

Western Australia

Petroleum Products Pricing Act 1983

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Petroleum Products Pricing Act 1983

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Western Australia

Petroleum Products Pricing Act 1983

An Act with respect to the regulation of the prices or rates charged for petroleum products or certain services related thereto and for incidental and other purposes.

[Long title amended by No. 72 of 1983 s. 15.]

Part I — Preliminary

1. Short title

This Act may be cited as the *Petroleum Products Pricing Act 1983*¹.

[Section 1 amended by No. 72 of 1983 s. 6.]

2. Commencement

The provisions of this Act shall come into operation on such day or days as is or are respectively fixed by proclamation¹.

3. Definitions

(1) In this Act, unless the contrary intention appears —

“**Commissioner**” means the person for the time being designated as the Commissioner under section 5;

“**committee**” means prices advisory committee established under section 8;

“**controlled petroleum product**” means petroleum product the price of which is for the time being regulated under an order;

“**controlled petroleum service**” means petroleum service the rate for which is for the time being regulated under an order;

“**declared petroleum product**” means petroleum product for the time being declared under section 10;

“**declared petroleum service**” means petroleum service for the time being declared under section 10;

“**Department**” means the department of the Public Service principally assisting in the administration of this Act;

“**dispensing equipment**” has the meaning given by section 3 of the *Petroleum Retailers Rights and Liabilities Act 1982*;

“**documents**” includes books, papers, forms and accounts and any other written records and any device by means of which information is recorded or stored;

“franchise agreement” has the meaning given by section 3 of the *Petroleum Retail Marketing Franchise Act 1980* of the Commonwealth;

“landed cost” means actual cost of petroleum products landed in the store in this State of the person to or for whom or on whose behalf the petroleum products were originally supplied or ordered, or at such other point of delivery as is determined under subsection (3);

“LPG” means liquefied petroleum gas;

“motor fuel” means petrol, LPG, or diesel fuel intended for use in propelling motor vehicles;

“motor vehicle” has the meaning given by section 5 of the *Road Traffic Act 1974*;

“order” means order made under section 12;

“paragraph” means paragraph of the section or subsection in which the term appears;

“Part” means Part of this Act;

“petroleum” means —

- (a) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state;
- (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
- (c) any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid or solid state, and one or more of the following, that is to say, hydrogen sulphide, nitrogen, helium, and carbon dioxide;

“petroleum product” means a product derived from petroleum, but not petroleum itself, except that it does not include —

- (a) a product listed in Schedule 1; or
- (b) a product that is excluded from this definition by an order under subsection (4),

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and it includes LPG (whether motor fuel or not, and whether or not the LPG is petroleum);

“petroleum service” means service consisting of the provision for reward in accordance with a franchise agreement of any premises, being premises at which motor fuel is —

- (a) sold by retail to persons within the State; and
- (b) usually dispensed through dispensing equipment;

“price”, in relation to any goods, or **“rate”**, in relation to any service, includes every valuable consideration, whether direct or indirect; and a reference to price includes a reference to rate;

“section” means section of this Act;

“services” means services (not being services provided by an employee, in his capacity as such, to his employer) provided by a person in the carrying on of an industrial, commercial, business, profit-making or remunerative undertaking (including a professional practice), and includes the provision for reward of lodging or of residential, industrial or commercial accommodation;

“subsection” means subsection of the section in which the term appears.

- (2) Expressions used in an order or notice or in any other instrument made, given or issued under this Act shall, unless the contrary intention appears, have the same respective meanings as in this Act.
- (3) The Commissioner may from time to time determine a point of delivery for the purpose of the definition of “landed cost” in subsection (1), and may revoke such a determination.
- (4) The Minister may, by an order published in the *Gazette*, exclude a product derived from petroleum but not listed in Schedule 1 from the definition of “petroleum product” in subsection (1), and may subsequently amend or revoke the order by another order published in the *Gazette*.

[Section 3 amended by No. 72 of 1983 s. 7 and 15; No. 73 of 2000 s. 3; No. 28 of 2006 s. 114.]

4. Relationship to other Acts, etc.

- (1) Notwithstanding that by any other Act or law a person or authority is empowered to fix prices or rates in relation to petroleum products or petroleum services, where the provisions of any order are inconsistent with any of the provisions of any other such Act or law, or of any regulation, local law, by-law, rule or other instrument made thereunder, the provisions of the order prevail.
- (2) In the exercise of his powers under this Act, the Commissioner shall have regard to any determination made in relation to the price or rate applicable to any petroleum products or petroleum services under any other Act or law, but is not required to give effect to any such determination.
- (3) Regulations made under and for the purpose of this Act may make provision —
 - (a) for the furnishing of information or documents obtained, and the employment of officers engaged, for the purposes of any other Act or law;
 - (b) for the implementation of the objects of this Act on behalf of and under the direction of the Commissioner by a person or authority empowered to fix prices or rates under any other Act or law; and
 - (c) that prices or rates determined under any other Act or law shall continue to have effect as though they had been fixed under an order, and that a contravention of the terms of the determination may be penalized in accordance with those regulations,

notwithstanding the provisions of that other Act or law.

[Section 4 amended by No. 72 of 1983 s. 15; No. 14 of 1996 s. 4; No. 73 of 2000 s. 13.]

Part II — Administration

5. Commissioner

- (1) The Minister is required, by notice published in the *Gazette*, to designate a person who is an executive officer of the Department as the Commissioner for the purposes of this Act and the *Petroleum Retailers Rights and Liabilities Act 1982*.
- (2) The Commissioner may be referred to by a title specified by the Minister by notice published in the *Gazette*.
- (3) In this section —
“**executive officer**” has the meaning given by section 3(1) of the *Public Sector Management Act 1994*.

[Section 5 inserted by No. 28 of 2006 s. 115.]

6. Object and purposes

- (1) The objects of this Act are to make provision by way of inquiry, investigation, price or rate fixing and enforcement procedures for the purpose of preventing —
 - (a) excessive prices being charged for the sale of petroleum products, whether in relation to wholesale or retail trading; or
 - (b) excessive rates being charged for the supply of petroleum services,to provide for the transparency of pricing of petroleum products, and to make additional provisions about motor fuel prices.
- (2) Without limiting the generality of subsection (1), the Minister, the Commissioner and officers concerned with the administration of this Act shall give particular attention to those petroleum products or petroleum services which may be essential to the welfare of the community.

[Section 6 amended by No. 72 of 1983 s. 15; No. 73 of 2000 s. 4.]

7. General administration, and the powers and duties of the Commissioner

- (1) The functions of the Commissioner are —
 - (a) to advise the Minister as to the administration of this Act and the *Petroleum Retailers Rights and Liabilities Act 1982*, generally and in relation to particular matters; and
 - (b) to administer this Act and the *Petroleum Retailers Rights and Liabilities Act 1982* and to investigate and prosecute contraventions.
- (2) Other than in relation to the power of the Commissioner to fix maximum prices or maximum rates pursuant to section 12, the Minister may, from time to time and either generally or with respect to a particular matter, give directions to the Commissioner with respect to his functions, or as to the exercise of his powers or the carrying out of his duties, and the Commissioner shall give effect to those directions.
- (3) The Commissioner shall —
 - (a) monitor and keep under continuous review the prices and rates applicable in the State to petroleum products and petroleum services generally; and
 - (b) keep the Minister fully informed, and when required report to him, concerning movements in those prices and rates.
- (4) For the purposes of this Act and the *Petroleum Retailers Rights and Liabilities Act 1982*, the Commissioner —
 - (a) shall make such inquiries or investigations, or seek such advice, as he considers necessary;
 - (b) may cause notice of his intention to inquire into or investigate any matter to be published in a newspaper circulating throughout the State for the purpose of enabling persons and bodies to submit to him representations concerning that matter;

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- (c) may take into account any representations, whether oral or documentary, made to him by persons who, in his opinion, have a substantial interest in a matter relating to the price of any petroleum products or the rate of any petroleum service or by any body which, in his opinion, represents a substantial number of persons who have such an interest;
 - (d) may, in respect of any investigation, determine the extent, if any, to which —
 - (i) he will hold proceedings in public; and
 - (ii) persons interested or claiming to be interested in a matter are to be allowed to be present or to be heard, either by themselves or by their representatives, or to cross-examine witnesses or otherwise participate in the consideration of that matter;
- and
- (e) may, unless otherwise directed by the Minister, determine the procedure to be used in relation to any investigation.

[(5) repealed]

[Section 7 amended by No. 72 of 1983 s. 8 and 15; No. 98 of 1985 s. 3; No. 73 of 2000 s. 5; No. 28 of 2006 s. 116.]

8. Prices advisory committees

- (1) The Minister may appoint one or more prices advisory committees to advise —
 - (a) whether or not particular petroleum products or petroleum services should be declared under section 10; or
 - (b) whether or not maximum prices or rates in relation to particular declared petroleum products or declared petroleum services should be fixed under section 12 or continue in force,

and a committee so appointed shall make recommendations upon those matters and such other matters as are referred to the committee by the Minister or the Commissioner.

