

Western Australia

Unleaded Petrol Act 1984

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NOTES

Unleaded Petrol Act 1984

An Act to provide for the sale, supply and use of unleaded petrol and for connected purposes.

[Assented to 8 January 1985.]

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. Short title

This Act may be cited as the *Unleaded Petrol Act 1984*.

2. Interpretation

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

“analyst” means a person appointed under section 12 (1) to be an analyst;

“authorized officer” means a person appointed under section 12 (1) to be an authorized officer;

“AS 1876” means Australian Standard 1876 entitled Petrol (Gasoline) for Motor Vehicles published by the Standards Association of Australia;

“dispensing equipment” means equipment by means of which petrol is transferred from a storage facility into the part of a vehicle in which petrol that is to be used as fuel for the propulsion of the vehicle is stored;

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“petrol” includes a mixture of petrol and any other fuel;

“petrol retailer” means a person who sells petrol by retail, whether it is supplied in bulk, in containers, through dispensing equipment, or otherwise, and whether or not the kind of petrol sold is limited but does not include a person who so sells petrol if none of the petrol is for use in propelling a vehicle on a road within the meaning of the *Road Traffic Act 1974*;

“unleaded petrol” means petrol that does not contain more than —

- (a) 0.013 grams of lead; or
- (b) .0013 grams of phosphorus, per litre when it is at 15 ° C.

- (2) For the purpose of ascertaining whether petrol is unleaded petrol as defined in subsection (1), the mass of lead or phosphorus that is present as a constituent of a compound shall be included in determining the mass of lead or phosphorus, respectively, that is present in the petrol.

3. Petrol retailer to sell unleaded petrol

- (1) On and after 1 July 1985, a petrol retailer who is open for business shall comply with a request to sell unleaded petrol to a person.

Penalty: In the case of a body corporate, \$5 000 and, in the case of a person other than a body corporate, \$2 000.

- (2) In proceedings for an offence against subsection (1) it is a defence for the person charged to prove that —
 - (a) he did not have any or sufficient unleaded petrol to enable him to comply with the request and he had made all reasonable efforts to obtain such quantities of unleaded petrol as could have reasonably been expected to be sufficient to enable him to comply with every such request;

- (b) he was prevented by reason of the malfunction of equipment or other unavoidable cause from complying with the request and he had made all reasonable efforts to remedy the situation;
- (c) he could not have complied with the request without contravening a provision of the law; or
- (d) having regard to the nature of the request or the circumstances in which the request was made, there were reasonable grounds for not complying with the request.

4. Petrol supplier to ensure supply of unleaded petrol

- (1) On and after 1 July 1985 a person who, in the course of business, supplies petrol to a petrol retailer shall, upon being requested to supply unleaded petrol to that petrol retailer —
 - (a) comply with the request; or
 - (b) make arrangements for another person to supply to that petrol retailer the unleaded petrol requested.

Penalty: \$5 000.

- (2) In proceedings for an offence against subsection (1) it is a defence for the person charged to prove that —
 - (a) he had made all reasonable efforts to comply with the request or, being unable to comply with the request, make arrangements of the kind referred to in subsection (1) (b) but by reason of circumstances beyond his control was neither able to comply with the request nor make such arrangements;
 - (b) he could not have complied with the request nor made arrangements of the kind referred to in subsection (1) (b) without contravening a provision of the law; or
 - (c) having regard to the nature of the request or the circumstances in which the request was made, there were reasonable grounds for not complying with the request or making such arrangements.

5. Exemptions

- (1) Subject to this section, the Minister may, by notice published in the *Gazette*, exempt a petrol retailer specified in the notice from the requirement to sell unleaded petrol and, except as may be otherwise provided in the exemption, section 3 (1) does not apply to a petrol retailer who is for the time being so exempted.
- (2) Subject to this section, an exemption may be given with effect for an indefinite period or for such period as is specified in the notice.
- (3) An exemption under this section shall not be given unless the Minister is satisfied that —
 - (a) the availability of unleaded petrol throughout the State would not be unreasonably prejudiced if the exemption is given; and
 - (b) sufficient cause has been shown why the exemption should be given.
- (4) Subject to this section, the Minister may, by notice published in the *Gazette*, vary or revoke an exemption under this section but any such variation or revocation shall not take effect until such day as is specified in the notice being, in the case of a revocation, a day not less than 6 months after the day on which the notice is so published.
- (5) Before the Minister gives an exemption under this section, or varies or revokes an exemption so given, he shall consult with the Minister of the Crown to whom the administration of the *Consumer Affairs Act 1971* is for the time being committed by the Governor or the Minister of the Crown for the time being acting for or on behalf of that Minister.

6. Application for exemption

An application for an exemption under section 5 shall be made in writing to the Minister and the applicant shall provide to the Minister such information as the Minister or an officer

authorized in that behalf may request in relation to the application.

