor fuel for sale at a standard retail price that differs from the standard retail price that was notified as required by regulations under paragraph (a).
- (2) If a kind of motor fuel is not available for retail sale at a particular place except in accordance with an existing agreement or arrangement between the customer and the retailer, subsection (1) does not apply to the sale of that kind of motor fuel at that place.
- (3) The regulations may include provision for the Commissioner to be notified if a person ceases, temporarily or not, to be required by regulations under subsection (1)(a) to notify in respect of all motor fuel or any kind of motor fuel.

”.

21. Penalties amended

- (1) Under the provisions identified in the Table to this subsection “Penalty: in the case of an individual, \$4 000 and, in the case of a body corporate, \$10 000.” is deleted and the following is inserted instead —

“ Penalty: \$20 000. ”.

Table

s. 11(1)	s. 21
s. 14(1)	s. 22B
s. 14(2)	s. 22C
s. 15	s. 22D
s. 16(1)	s. 22E
s. 17	s. 22F
s. 18(3)	s. 27(5)
s. 19(1)	s. 27A(5)
s. 20(1)	

- (2) The penalties specified under the provisions identified in column 1 of the Table to this subsection are amended by deleting the amounts shown in column 2 and inserting instead the amounts shown in column 3.

Table

<i>column 1</i> provision	<i>column 2</i> amount deleted	<i>column 3</i> amount inserted
s. 25(1)	\$4 000	\$20 000
s. 26	\$4 000	\$20 000
s. 33(1)	\$10 000	\$20 000

- (3) Section 34(a) is amended as follows:
- (a) in subparagraph (i), by deleting “\$1 000” and inserting instead —
“ \$20 000 ”;
 - (b) in subparagraph (ii), by deleting “\$2 000” and inserting instead —
“ \$100 000 ”.