- (2) The Minister or the Commissioner may give directions to a committee as to the nature and extent of its terms of reference.
- (3) The membership of a committee comprises —
 - (a) a chairman;
 - (b) not more than 3 trade representatives and an equal number of consumer representatives; and
 - (c) such other persons, if any, as the Minister determines,appointed in writing by the Minister.
- (4) A meeting of a committee shall not be held or continued unless the chairman of the committee and not less than —
 - (a) one trade representative; and
 - (b) one consumer representative,thereof are present, but otherwise any matter before a committee may be determined by majority vote of the members present and voting.
- (5) The chairman of a committee does not have a deliberative vote on any matter before a meeting, but, when the votes for and against the matter are equal, the chairman may —
 - (a) exercise a casting vote and decide that matter; or
 - (b) adjourn that matter for consideration by a subsequent meeting of the committee.
- (6) A committee —
 - (a) shall hold meetings at such times and places, and on such terms of reference, as the Minister or the Commissioner directs;
 - (b) may adjourn and reconvene such meetings as may be necessary; and

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- (c) otherwise, subject to this section, may regulate its own proceedings.

- (7) In this section —

“consumer representative” means a person appointed to a committee to represent consumers of petroleum products or users of petroleum services;

“trade representative” means a person appointed to a committee to represent sellers of petroleum products or suppliers of petroleum services, being a person who is or has been engaged in the business of manufacturing or selling petroleum products or of supplying petroleum services, as the case requires.

[Section 8 amended by No. 72 of 1983 s. 15.]

9. Terms of office of members of committees

- (1) A member of a committee shall, subject to this section, hold office for such period not exceeding 3 years as is specified in the instrument of his appointment, but is eligible for re-appointment.
- (2) If a member of a committee —
 - (a) is an undischarged bankrupt or a person who is an insolvent under administration and whose property is subject to an order, arrangement, or composition under the laws relating to bankruptcy;
 - (b) dies or otherwise becomes permanently incapable of performing his duties as such a member;
 - (c) resigns his office by writing under his hand addressed to the Minister; or
 - (d) absents himself, except on leave duly granted by the Minister, from 3 consecutive meetings of the committee (for which purpose where a meeting has been adjourned and reconvened each part of that meeting shall be taken

to constitute a separate meeting) of which he has had notice,

the office of that member becomes vacant.

- (3) The Minister may grant leave of absence to a member of a committee on such terms and conditions as the Minister determines.
- (4) The members of a committee may be paid such remuneration and allowances as the Minister determines.

Part III — Regulation of prices and rates

Division 1 — Declaration of goods and services

10. Declaration of goods and services

- (1) The Minister may by notice published in the *Gazette* declare —
 - (a) any petroleum products to be declared petroleum products; or
 - (b) any petroleum service to be declared petroleum service,for the purposes of this Act, and for so long as the notice remains in force an order under section 12 may be made in relation to petroleum products or petroleum services of that kind.
- (2) A notice under this section —
 - (a) may, by notice published in the *Gazette*, be amended, varied or revoked by the Minister; and
 - (b) takes effect on the day of its publication in the *Gazette* or on such later day, or at such time on such later day, as is specified in the notice.
- (3) Without limiting the generality of subsection (1), the Minister may declare petroleum products or petroleum services —
 - (a) by reference to differences in the quantity, quality, volume or description of the petroleum products sold or the petroleum services supplied, or to different forms, modes, stages, conditions, terms or localities of trade, commerce, sale or supply;
 - (b) in relation to the whole or any part of the State; or
 - (c) on or subject to any condition or circumstance.
- (4) A notice under this section may contain such incidental and supplementary provisions as are necessary or expedient for the purposes of the declaration to which the notice relates.

[Section 10 amended by No. 72 of 1983 s. 9 and 15.]

11. Procedure when increase in price or rate of declared goods or declared service proposed

- (1) A notice under section 10 may require that —
- (a) any person generally;
 - (b) any person included in a class of persons;
 - (c) any person to whom a notice is given in pursuance of the declaration; or
 - (d) any particular person,
- being a person who is a manufacturer or seller of declared petroleum products or a supplier of a declared petroleum service, notify, not less than 14 working days prior to the day on which that proposed increase is to take effect, the Commissioner in writing of any proposed increase in the price of those declared petroleum products or in the rate for that declared petroleum service to which that person proposes to give effect, and a person shall not refuse or fail to comply with that requirement.
- Penalty: \$20 000.
- (2) A person to whom subsection (1) applies shall submit with the notification to be made by him under that subsection a document setting out to the best of his knowledge and ability —
- (a) the cost to the manufacturer, seller or supplier of the declared petroleum products or declared petroleum service concerned;
 - (b) the methods and principles in accordance with which the manufacturer, seller or supplier referred to in paragraph (a) has arrived at that cost and at the proposed increase in the price of the petroleum products or the rate of the declared petroleum service concerned;
 - (c) in the case of a manufacturer or seller of petroleum products, the price at which, and the conditions on which, he has sold, sells or proposes to sell the declared petroleum products concerned;

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- (d) in the case of a supplier of petroleum services, the rate at which, and the conditions on which, he has supplied, supplies or proposes to supply, the declared petroleum service; and
 - (e) such other particulars as are prescribed or are required by a notice given under subsection (1)(c).
- (3) In subsection (1) —
 - “working day”** means day which is not —
 - (a) a Sunday or a Saturday; or
 - (b) a bank holiday or public holiday within the meaning of the *Public and Bank Holidays Act 1972*.

[Section 11 amended by No. 72 of 1983 s. 10 and 15; No. 73 of 2000 s. 14(1); No. 11 of 2001 s. 21(1).]

Division 2 — Determination of maximum prices and rates for goods and services

12. Determination of maximum prices and rates

- (1) Subject to subsection (5), the Commissioner may, with respect to any declared petroleum products or declared petroleum service, by order published in the *Gazette* fix —
 - (a) the maximum price at which any declared petroleum products may be sold; or
 - (b) the maximum rate at which any declared petroleum service may be supplied,either generally throughout the State or in any specified part of the State.
- (2) Without limiting the generality of subsection (1), the Commissioner may fix maximum prices or maximum rates —
 - (a) differentially, according to differences in the quantity, quality, volume or description of the petroleum products sold or the petroleum services supplied, or by reference

- to different forms, modes, stages, conditions, terms or localities of trade, commerce, sale or supply;
- (b) for the whole or different parts of the State and differentially for different parts of the State;
 - (c) on a sliding scale;
 - (d) on and subject to any condition or circumstance;
 - (e) for cash, delivery or otherwise, or on terms, and in any such case inclusive or exclusive of the cost of packing or delivery;
 - (f) on landed cost, or other cost, together with a percentage thereon, or a specified amount, or both;
 - (g) according to, or on, any principle or method of calculation specified by the Commissioner;
 - (h) relative to such standards of measurement, weight, capacity or otherwise as he thinks proper, or relative to prices or rates charged by individual traders or suppliers on any date specified by the Commissioner, with such variations (if any) as in the special circumstances of the case the Commissioner thinks fit, or so that such prices or rates shall vary in accordance with a standard, or time or other circumstance, or shall vary with profits or wages, or with such costs as are determined by the Commissioner.
- (2a) An order fixing a maximum price for the sale of motor fuel may apply to a particular terminal, as defined in Part IIIA.
- (3) An order may contain such incidental and supplementary provisions as are necessary or expedient for the purposes of that order.
- (4) An order —
- (a) may, by an order published in the *Gazette*, be amended, varied or revoked by the Commissioner; and

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- (b) takes effect —
 - (i) on the day of its publication in the *Gazette*; or
 - (ii) subject to subsection (4a), on such day, or at such time on such day, as is specified in the order.
- (4a) For the purposes of subsection (4)(b)(ii), there shall not be specified in an order a day earlier than the day of the publication of the order in the *Gazette* unless —
 - (a) the order amends or varies another order, which other order fixes the maximum price at which a declared petroleum product may be sold, by increasing that maximum price; and
 - (b) the sole reason for seeking to increase the maximum price referred to in paragraph (a) is the increase in cost occasioned to the manufacturer or seller of the declared petroleum product referred to in that paragraph by the imposition by or under a law of the State or of the Commonwealth of a fee, levy, duty, tax or other impost (in this subsection called “**the new impost**”) on or in relation to or by reference to that declared petroleum product or an increase in the rate of a fee, levy, duty, tax or other impost (in this subsection called “**the impost rate**”) so imposed on or in relation to or by reference to that declared petroleum product,in which case there may be specified in the order a day which is earlier than the day of that publication, but which is not earlier than the day on which the new impost was imposed or the impost rate was increased, as the case requires.
- (5) The Commissioner shall, before causing an order to be published in the *Gazette*, serve a draft of the proposed order on the Minister, and shall not cause the proposed order to be so published —
 - (a) unless the Minister has within 7 days of the receipt of the draft of the proposed order informed the

Commissioner that he does not propose to give to the Commissioner a direction to refrain from publishing the order; or

- (b) if the Minister, in the public interest, has within 7 days of the receipt of the draft of the proposed order directed the Commissioner to refrain from publishing the order,

and the Minister shall cause any direction given under paragraph (b) to be published in the *Gazette*.

