

**PETROLEUM RETAILERS
RIGHTS AND LIABILITIES
ACT 1982.**

(No. 105 of 1982.)

ARRANGEMENT.

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PETROLEUM RETAILERS RIGHTS AND LIABILITIES.

No. 105 of 1982.

AN ACT with respect to the Rights and Liabilities of Persons occupying Land for the purpose of selling Motor Fuel by Retail and for other purposes.

[Assented to 24 November 1982.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Petroleum Retailers Rights and Liabilities Act 1982*. Short title.

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

Interpretation.

3. (1) In this Act unless the context otherwise requires—

“authorized officer” means a person designated as an authorized officer under section 12;

“Commissioner” means the person holding or acting in the office of Commissioner for Consumer Affairs under the Consumer Affairs Act 1971;

“dispensing equipment” means a pump which transfers motor fuel from an underground storage into that part of a road vehicle in which motor fuel for the propulsion of that vehicle is stored;

“franchise agreement” has the same meaning as in the Petroleum Retail Marketing Franchise Act 1980 of the Commonwealth;

“landlord” in relation to a site means the person who has granted to the person in lawful occupation of the site the right to occupy the site;

“motor fuel” means petrol or diesel fuel used in propelling a road vehicle;

“primary supplier” in relation to the tenant of a site means a person who has agreed to supply motor fuel to the tenant at the site under a franchise agreement to which the Petroleum Retail Marketing Franchise Act 1980 of the Commonwealth applies;

“section” means a section of this Act;

“site” means premises at which motor fuel is sold by retail and is usually dispensed through dispensing equipment;

“subsection” means a subsection of the section in which that term is used;

“tenant” in relation to a site means any person who lawfully occupies a site and who is a party to a franchise agreement to which the Petroleum Retail Marketing Franchise Act 1980 of the Commonwealth applies in respect of that site;

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

(2) Nothing in this Act shall apply to a site which is being lawfully operated by a prescribed corporation within the meaning of the Petroleum Retail Marketing Sites Act 1980 of the Commonwealth in accordance with that Act.

(3) Nothing in this Act shall apply to or in relation to a site which is primarily used for and in connection with the wholesaling of motor fuel.

4. (1) A tenant of a site may, subject to this section, but notwithstanding any Act or law affecting the contractual relationship between a landlord and his tenant or agreement to the contrary (whether the agreement was made between the landlord and tenant or either of them or made between any other persons) use any underground storage at or dispensing equipment on the site for the storage or dispensing of motor fuel which he is lawfully able to purchase from a person other than his primary supplier for the purpose of resale at the site.

Tenant's rights.

(2) A tenant shall not exercise the power conferred by subsection (1) until 7 days after he has given notice in writing of his intention so to do to his landlord and to his primary supplier (if any).

(3) Where a tenant exercises his right under subsection (1) he shall ensure that—

(a) so far as is practicable he has motor fuel of each kind and grade that he is obliged to purchase from his primary supplier available for sale at the site;

(b) where in any six month period—

- (i) he purchases motor fuel from one supplier, other than his primary supplier, he purchases at least as much motor fuel of each kind or grade from his primary supplier as he purchases from that other supplier;
 - (ii) he purchases motor fuel from more than one supplier, other than his primary supplier, he purchases at least as much motor fuel of each kind or grade from his primary supplier as the total amount of motor fuel of each kind or grade as he purchases from those other suppliers;
- (c) any dispensing equipment on the site that is used to dispense motor fuel other than motor fuel supplied by the primary supplier does not display the name or business name of the primary supplier or any colours or distinguishing symbol or motif identifying, commonly associated with, or controlled by the primary supplier;
- (d) a permanent register is maintained containing the prescribed particulars of any purchase of motor fuel;
- (e) forthwith on the receipt of any motor fuel, there be entered in the register maintained for the purposes of paragraph (d) of this subsection the prescribed particulars of such receipt;
- (f) the Commissioner or an authorized officer is allowed to inspect and take extracts from the register maintained by a tenant for the purposes of paragraph (d) of this subsection;
- (g) so far as is practicable any underground storage that he uses pursuant to that power does not contain any motor fuel that has been supplied to the site by his primary supplier;

(7) Any person who fails to make an entry in a register as required by this Act or who makes a false entry in or in any other manner falsifies a register referred to in subsection (3) is guilty of an offence against this Act.

**Exercise of
tenant's
rights.**

5. (1) For the purposes of exercising a right under section 4, a tenant of a site—

- (a) may, with the permission of the landlord of the site, instal additional underground storage;
- (b) may, with the permission of his primary supplier—
 - (i) isolate a storage tank from another storage tank;
 - (ii) instal additional dispensing equipment; and
 - (iii) connect any existing dispensing equipment to any underground storage installed by him; and
- (c) may, with the permission of his primary supplier, replace any dispensing equipment connected to any existing underground storage.