- (6) The powers of the Commissioner of or in relation to fixing —
 - (a) the maximum price at which any declared petroleum products may be sold; and
 - (b) the maximum rate at which any declared petroleum service may be supplied,

shall extend to and in relation to the fixing of the maximum remuneration for the sale of any declared petroleum products and the supply of any declared petroleum service for an undivided remuneration, and a transaction in respect of which a maximum remuneration has been so fixed is deemed to be the supply of a controlled petroleum service at a rate equal to the undivided remuneration charged.

- (7) For the purposes of this Act, and of any order, unless the contrary intention appears —
 - (a) the sale of any petroleum products shall be deemed to include the supply in connection with that sale (whether or not for a separate remuneration) of any service customarily supplied by vendors in connection with such a sale without any separate remuneration;
 - (b) the supply of any petroleum service shall be deemed to include the sale or supply in connection with the petroleum service (whether or not for a separate price or remuneration) of any goods customarily sold or supplied by persons supplying such a petroleum service without any separate price or remuneration; and

- (c) a maximum price fixed includes the cost of the wrapping or packaging of the petroleum products to which the price applies.

[Section 12 amended by No. 72 of 1983 s. 11 and 15; No. 73 of 2000 s. 6.]

13. Power of Minister to suspend order

- (1) The Minister may request the Commissioner to consider further any matter dealt with by any order or any part of an order and may, by notice published in the *Gazette* —
 - (a) suspend the operation of an order or any part of an order for such period after the publication of the notice as is specified therein;
 - (b) extend the period for which the operation of an order or part of an order is suspended under this subsection; or
 - (c) terminate the suspension under this subsection of an order or part of an order.
- (2) During the period for which the operation of an order or part of an order is suspended by notice published under subsection (1), the maximum price or rate (if any) that prevailed immediately before the coming into operation of that order or part of an order applies.

Division 3 — Enforcement of maximum prices and rates

14. Offence to sell goods at price higher than maximum price or supply service at rate higher than maximum rate

- (1) A person shall not sell or offer for sale any controlled petroleum products or supply or offer to supply any controlled petroleum service at a greater price or rate than the maximum price or maximum rate fixed under this Act for the sale of those petroleum products or the supply of that petroleum service.
Penalty: \$20 000.

- (2) Where an order fixing a maximum price or maximum rate for any goods or service takes effect a person shall not, without the prior authorisation of the Commissioner, sell or offer for sale any of those controlled goods, or supply or offer to supply that controlled service, on terms or conditions different from those on which substantially identical goods or services were sold or supplied by him immediately prior to the order taking effect, if that sale or offer for sale or supply or offer to supply on those terms and conditions would result directly or indirectly —
- (a) in a greater price or rate than the maximum price or rate fixed under this Act in relation thereto being obtained; or
 - (b) in any other manner to the advantage of that person.

Penalty: \$20 000.

- (3) For the purposes of this section, a person on whose behalf, or at whose place of business, any controlled goods are sold or offered for sale, or any controlled service is supplied or offered, at a greater price or rate than the maximum price or rate fixed under this Act for the sale of those goods or the supply of that service, whether the goods are sold or offered for sale or the service is supplied or offered contrary to the instructions of that person or not, shall be deemed to have contravened the provisions of this section, unless the court is satisfied that the sale, supply, or offering took place without his knowledge and that he has exercised all reasonable diligence to secure compliance with this Act.

[Section 14 amended by No. 72 of 1983 s. 15; No. 73 of 2000 s. 14(1); No. 11 of 2001 s. 21(1).]

15. Delivery of goods less in quantity than, or of inferior quality to, those sold

A person shall not, in relation to an agreement for the sale of any controlled petroleum products, deliver or offer to deliver —

- (a) a quantity of petroleum products less than the quantity purported to be sold; or

- (b) goods inferior in quality to the petroleum products purported to be sold,

unless he shows that he did not so deliver or offer to deliver with intent to evade any other provision of this Act.

Penalty: \$20 000.

[Section 15 amended by No. 72 of 1983 s. 15; No. 73 of 2000 s. 14(1); No. 11 of 2001 s. 21(1).]

16. Alterations in mode of packing or recipe or formula

- (1) A person shall not without the consent in writing of the Commissioner —
 - (a) pack or put up for sale any controlled petroleum products in a container or quantity smaller than the container or quantity ordinarily offered for sale in relation to those petroleum products immediately before the date of fixation;
 - (b) pack or put up for sale in a container a quantity of controlled petroleum products smaller than the quantity of those petroleum products ordinarily packed or put up for sale in a container of that size immediately before the date of fixation;
 - (c) alter the formula ordinarily used by him or a predecessor in business on or immediately before the date of fixation in the manufacture or production of any controlled petroleum products; or
 - (d) as regards any particular controlled petroleum products manufacture those petroleum products in a quality inferior to the quality manufactured by him or a predecessor in business on or immediately before the date of fixation.

Penalty: \$20 000.

- (2) For the purposes of this section, proof that immediately before the date of fixation a person dealing in the ordinary course of trade in any controlled petroleum products in respect of which any proceedings have been instituted —
- (a) sold or had for sale petroleum products of that description purporting to have been packed or put up for sale by the accused or a predecessor in business of the accused in a particular quantity, that particular quantity shall, unless the contrary is shown, be presumed to be the quantity ordinarily offered for sale by the accused immediately before the date of fixation; and
 - (b) sold or had for sale any petroleum products (purporting to have been manufactured or produced by the accused) that appear by analysis or otherwise to have been manufactured or produced in accordance with a particular formula, that particular formula shall, unless the contrary is shown, be presumed to be the formula that was ordinarily used by the accused immediately before the date of fixation in the manufacture or production of those petroleum products.
- (3) It is a defence to any proceedings in respect of an offence against subsection (1)(c) if the accused proves that —
- (a) the alteration in the formula concerned was not made in anticipation or consequence of any investigation or proceeding under this Act in respect of the controlled petroleum products the formula of which was altered; and
 - (b) the controlled petroleum products manufactured or produced in accordance with the formula concerned, as altered, were not inferior to those manufactured or produced before the alteration.
- (4) In this section —
- “date of fixation”**, when used in relation to any petroleum products, means the most recent date on which an order fixing the maximum price of those petroleum products took effect.

[Section 16 amended by No. 72 of 1983 s. 12 and 15; No. 73 of 2000 s. 14(1); No. 11 of 2001 s. 21(1); No. 84 of 2004 s. 82.]

17. Price or rate of controlled goods or service to be specified separately

A person shall not —

- (a) sell or offer for sale any controlled petroleum products together with any other goods, whether controlled or not, or with any service, whether controlled or not, without separately specifying the price of those controlled petroleum products; or
- (b) supply or offer to supply any controlled petroleum service together with any other service, whether controlled or not, or with any goods, whether controlled or not, without separately specifying the rate of that controlled petroleum service,

unless the transaction as a whole is one —

- (c) in respect of which a maximum undivided remuneration has been fixed under this Act; or
- (d) which by reason of section 12(7) is deemed to be either a sale of petroleum products or the supply of a petroleum service.

Penalty: \$20 000.

[Section 17 amended by No. 72 of 1983 s. 13 and 15; No. 73 of 2000 s. 14(1); No. 11 of 2001 s. 21(1).]

18. Power of Commissioner to prohibit certain transactions

- (1) If the Commissioner is of the opinion that it is necessary so to do in order to prevent a person (in this section referred to as **“the vendor”**) who carries on the business of selling controlled petroleum products or supplying a controlled petroleum service from continuing to operate a scheme that the Commissioner is satisfied —
 - (a) involves a departure from his normal course of trading;

- (b) would not be operated but for the provisions of this Act; and
- (c) has the effect that the real cost (taking into account losses involved in transactions connected with that scheme) to a purchaser of goods from the vendor of any controlled petroleum products so purchased, or to a person to whom services are supplied by the vendor of any controlled petroleum service so supplied, is more than the maximum price or rate fixed under this Act for the sale of those petroleum products or the supply of that petroleum service,

the Commissioner may, by notice in writing directed to the vendor and published in the *Gazette* or served on the vendor, specify a class of transactions (being in the opinion of the Commissioner a class of transactions that is being used for the purposes of the scheme) to be a class of transactions to which this section applies.

- (2) A notice under this section —
 - (a) takes effect —
 - (i) on the date specified in that notice; or
 - (ii) on the date of its publication in the *Gazette* or of its service on the vendor, as the case requires,whichever is the later date; and
 - (b) may at any time be amended, varied or revoked by the Commissioner by a subsequent notice in writing directed to the vendor and published in the *Gazette* or served on the vendor.
- (3) Except with the consent of the Commissioner, a person to whom a notice under this section is directed shall not, while that notice has effect, enter into a transaction included in a class of transactions specified in the notice.

Penalty: \$20 000.

- (4) A notice under this section shall specify the class of controlled petroleum products or controlled petroleum services in relation to which, in the opinion of the Commissioner, the scheme concerned is being operated, but has full force and effect notwithstanding that it does not specify or describe in detail the scheme that, in the opinion of the Commissioner, makes that notice necessary so long as the notice gives a general description of the scheme.
- (5) A reference in this section to a person includes a reference to persons included in a class of persons, and this section, with such adaptations as are necessary, applies accordingly.
[Section 18 amended by No. 72 of 1983 s. 15; No. 73 of 2000 s. 14(1); No. 11 of 2001 s. 21(1).]

19. Refusal to sell goods at fixed price

- (1) A person who has in his custody or under his control any controlled petroleum products for sale shall not refuse or fail —
 - (a) on demand for a quantity of those controlled petroleum products; and
 - (b) on tender of payment at the maximum price fixed under this Act for that quantity of those controlled petroleum products,to sell those controlled petroleum products in the quantity demanded.
Penalty: \$20 000.
- (2) In proceedings in respect of an offence against subsection (1) it is a defence to show that, on the occasion in question —
 - (a) the accused supplied a reasonable quantity of the controlled petroleum products demanded or, after making reasonable provision for private consumption or use, had not a sufficient quantity of those controlled petroleum products in his custody or under his control to supply the quantity demanded in addition to the quantity required to satisfy —

- (i) all other contracts then subsisting, under which he was obliged to supply quantities of those controlled petroleum products for consumption or use; and
 - (ii) the ordinary requirements of his business;
 - (b) either —
 - (i) if the offence arose out of the accused refusing or failing to supply motor fuel from a place that was a declared terminal, as defined in Part IIIA, the person who demanded to be supplied was not a reseller or a prescribed person as referred to in section 22G; or
 - (ii) if subparagraph (i) does not apply, the accused was a wholesale trader in the controlled petroleum products demanded, and the person who demanded to be supplied was not a manufacturer or a retail trader in them or in any goods made or partly made from them;
 - or
 - (c) the accused —
 - (i) would have had reasonable grounds for refusing or failing to supply the controlled petroleum products concerned to the person who demanded to be supplied, had those controlled petroleum products not been controlled petroleum products;
 - (ii) was acting in accordance with a practice for the time being approved by the Commissioner; or
 - (iii) otherwise had reasonable cause, not contrary to the objects and purposes of this Act, for so acting.
- (3) For the purpose of determining what is a reasonable quantity of any controlled petroleum products within the meaning of this section, regard shall be had to all the circumstances of the case, including the question whether the person who demanded to be supplied was or was not at the time of that demand carrying on

business as a retail trader in the controlled petroleum products demanded, either alone or with other goods.

[Section 19 amended by No. 72 of 1983 s. 15; No. 73 of 2000 s. 7, 13 and 14(1); No. 11 of 2001 s. 21(1); correction to reprint in Gazette 20 Sep 2002 p. 4693; No. 84 of 2004 s. 82.]

20. Refusal to supply service at fixed rate

- (1) A person who supplies any controlled petroleum service shall not refuse or fail —
- (a) on demand for the supply of that controlled petroleum service; and
 - (b) on tender of payment at the maximum rate fixed under this Act for the supply of that controlled petroleum service,

to supply that controlled petroleum service.

Penalty: \$20 000.

- (2) In proceedings in respect of an offence against subsection (1), it is a defence to show that, on the occasion in question —
- (a) the accused did not have sufficient capacity for service under his control to supply the controlled petroleum service demanded in addition to the controlled petroleum service required to satisfy —
 - (i) all other contracts then subsisting under which he was obliged to supply that controlled petroleum service; and
 - (ii) the ordinary requirements of his business;
 - or
 - (b) the accused —
 - (i) would have had reasonable grounds for refusing or failing to supply the controlled petroleum service demanded to the person who demanded the supply of that controlled petroleum service,

had had that controlled petroleum service not been a controlled petroleum service;

- (ii) was acting in accordance with a practice for the time being approved by the Commissioner; or
- (iii) otherwise had reasonable cause, not contrary to the objects and purposes of this Act, for so acting.

[Section 20 amended by No. 72 of 1983 s. 15; No. 73 of 2000 s. 13 and 14(1); No. 11 of 2001 s. 21(1); No. 84 of 2004 s. 82.]

21. Refusal to sell or supply unless other goods or services are also purchased

A person shall not —

- (a) sell or offer for sale any controlled petroleum products subject to any condition requiring the purchase of any other goods, whether controlled or not, or the acceptance of the supply of any service, whether controlled or not;
- (b) supply or offer to supply any controlled petroleum service subject to any condition requiring the purchase of any goods, whether controlled or not, or the acceptance of the supply of any other service, whether controlled or not.

Penalty: \$20 000.

[Section 21 amended by No. 72 of 1983 s. 15; No. 73 of 2000 s. 14(1); No. 11 of 2001 s. 21(1).]

22. “Offer” includes notification of price or rate

For the purposes of this Act —

- (a) the notification by any person of the price proposed by him for the sale of any petroleum products by the publication or exhibition of a price list, by furnishing a quotation, or by exposing or exhibiting the petroleum products in association with any mark, ticket, placard or notice indicating price shall be deemed to constitute an

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Part III Regulation of prices and rates

Division 3 Enforcement of maximum prices and rates

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offer to sell those petroleum products at the price so notified; and

- (b) the notification by any person of the rate proposed by him for the supply of any petroleum service by the publication or exhibition of a list of rates, or by furnishing a quotation, shall be deemed to constitute an offer to supply that petroleum service at the rate so notified.

[Section 22 amended by No. 72 of 1983 s. 15.]

Part IIIA — Special provisions about motor fuel

[Heading inserted by No. 73 of 2000 s. 8.]

Division 1 — Before retail sale

[Heading inserted by No. 73 of 2000 s. 8.]

22A. Definitions

(1) In this Division —

“**declared terminal**” means a terminal designated under subsection (2) as a declared terminal for the purposes of this Division;

“**displayed price**” means the price displayed under section 22B;

“**kind of motor fuel**” refers to the type of motor fuel and, if there are different grades of a particular type of motor fuel, each grade is a different kind of motor fuel;

“**offer**” has, in addition to its ordinary meaning, the meaning given by subsection (3);

“**supplier**” means a person who supplies motor fuel to a reseller;

“**terminal**” means a place at which motor fuel any of which a supplier intends to supply to resellers is held.

(2) The Commissioner may, by an order published in the *Gazette*, designate a terminal as a declared terminal for the purposes of this Division, and may subsequently amend or revoke the order by another order published in the *Gazette*.

(3) A supplier is to be considered as offering to make a supply of motor fuel from a declared terminal at any time when a person demanding that supply in accordance with section 22G would be entitled under section 22G to purchase the motor fuel as demanded.

[Section 22A inserted by No. 73 of 2000 s. 8.]

22B. Price at terminal to be displayed and Commissioner to be notified of changes

- (1) A supplier of motor fuel from a declared terminal is required to display at the place of sale, so as to be clearly legible to anyone to whom motor fuel of the kind concerned is to be supplied, the price that would apply if it were to make a wholesale sale of motor fuel to a reseller who —
 - (a) was not the subject of any agreement or arrangement affecting price; and
 - (b) took delivery of the motor fuel at the terminal from which it was supplied.
- (2) Subsection (1) requires a price to be displayed for each kind of motor fuel supplied or offered to be supplied from the terminal.
- (3) Whenever a price that subsection (1) requires to be displayed is changed, the supplier is required to notify the Commissioner, in accordance with the regulations, of the price change.

Penalty: \$20 000.

[Section 22B inserted by No. 73 of 2000 s. 8; amended by No. 11 of 2001 s. 21(1).]

22C. Previous month's average price to be displayed

- (1) A supplier of motor fuel from a declared terminal is required to display at the terminal, so as to be clearly legible to anyone to whom motor fuel is supplied at the terminal, the weighted average price, calculated in accordance with the regulations, for each kind of motor fuel supplied from the terminal during the previous month.
- (2) In subsection (1) —

“previous month” means, unless the regulations provide otherwise, the most recent calendar month that has been expired for at least 7 days;

“calendar month” means January, February, or any of the 10 other named months of the calendar year.

- (3) The price that this section requires to be displayed is to be displayed as near as practicable to the price displayed under section 22B.

Penalty: \$20 000.