(2) Where a tenant of a site intends to exercise a power under subsection (1), he shall give to the landlord or his primary supplier, as the case may be, notice in writing of his intention together with details of his proposal, including, where subsection (1) (a) or (1) (b) applies, plans and specifications.

(3) A landlord or a primary supplier who receives notice under subsection (2) shall, within 14 days after receipt of the notice—

- (a) give permission to the tenant to exercise the power; or

respect of any one occurrence which may give rise to the liability, which the landlord or primary supplier may reasonably require; and

(b) upon being so requested by the landlord or primary supplier, produce adequate evidence to show that such insurance has been taken out and remains current.

(9) Any dispute arising in relation to an exercise of power under this section or to the reasonableness of a refusal by the landlord or primary supplier to give permission for the exercise of a power shall be determined by the Commissioner.

(10) A tenant, landlord, or primary supplier who is aggrieved by a determination of the Commissioner made under subsection (9) may appeal to the Minister within 7 days of that determination and the decision of the Minister is final and conclusive.

Tenant's liability.

6. (1) Where a tenant exercises his right under this Act to use dispensing equipment that has been installed and maintained by the landlord or primary supplier he shall be liable to pay to the landlord or primary supplier as the case requires 50 per cent of the cost incurred by the landlord or primary supplier in the maintenance of the dispensing equipment.

(2) Dispensing equipment shall be deemed to have been used by a tenant for the dispensing of motor fuel supplied otherwise than by the primary supplier from the day upon which notice in writing to the primary supplier of his intention to so use the equipment took effect until he has given notice in writing to the primary supplier that he has ceased to so use the equipment.

Landlord not to impose charges or limitations.

7. (1) A landlord or primary supplier of a site shall not, by reason only that the tenant exercises or purports or attempts to exercise any right or

power under this Act, impose any charge (other than a charge authorized by this Act) or remove or threaten to remove any benefit or privilege enjoyed by the tenant.

(2) Subsection (1) does not apply in relation to the imposition of a charge or removal, or threatened removal, of a benefit or privilege if—

- (a) the imposition, removal or threatened removal relates to a matter which is referred to in section 20 of the Petroleum Retail Marketing Franchise Act 1980 of the Commonwealth;
- (b) the benefit or privilege removed or threatened to be removed was given primarily to promote the sale of motor fuel supplied by the primary supplier; or
- (c) the benefit or privilege removed related to the terms of payment required of a class or classes of tenants and was removed pursuant to a general variation of such terms for all members of that class or those classes.

(3) In determining whether a contravention of subsection (1) has been committed regard shall not be had to any act or thing that is or is of a kind specifically authorized or approved by the regulations.

8. (1) Where a person suffers loss or damage by reason of another person contravening or failing to comply with a provision of this Act or the regulations, the second-mentioned person is liable to compensate the first-mentioned person who may recover the amount of the compensation by action in the Supreme Court. Compensation.

(2) An action under subsection (1) may be commenced at any time within 3 years after the day on which the cause of action accrued.

(3) A certified copy of a court order convicting a person for contravening or failing to comply with a provision of this Act or the regulations shall be evidence of such contravention or failure to comply in any proceedings for compensation brought under this Act.

(4) In any proceedings for compensation brought under this Act the standard of proof required for establishing each element of the first-mentioned person's case shall be the same as that required for the proof of a fact in issue in civil proceedings generally.

9. (1) The Supreme Court may, on the application of any person, make one or more of the following orders—

- (a) an order restraining a person from engaging in conduct that constitutes or would constitute a contravention of the provisions of this Act or the regulations;
- (b) an order directing a person to comply with an obligation imposed by this Act or the regulations; or
- (c) such other or ancillary orders as the Court thinks fit to ensure observance of this Act or the regulations.

(2) If, in the opinion of the Supreme Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

(3) The Supreme Court may rescind or vary an order granted under subsection (1) or (2).

(4) The Supreme Court may grant an order under subsection (1) or (2) restraining a person from engaging in conduct of a certain kind, whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind and whether or not the person has

previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to a person if the first-mentioned person engages in conduct of that kind.

10. Any person who fails to comply with a provision of this Act or of the regulations shall be guilty of an offence and liable to a penalty not exceeding \$5 000. Offences.

11. (1) For the purposes of this Act, a document may be served— Service.

(a) on a natural person—

(i) by delivering it to the person personally; or

(ii) by leaving it at, or by sending it by registered post and addressed to the person at the address of the place of residence or business of the person last known to the person serving the document;

(b) on a body corporate—by leaving it at, or sending it by registered post addressed to the body corporate at the registered office or a principal office of the body corporate;

or

(c) in such other manner as is prescribed.

(2) Nothing in subsection (1) affects the power of the Supreme Court or a court to authorize service of a document otherwise than as provided in that subsection.

12. The Minister may designate any officer of the Public Service of the State as an authorized officer for the purposes of this Act. Minister may designate authorized officer.

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Regulations.

13. The Governor may make regulations for or with respect to any matter or thing which by this Act is authorized or required to be prescribed to give effect to this Act.