[Section 22C inserted by No. 73 of 2000 s. 8; amended by No. 11 of 2001 s. 21(1).]

22D. Maximum price to be displayed

If the price for the supply of a kind of motor fuel from a declared terminal is the subject of an order under section 12, the supplier is required to display at the terminal, so as to be clearly legible to anyone to whom motor fuel of the kind concerned is to be supplied, the maximum price fixed by the order.

Penalty: \$20 000.

[Section 22D inserted by No. 73 of 2000 s. 8; amended by No. 11 of 2001 s. 21(1).]

22E. Price to be compared to maximum price fixed

- (1) If a supplier makes a supply of any kind of motor fuel from a declared terminal to a purchaser who —

- (a) is not the subject of any agreement or arrangement affecting price; and
- (b) takes delivery of the motor fuel at the terminal from which it is supplied,

(in this section called a “**relevant supply**”) and the supply is the subject of an order under section 12, the supplier is required to show in the invoice for the supply —

- (c) the displayed price; and
- (d) the maximum price fixed by the order.

- (2) If the price for a relevant supply of a kind of motor fuel from a declared terminal is not the subject of an order under section 12 but the price for a relevant supply of that kind of motor fuel from another declared terminal is the subject of an order under

section 12, the supplier is required to show in the invoice for a relevant supply of any motor fuel of that kind —

- (a) the displayed price;
 - (b) the maximum price fixed by the order; and
 - (c) if the displayed price exceeds the maximum price fixed by the order for the other terminal, any details as to the difference between those prices that the regulations require to be shown.
- (3) If the maximum price is fixed under section 12 for 2 or more other terminals, the supplier may choose between them for the purpose of complying with subsection (2) unless the Commissioner directs the supplier in writing as to which of them to use.
- (4) If a displayed price for any motor fuel is such that subsection (2)(c) would require the supplier to give details of the displayed price in the invoice for the supply of any of the motor fuel, the supplier is required to give the Commissioner, in accordance with the regulations, the same details.

Penalty: \$20 000.

[Section 22E inserted by No. 73 of 2000 s. 8; amended by No. 11 of 2001 s. 21(1).]

22F. Information that supplier is to provide

- (1) If a supplier of motor fuel from a declared terminal supplies or offers to supply any of that motor fuel for a price any component of which is for —
- (a) delivery of the fuel;
 - (b) use of a brand;
 - (c) a credit facility; or
 - (d) anything else connected with the sale of the motor fuel,
- the supplier is required to provide, in writing, details of the amount of each of those components, and what it is for, to a person reasonably requesting that information.

- (2) The supplier is required to include those details in the invoice for any sale for a price that includes any of those components.
- (3) A supplier is required to provide, in writing, to anyone reasonably requesting it, any other information that this Division —
 - (a) requires the supplier to display at the place of sale; or
 - (b) would require the supplier to disclose in the invoice of a sale.

Penalty: \$20 000.

[Section 22F inserted by No. 73 of 2000 s. 8; amended by No. 11 of 2001 s. 21(1).]

22G. Obligation to supply from declared terminal

- (1) A reseller or a prescribed person who —
 - (a) demands that the supplier of motor fuel from a declared terminal sell to the person making the demand a quantity of any of that motor fuel; and
 - (b) tenders payment of the price at which the motor fuel is for the time being for sale,is entitled to purchase motor fuel from the terminal, as demanded, unless the supplier gives the person making the demand, in writing, good reason for refusing to comply with the demand.
- (2) If a supplier refuses to sell a person motor fuel under subsection (1), the person (in this section called **“the aggrieved person”**) may apply to the Commissioner for a decision as to whether the supplier properly refused under subsection (1).
- (3) If the Commissioner, after giving the supplier and the aggrieved person an opportunity to be heard on the question, decides that the supplier did not properly refuse and the aggrieved person was entitled to purchase motor fuel as demanded, the Commissioner may order the supplier to pay the aggrieved person an amount of

compensation determined by the Commissioner, which may include an amount for costs involved in making the application.

- (4) An order the Commissioner made under subsection (3) may be enforced by lodging a copy of it, certified by the Commissioner to be a true copy, and an affidavit stating to what extent it has not been complied with, with a court of competent jurisdiction.
- (5) When lodged, the order is to be taken to be a judgment of the court and may be enforced accordingly.

[Section 22G inserted by No. 73 of 2000 s. 8; amended by No. 59 of 2004 s. 141.]

Division 2 — Retail sale

[Heading inserted by No. 73 of 2000 s. 8.]

22H. Definitions

In this Division —

“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;

“standard retail price” means the price at which the motor fuel concerned is offered for retail sale to a customer who is not the subject of any agreement or arrangement affecting price.

[Section 22H inserted by No. 73 of 2000 s. 8; amended by No. 11 of 2001 s. 19.]

22I. Regulations to require retailers to display prices

- (1) The regulations may require a person who offers motor fuel for retail sale to display at the place of sale, so as to be clearly legible to passing motorists, the standard retail price at which each kind of motor fuel is currently offered for sale at the place.
- (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 as to the displaying of the price and the information to be displayed.

[Section 22I inserted by No. 73 of 2000 s. 8.]

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;
 - (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.

[Section 22J inserted by No. 11 of 2001 s. 20.]

Part IV — Obtaining information

23. Power of Commissioner to inquire, investigate, and obtain information

- (1) The Commissioner may, for the purpose of any inquiry or investigation which he considers necessary for the exercise of any of the powers conferred, or for the performance of any of the duties and functions imposed, on him by or under this Act or the *Petroleum Retailers Rights and Liabilities Act 1982* —
 - (a) require any person —
 - (i) to give him such information as he requires; and
 - (ii) to answer any question put to the person, in relation to any matter the subject of such an inquiry or investigation;
 - (b) require that any information or answer referred to in paragraph (a) be given —
 - (i) orally, or in writing, as may be specified by the Commissioner;
 - (ii) at a time and place specified by the Commissioner; or
 - (iii) on oath or affirmation or by statutory declaration (for which purpose the Commissioner may administer an oath or affirmation and may witness a statutory declaration);
 - (c) by notice in writing, require the production of any documents relating to any such inquiry or investigation;
 - (d) enter at all reasonable times and search any premises and inspect any documents that he finds therein and take samples of any stocks of petroleum products and inspect any petroleum service carried on therein;
 - (e) make a copy or abstract of any document produced to, or inspected by, him under this Act or the *Petroleum Retailers Rights and Liabilities Act 1982*, or of any entry

made therein, and in the absence of proof to the contrary any such copy certified as correct by the Commissioner shall be received in all courts as evidence of, and of equal validity as, the original.

- (2) Before entering any premises for the purposes of this Act or the *Petroleum Retailers Rights and Liabilities Act 1982*, the Commissioner or other person authorised shall display to the person, if any, affording him entry a warrant issued to him under subsection (3) and —
- (a) in the case of the Commissioner, a document signed by the Minister and certifying that he is the Commissioner; or
 - (b) in the case of a person otherwise authorised under this Act or the *Petroleum Retailers Rights and Liabilities Act 1982*, a document signed by the Commissioner and certifying that that person is so authorised.
- (3) On receiving an application for a warrant to enter any premises made to him by the Commissioner or other person authorised, a Justice of the Peace or magistrate may, on being satisfied that that warrant is sought in good faith to enable the Commissioner or that person to enter the premises referred to in that application for the purpose of conducting an inquiry or investigation under this Act or the *Petroleum Retailers Rights and Liabilities Act 1982*, issue that warrant to the Commissioner or that person, as the case requires.

[Section 23 amended by No. 72 of 1983 s. 15; No. 59 of 2004 s. 141; No. 24 of 2005 s. 63; No. 28 of 2006 s. 117.]

24. Sufficient notice to be given to enable questions, etc. to be answered

- (1) A person is not obliged to answer any question put to him under this Act unless he has first been informed by the Commissioner that he is required and is obliged to do so by virtue of this Act, nor is a person obliged to furnish any information or answer any question until he has been given sufficient notice to enable him

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to obtain the information or ascertain the answer, as the case requires.

- (2) Without prejudice to section 11 of the *Evidence Act 1906*, when a person is by virtue of this Act required to —
- (a) give any information;
 - (b) answer any question; or
 - (c) produce any document,

he shall not refuse to do so on the ground that the information, answer or document may tend to incriminate him or render him liable to any penalty, but no answer, information or document so given or produced by him shall be admissible in evidence in any proceedings against him other than proceedings in respect of an offence against this Act or the *Petroleum Retailers Rights and Liabilities Act 1982*.

[Section 24 amended by No. 28 of 2006 s. 118.]

25. Failure to supply information

- (1) When under this Act a person is required by the Commissioner to give any information, answer any question or produce any document, the person shall not —
- (a) fail or refuse to give that information, answer the question, or produce the document, without reasonable excuse; or
 - (b) wilfully furnish any information, answer or document that is false or misleading in a material particular.

Penalty: \$20 000.

- (2) It is a defence in any proceeding for an offence against subsection (1)(a) for the accused to show that he had not been informed before failing or refusing to give the information, to answer the question or to produce the document, as the case requires, that he was required under this Act to give the information or answer, or produce the document, as the case requires.

[Section 25 amended by No. 73 of 2000 s. 9 and 14(2); No. 11 of 2001 s. 21(2); No. 84 of 2004 s. 82.]

26. Obstructing Commissioner

A person shall not prevent or attempt to prevent the Commissioner from entering premises or otherwise obstruct or impede the Commissioner in the exercise of his powers under this Act or the *Petroleum Retailers Rights and Liabilities Act 1982*.

Penalty: \$20 000.

[Section 26 amended by No. 73 of 2000 s. 14(2); No. 11 of 2001 s. 21(2); No. 28 of 2006 s. 119.]

27. Power of Commissioner to require returns

- (1) For the purposes of any inquiry or investigation conducted under this Act, the Commissioner may by notice in writing require a person to furnish to him, within a specified time and in a specified form, a return setting forth to the best of the knowledge and ability of that person such of the following particulars as are specified in the notice, namely —
 - (a) the quantity of any petroleum products in his possession or under his control at a specified date and held for sale;
 - (b) the cost to the person of the petroleum products referred to in paragraph (a);
 - (c) the methods and principles in accordance with which the person arrives at the cost referred to in paragraph (b);
 - (d) if the maximum price of the petroleum products referred to in paragraph (a) has not been fixed under this Act, the prices, wholesale or retail, at which, and the conditions on which, the person has sold, sells or proposes to sell those petroleum products;
 - (e) the price, wholesale or retail, charged for the petroleum products referred to in paragraph (a) by the person on

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such date as the Commissioner specifies, and the conditions of any such sale; and

- (f) such further particulars relating to the petroleum products referred to in paragraph (a) as are specified in that notice.
- (2) The Commissioner may by notice in writing require any person engaged in the supply of a petroleum service to furnish to him, within a specified time and in a specified form, a return setting forth to the best of the knowledge and ability of that person such particulars relating to the petroleum service as are specified in that notice.
- (3) A return furnished under this section shall be verified by statutory declaration.
- (4) A return furnished by a person under this section shall not be admissible in evidence in any proceedings against him other than proceedings in respect of an offence against this Act.
- (5) A person who is required by notice given under this section to furnish a return shall not —
 - (a) fail or refuse to comply with any of the requirements of that notice; or
 - (b) wilfully furnish any information that is false or misleading in a material particular.

Penalty: \$20 000.

- (6) In this section, a reference to petroleum products or petroleum services is a reference to petroleum products or petroleum services of a kind which the Commissioner has, by notice published in a newspaper under section 7(4)(b), indicated as being the subject of inquiry or investigation.

[Section 27 amended by No. 72 of 1983 s. 15; No. 73 of 2000 s. 14(1); No. 11 of 2001 s. 21(1).]

27A. Further powers of Commissioner to obtain information

- (1) This section applies if the Commissioner requires information for any of the objects or purposes of this Act or the *Petroleum Retailers Rights and Liabilities Act 1982* other than for the purposes of an inquiry or investigation under this Act or the *Petroleum Retailers Rights and Liabilities Act 1982*.
- (2) The Commissioner may by notice in writing require any person engaged in the sale or supply of a petroleum product to furnish, within a specified time and in a specified manner and form, a return setting forth to the best of the knowledge and ability of that person such particulars as to price or otherwise relating to the petroleum product as are specified in that notice.
- (3) The notice may require a return that it requires to be furnished to be verified by statutory declaration.
- (4) A return furnished by a person under this section is not admissible in evidence in any proceedings against the person other than proceedings in respect of an offence against this Act or the *Petroleum Retailers Rights and Liabilities Act 1982*.
- (5) A person who is required by notice given under this section to furnish a return is not to —
 - (a) fail or refuse to comply with any of the requirements of that notice; or
 - (b) wilfully furnish any information that is false or misleading in a material particular.

Penalty: \$20 000.

- (6) Nothing in this section limits the power to make regulations requiring persons to provide information.

[Section 27A inserted by No. 73 of 2000 s. 10; amended by No. 11 of 2001 s. 21(1); No. 28 of 2006 s. 120.]

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27B. Publication by Commissioner of information

If the Commissioner considers that it will assist in achieving the objects and purposes of this Act or the *Petroleum Retailers Rights and Liabilities Act 1982*, the Commissioner may publish, as the Commissioner considers appropriate, any information obtained under, or in the course of the administration of, this Act or the *Petroleum Retailers Rights and Liabilities Act 1982*.

[Section 27B inserted by No. 73 of 2000 s. 10; amended by No. 28 of 2006 s. 121.]

28. “Commissioner” includes other officers

A reference in this Part to the Commissioner shall be deemed to include a reference to a person who is —

- (a) approved by the Minister or the chief executive officer of the Department; and
- (b) authorised in writing by the Commissioner, which the Commissioner is hereby empowered to do,

to investigate any matter under this Act or the *Petroleum Retailers Rights and Liabilities Act 1982*.

[Section 28 amended by No. 1 of 1985 s. 28; No. 57 of 1997 s. 93; No. 28 of 2006 s. 122.]

Part V — Offences and penalties

Division 1 — General provisions

[Heading inserted by No. 73 of 2000 s. 11(1).]

29. Liability of officers etc., of body corporate

If any chairman, member of the governing body, director, manager, secretary, or officer of a body corporate knowingly authorises or permits the commission of an offence against this Act or the *Petroleum Retailers Rights and Liabilities Act 1982* by the body corporate, he shall be deemed to have committed that offence and be punishable as an individual accordingly.

[Section 29 amended by No. 28 of 2006 s. 123.]

30. Court may order refund of amount paid in excess of maximum price or rate

- (1) If, in any proceedings in respect of an offence against this Act, the court concerned is satisfied that in relation to the sale of any controlled petroleum products or the supply of any controlled petroleum service a price or rate in excess of the maximum price or rate fixed under this Act for the sale of those petroleum products or the supply of that petroleum service has been paid to the accused by a person, that court may, in addition to any other penalty that may be imposed, order the accused to refund to the person the difference between that maximum price or rate and the price or rate actually paid by the person, and the like proceedings may be taken on that order as if that order were an order or judgment given or made in an action in a court of competent jurisdiction by the person against the accused for the recovery of an amount equal to that difference.
- (2) A certificate given by the Commissioner specifying the amount by which the price or rate paid by a person for any petroleum products or petroleum service exceeded the maximum price or rate fixed under this Act for the sale of those petroleum products

or the supply of that petroleum service is, for the purpose of subsection (1), evidence of the matters stated therein.

[Section 30 amended by No. 72 of 1983 s. 15; No. 84 of 2004 s. 82.]

31. Limitation period for prosecutions

A prosecution for an offence against this Act or the *Petroleum Retailers Rights and Liabilities Act 1982* must be commenced within 12 months after the date on which the offence was allegedly committed.

[Section 31 inserted by No. 84 of 2004 s. 80; amended by No. 28 of 2006 s. 124.]

Division 2 — Infringement notices

[Heading inserted by No. 73 of 2000 s. 11(2).]

31A. Infringement notices

In this Division —

“**authorised person**” in section 31B, 31C, 31D or 31E means a person appointed under section 31H by the Commissioner to be an authorised person for the purposes of the section in which the term is used;

“**prescribed**” means prescribed by regulations.

[Section 31A inserted by No. 73 of 2000 s. 11(2).]

31B. Giving of notice

- (1) An authorised person who has reason to believe that a person has committed a prescribed offence under this Act may, within 21 days after the alleged offence is believed to have been committed, give an infringement notice to the alleged offender.
- (2) An offence under section 15, 16, 19, or 20 cannot be prescribed under this section.

[Section 31B inserted by No. 73 of 2000 s. 11(2).]

31C. Content of notice

- (1) An infringement notice is to be in the prescribed form and is to —
 - (a) contain a description of the alleged offence;
 - (b) advise that if the alleged offender does not wish to be prosecuted for the alleged offence in a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to an authorised person within a period of 28 days after the giving of the notice; and
 - (c) inform the alleged offender as to who are authorised persons for the purposes of receiving payment of modified penalties.
- (2) In an infringement notice the amount specified as being the modified penalty for the offence referred to in the notice is to be the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.
- (3) The modified penalty that may be prescribed for an offence is not to exceed 20% of the maximum penalty that could be imposed for that offence by a court.

[Section 31C inserted by No. 73 of 2000 s. 11(2); amended by No. 84 of 2004 s. 80.]

31D. Extension of time

An authorised person may, in a particular case, extend the period of 28 days within which the modified penalty may be paid and the extension may be allowed whether or not the period of 28 days has elapsed.

[Section 31D inserted by No. 73 of 2000 s. 11(2).]

31E. Withdrawal of notice

- (1) An authorised person may, whether or not the modified penalty has been paid, withdraw an infringement notice by sending to

the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.

- (2) If an infringement notice is withdrawn after the modified penalty has been paid, the amount is to be refunded.

[Section 31E inserted by No. 73 of 2000 s. 11(2).]

31F. Benefit of paying modified penalty

- (1) Subsection (2) applies if the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn.
- (2) If this subsection applies it prevents the bringing of proceedings and the imposition of penalties to the same extent that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.
- (3) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

[Section 31F inserted by No. 73 of 2000 s. 11(2).]

31G. Application of penalties collected

An amount paid as a modified penalty is, subject to section 31E(2), to be dealt with as if it were a penalty imposed by a court as a penalty for an offence.

[Section 31G inserted by No. 73 of 2000 s. 11(2).]

31H. Appointment of authorised persons

- (1) The Commissioner may, in writing, appoint officers or classes of officers to be authorised persons for the purposes of section 31B, 31C, 31D or 31E or for the purposes of 2 or more of those sections, but a person who is authorised to give infringement notices under section 31B is not eligible to be an authorised person for the purposes of any of the other sections.

- (2) The Commissioner is to issue to each person who is authorised to give infringement notices under this Division a certificate of that person's authorisation, and the authorised person is to produce the certificate whenever required to do so by a person to whom an infringement notice has been or is about to be given.

- (3) In this section —

“officer” means an officer of the Department.

[Section 31H inserted by No. 73 of 2000 s. 11(2); amended by No. 28 of 2006 s. 125.]

Part VI — Miscellaneous

32. Application of orders and notices

An order or notice under this Act may be made or given so as to apply, according to its tenor, to —

- (a) persons generally;
- (b) all or any persons included in a class of persons;
- (c) all or any persons in any area;
- (d) any particular person;
- (e) the sale of petroleum products or supply of a petroleum service or of petroleum services to a particular person or a class of persons by a particular person;
- (f) petroleum products or petroleum services generally;
- (g) any class of petroleum products or any class of petroleum services;
- (h) all or any petroleum products or petroleum services in any area; or
- (i) specified petroleum products or a specified petroleum service.

[Section 32 amended by No. 72 of 1983 s. 15.]

32A. Delegation by Commissioner

- (1) The Commissioner may delegate to any other person employed in the Department any power or duty of the Commissioner under another provision of this Act or the *Petroleum Retailers Rights and Liabilities Act 1982*.
- (2) The delegation must be in writing signed by the Commissioner.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so

in accordance with the terms of the delegation unless the contrary is shown.

- (5) Nothing in this section limits the ability of the Commissioner to perform a function through an officer or agent.

[Section 32A inserted by No. 28 of 2006 s. 126.]

32B. Protection from liability for wrongdoing

- (1) A person is not liable for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act or the *Petroleum Retailers Rights and Liabilities Act 1982*.
- (2) The State is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act or the *Petroleum Retailers Rights and Liabilities Act 1982* had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

[Section 32B inserted by No. 28 of 2006 s. 126.]

32C. Judicial notice

All courts, judges and persons acting judicially shall take judicial notice of the official signature of every person who is for the time being and every person who has at any time been the Commissioner and of the fact that such person holds or has held such office.

[Section 32C inserted by No. 28 of 2006 s. 126.]

s. 33

33. Secrecy

- (1) Subject to subsection (2), the Minister, the Commissioner, an officer of the Department, a member of a committee, or a person acting pursuant to regulations referred to in section 4(3) or authorised in accordance with section 28 shall not either directly or indirectly use, make a record of, or divulge or communicate to any person information that comes to his knowledge in consequence of his official position under or in relation to this Act or the *Petroleum Retailers Rights and Liabilities Act 1982*.
Penalty: \$20 000.
- (2) Nothing in subsection (1) prohibits the use, recording, divulging or communication of any information —
- (a) for the purposes of this Act or the *Petroleum Retailers Rights and Liabilities Act 1982* or any proceedings under this Act or the *Petroleum Retailers Rights and Liabilities Act 1982*;
 - (b) in the course of an exchange of information with persons or bodies having power to regulate prices or rates in any other State or in a Territory;
 - (c) in the course of furnishing information or documents pursuant to regulations referred to in section 4(3)(a); or
 - (d) in the case of a person who also exercises powers or performs duties or functions under another Act administered by the Minister, in the course of the exercise of his powers or performance of his duties or functions under that Act.

[Section 33 amended by No. 79 of 1995 s. 69(2); No. 73 of 2000 s. 14(2); No. 11 of 2001 s. 21(2); No. 28 of 2006 s. 127.]

34. Regulations

The Governor may make regulations prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular —

- (a) creating offences against those regulations and prescribing penalties, not exceeding —
 - (i) in the case of an individual, \$20 000; or
 - (ii) in the case of a body corporate, \$100 000,in respect of those offences;
- (b) requiring any information or document required to be given or furnished thereunder to be verified by statutory declaration.

[Section 34 amended by No. 73 of 2000 s. 14(3); No. 11 of 2001 s. 21(3).]

[35. Repealed by No. 72 of 1983 s. 14.]

Schedule 1 Certain exclusions from definition of “petroleum product”

**Schedule 1 — Certain exclusions from definition of
“petroleum product”**

[s. 3(1)]

Chemical fertilisers

Ammonia aqua, fertiliser grade
Ammonium nitrate
Ammonium nitrate, liquid
Ammonium phosphate fertiliser
Ammonium sulphate
Anhydrous ammonia fertiliser
Chemical fertilisers
Chemical fertilisers, mixed
Fertilisers, leaf or foliage type
Nitrate of soda fertiliser
Phosphate, ground
Potash fertilisers
Prilled ammonium nitrate
Sodium nitrate fertiliser
Superphosphate
Urea, fertiliser grade

Industrial gases

Acetylene gas
Argon
Carbon dioxide gas
Carbon monoxide
Dry ice
Helium
Hydrogen
Neon
Nitrogen
Nitrous oxide
Oxygen

Synthetic resins and rubber

Acrylic resins
Acrylonitrile-butadiene-styrene
Alkyd resins
Allyl plastics
Aminoaldehyde resins

Certain exclusions from definition of "petroleum product"

Schedule 1

Carbon black
Casein, hardened
Cellulose acetate
Cellulose nitrate
Cellulosic resins
Coal tar resins
Cresol formaldehyde
Epoxy resins
Ethyl cellulose
Fluorocarbon resins
Gelatin, chemically hardened
Melamine formaldehyde resins
Methylstyrene
Phenol formaldehyde
Phenol resins
Plastics raw materials
Polyamide resins
Polyester resins
Polyethylene resins
Polymethacrylate
Polypropylene resins
Polystyrene
Polyurethane resins
Polyvinyl acetate
Polyvinyl chloride compounds
Polyvinyl chloride resins (polymer)
Protein, hardened
Resin esters
Styrene butadiene resins
Styrene butylene resins
Styrene resins
Synthetic resins
Synthetic rubber
Urea formaldehyde resins
Urea resins
Urethane resins
Vinyl chloride copolymers
Vinyl resins
Vulcanised fibre

Organic industrial chemicals

Schedule 1 Certain exclusions from definition of “petroleum product”

Acetaldehyde
Acetic acid
Acetic anhydride
Acetin
Acetone
Acetone redistilling or re-refining
Acetylsalicylic acid
Acids, organic
Alcohol, absolute
Alcohol, industrial
Amyl acetate
Amyl alcohol
Aniline dyes
Aniline oil
Ascorbic acid
Azo dyes
B.H.C.
Butadiene
Butyl acetate
Butyl alcohol
Carbolic acid
Carbon bisulphide
Carbon disulphide
Carbon tetrachloride
Chemical colours, organic
Chloroform
Citric acid
Cresylic acid
Cuprene, organic
Cyclic plasticisers
D.D.T.
Dibutyl phthalate
Di-iso-octyl phthalate
Dye intermediates
Dyes
Dyestuffs
Ethyl acetate
Ethyl alcohol
Ethyl formate
Ethylene
Ethylene oxide

Certain exclusions from definition of "petroleum product"

Schedule 1

Fatty acids
Fluorocarbons
Formaldehyde
Industrial chemicals, organic
Lactic acids
Lake colours
Methanol
Methyl alcohol
Methyl methacrylate
Methylated spirits
Naphtha, crude
Natural resins
Nitrobenzene
Nitrocellulose
Nitromethane
Nitroparaffins
Oil treating compounds
Oleic acid
Oxalic acid
Phenol
Phthalic anhydride esters
Pigments, organic
Plasticisers
Polymeric plasticisers
Power alcohol
Rennin
Rosin
Spirits, non-potable
Stearine pitch
Stearate or stearic acid
Tannic acid
Tanning compounds, organic
Tannins
Tartaric acid
T.D.E.
Thinners, paint, redistilling or re-refining
Toluol
Trichloroethylene
Tricresyl phosphate
Turpentine
Turpentine, mineral

Schedule 1 Certain exclusions from definition of “petroleum product”

Urea
Vinyl acetate monomer
White spirit, non-potable
Wood alcohol
Xylol

Inorganic industrial chemicals

Acids, inorganic
Alkalis
Aluminium sulphate
Ammonia
Ammonium persulphate
Barium sulphate, precipitated
Bone char
Boracic acid
Borax
Boric acid
Cadmium pigments
Calcium arsenate
Calcium carbide
Calcium chloride
Carbide
Charcoal
Chemical colours, inorganic
Chloride of lime
Chlorine
Chrome oxide
Chromium green oxide
Copper sulphate
Cuprene, inorganic
Degreasing compounds
Glaubers salt
Graphite, artificial
Hydrochloric acid
Hydrofluoric acid
Hydrogen peroxide
Hydrogen sulphide
Industrial chemicals, inorganic
Lampblack
Lead arsenate
Lead chromate

Certain exclusions from definition of "petroleum product"

Schedule 1

Litharge
Lithopone
Muriatic acid
Nitre cake
Nitric acid
Phosphoric acid
Phosphorus
Pigments, inorganic
Potassium carbonate
Potassium hydroxide
Prussian blue
Red lead
Salt cake
Salt refining
Silicates
Soda ash
Sodium alginate
Sodium aluminate
Sodium antimonate
Sodium benzoate
Sodium bicarbonate
Sodium bisulphate
Sodium borate
Sodium carbonate
Sodium cyanide
Sodium hydroxide
Sodium metasilicate
Sodium
Sodium peroxide
Sodium silicate
Sodium sulphate
Sodium sulphide
Sulphur compounds
Sulphur dioxide
Sulphuric acid
Tanning compounds, inorganic
Titanium dioxide
Titanium pigments
Ultramarine
Vitreous enamel frits
Water treating compounds

Schedule 1 Certain exclusions from definition of “petroleum product”

Waterproofing compounds
White lead
Zinc chloride
Zinc oxide

Other products

Crude oil
Liquefied natural gas
Natural gas
Natural sales gas
Natural gas condensate
Ethane

[Schedule 1 inserted by No. 73 of 2000 s. 12.]

Notes

- ¹ This is a compilation of the *Petroleum Products Pricing Act 1983* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Prevention of Excessive Prices Act 1983</i> ³	1 of 1983	25 Mar 1983	25 Mar 1983 (see s. 2 and <i>Gazette</i> 25 Mar 1983 p. 1059)
<i>Acts Amendment (Prevention of Excessive Prices) Act (No. 2) 1983</i> Pt. III	72 of 1983	22 Dec 1983	30 Dec 1983 (see s. 2(b))
<i>Acts Amendment (Consumer Affairs) Act 1985</i> Pt. VI	1 of 1985	8 Mar 1985	8 Mar 1985 (see s. 2(3))
<i>Acts Amendment (Financial Administration and Audit) Act 1985</i> s. 3	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 3(2)	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Industrial Relations Legislation Amendment and Repeal Act 1995</i> s. 69(2)	79 of 1995	16 Jan 1996	16 Jan 1996 (see s. 3(1))
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 39(10) and 93	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2)
<i>Petroleum Products Pricing Amendment Act 2000</i>	73 of 2000	4 Dec 2000	1 Jan 2001

Short title	Number and year	Assent	Commencement
<i>Petroleum Legislation Amendment Act 2001</i> s. 18-21	11 of 2001	13 Jul 2001	s. 20: 24 Aug 2001 (see s. 2 and <i>Gazette</i> 23 Aug 2001 p. 4377); balance: 1 Jan 2002 (see s. 2(1) and <i>Gazette</i> 31 Dec 2001 p. 6761)
Reprint of the <i>Petroleum Products Pricing Act 1983</i> as at 11 Jan 2002 (includes amendments listed above) (correction in <i>Gazette</i> 20 Sep 2002 p. 4693)			
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80 and 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005</i> s. 63	24 of 2005	2 Dec 2005	1 Jan 2006 (see s. 2 and <i>Gazette</i> 23 Dec 2005 p. 6244)
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 4 Div. 17 ⁴	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)

² Under the *Alteration of Statutory Designations Order (No. 2) 2001* a reference in any law to the Department of Consumer Affairs or to the Ministry of Consumer Affairs or the Ministry of Fair Trading is to be read and construed as a reference to the Department of Consumer and Employment Protection.

³ Now known as the *Petroleum Products Pricing Act 1983*; short title changed (see note under s. 1).

⁴ The *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 4 Div. 23 reads as follows:

“

Division 23 — Transitional provisions

151. Commissioner for Fair Trading

- (1) On commencement, the person holding the office of Commissioner for Fair Trading immediately before commencement is to be taken to have been designated as the

Commissioner or Registrar (as the case requires) for the purposes of each of the following enactments —

- (a) the Associations Incorporation Act 1987;
 - (b) the *Business Names Act 1962*;
 - (c) the *Chattel Securities Act 1987*;
 - (d) the *Companies (Co-operative) Act 1943*;
 - (e) Part 8 of the *Competition Policy Reform (Western Australia) Act 1996*;
 - (f) the *Consumer Affairs Act 1971*;
 - (g) the *Co-operative and Provident Societies Act 1903*;
 - (h) the *Credit Act 1984*;
 - (i) the *Credit (Administration) Act 1984*;
 - (j) the *Employment Agents Act 1976*;
 - (k) the *Hire-Purchase Act 1959*;
 - (l) the *Limited Partnerships Act 1909*;
 - (m) the *Motor Vehicle Dealers Act 1973*;
 - (n) the *Petroleum Products Pricing Act 1983*;
 - (o) the *Petroleum Retailers Rights and Liabilities Act 1982*;
 - (p) the *Residential Tenancies Act 1987*;
 - (q) the *Retirement Villages Act 1992*;
 - (r) the *Travel Agents Act 1985*.
- (2) A thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading (including in his or her capacity as the Prices Commissioner) before commencement under a provision of the *Consumer Affairs Act 1971* for the purposes of another enactment listed in subsection (1) has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted —
- (a) by, to or in relation to, the Commissioner or Registrar (as the case requires) as defined in that other enactment as in force after commencement; and
 - (b) where relevant, under the corresponding provision of that other enactment as in force after commencement.
- (3) To the extent that a thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading (including in his or her capacity as the Prices Commissioner) before commencement under, or for the purposes of, an enactment listed in subsection (1) is not covered by subsection (2), it has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted by, to or in

relation to, the Commissioner or Registrar (as the case requires) as defined in that enactment as in force after commencement.

- (4) A thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading before commencement under, or for the purposes of, an enactment not listed in subsection (1) has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted by, to or in relation to, the Commissioner as defined in the *Consumer Affairs Act 1971* as in force after commencement.
- (5) A reference in an enactment to the Commissioner for Fair Trading is to have effect after commencement as if it had been amended to be a reference to —
 - (a) in the case of an enactment listed in subsection (1) or subsidiary legislation made under such an enactment — the Commissioner or Registrar (as the case requires) as defined in the enactment as in force after commencement; or
 - (b) in the case of any other enactment or subsidiary legislation — the Commissioner as defined in the *Consumer Affairs Act 1971* as in force after commencement.

152. Commissioner for Corporate Affairs and Registrar of Co-operative and Financial Institutions

- (1) A thing done or omitted to be done by, to or in relation to, the Commissioner for Corporate Affairs before commencement under, or for the purposes of, the *Companies (Co-operative) Act 1943* has the same effect after commencement as if it had been done or omitted by, to or in relation to, the Registrar as defined in that Act as in force after commencement.
- (2) A thing done or omitted to be done by, to or in relation to, the Registrar of Co-operative and Financial Institutions before commencement under, or for the purposes of, the *Co-operative and Provident Societies Act 1903* has the same effect after commencement as if it had been done or omitted by, to or in relation to, the Registrar as defined in that Act as in force after commencement.

153. Consumer Affairs Act 1971

Each office in existence immediately before commencement because of section 15(1) of the *Consumer Affairs Act 1971* does not cease merely because that subsection is repealed by this Act.

154. *Petroleum Products Pricing Act 1983*

Each office in existence immediately before commencement because of section 5(2)(b) of the *Petroleum Products Pricing Act 1983* does not cease merely because that paragraph is deleted by this Act.

155. **Interpretation**

In this Division —

“**commencement**” means the time at which this Division comes into operation;

“**Commissioner for Fair Trading**” means the Commissioner for Fair Trading referred to in section 15 of the *Consumer Affairs Act 1971* as in force before commencement;

“**Prices Commissioner**” means the Prices Commissioner referred to in section 5(1) of the *Petroleum Products Pricing Act 1983* as in force before commencement.

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