7. Declared fuel supply emergencies

- (1) Where, under Part III of the *Fuel, Energy and Power Resources Act 1972*, a state of emergency is declared to exist in the State or any part of the State and, by reason of the emergency in relation to which a state of emergency has been declared, the Governor considers it just and expedient to do so, the Governor may, by order published in the *Gazette*, declare that while the order is in force sections 3 (1) and 4 (1) do not apply and an order so made shall have effect according to its tenor.
- (2) An order under subsection (1) shall specify the period, not exceeding one month, during which it shall be in force but nothing in this subsection prevents the making of successive orders under subsection (1).
- (3) Section 41 of the *Interpretation Act 1984* does not apply to an order under subsection (1) but nothing in this section limits the application to such an order of any other provision of that Act applying to subsidiary legislation.

8. Pricing

- (1) If, in addition to selling unleaded petrol, a petrol retailer sells petrol that is not unleaded petrol, the price at which he sells unleaded petrol at any one site shall not exceed the price at which he would sell the same quantity of petrol that is not unleaded petrol at that site.

Penalty: In the case of a body corporate, \$5 000 and, in the case of a person other than a body corporate, \$2 000.
- (2) Subject to subsection (5), the Minister may, by notice published in the *Gazette*, exempt a petrol retailer specified in the notice, or any petrol retailer of a class so specified, from the price constraint imposed by subsection (1) and any such exemption may be subject to such other constraint on the price of unleaded

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petrol as is fixed in the notice by reference to the price at which the petrol retailer concerned would sell the same quantity of petrol that is not unleaded petrol.

- (3) Subject to subsection (5), the Minister may, by notice published in the *Gazette*, vary or revoke a notice under this section.
- (4) A notice under this section or, where the notice has been varied under subsection (3), the notice as so varied, shall have effect according to its tenor until it is revoked under subsection (3).
- (5) Before the Minister gives an exemption under this section, or varies or revokes an exemption so given, he shall consult with the Minister of the Crown to whom the administration of the *Consumer Affairs Act 1971* is for the time being committed by the Governor or the Minister of the Crown for the time being acting for or on behalf of that Minister.

9. Marking of bowisers

On and after 1 July 1985, a petrol retailer who supplies petrol through dispensing equipment shall ensure that each bowser from which petrol may be supplied is conspicuously marked in such a position as to be readily seen by each person to whom petrol from that bowser is supplied —

- (a) where the petrol that may be supplied from the bowser is unleaded petrol, with the words “UNLEADED” in letters that are not less than 40 millimetres in height;
- (b) where the petrol that may be supplied from the bowser is not unleaded petrol, with the words “CONTAINS LEAD” in letters that are not less than 20 millimetres in height.

Penalty: In the case of a body corporate, \$2 500 and, in the case of a person other than a body corporate, \$1 000.

10. Nozzle sizes

On and after 1 July 1985, a petrol retailer who supplies petrol through dispensing equipment shall ensure that the discharge

end of each nozzle through which petrol is supplied from dispensing equipment has an outside diameter of —

- (a) where the petrol supplied through that nozzle is unleaded petrol, not more than 21.3 millimetres;
- (b) where the petrol supplied through that nozzle is not unleaded petrol, not less than 23.6 millimetres.

Penalty: In the case of a body corporate \$5 000 and, in the case of a person other than a body corporate, \$2 000.

11. Misdescription

A person who —

- (a) sells or distributes for sale as unleaded petrol;
- (b) offers or exhibits for sale as unleaded petrol; or
- (c) has in his possession for sale, or for distribution for sale, as unleaded petrol,

any petrol that, at the time it is so sold or distributed, offered or exhibited, or had in possession, as the case may be, is not unleaded petrol within the meaning of this Act commits an offence and is liable to a fine not exceeding \$5 000 in the case of a body corporate or \$2 000 in the case of a person other than a body corporate.

12. Authorized officers and analysts

- (1) The Minister may, by notice published in the *Gazette*, appoint public service officers within the meaning of the *Public Sector Management Act 1994* to be authorized officers or analysts for the purposes of this Act.
- (2) Every person appointed under subsection (1) shall be furnished with a certificate of his appointment, signed by either the Minister or an officer authorized by the Minister to sign the certificate on his behalf, and an authorized officer shall, if requested to do so, produce the certificate of his appointment to

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any person in relation to whom he is about to exercise any of his powers under this Act.

[Section 12 amended by No. 32 of 1994 s.19.]

13. Powers of authorized officers

- (1) An authorized officer —
 - (a) shall have reasonable access to any place for the purposes of investigating whether any contravention of this Act is taking, or has taken place;
 - (b) may make preliminary tests on petrol for the purpose of assisting him to decide whether, under paragraph (c), a sample of that petrol should be taken for analysis;
 - (c) may, for the purposes of analysis, take samples of petrol that the authorized officer has reason to suspect may be involved in the commission of an offence against this Act and may retain any sample so taken, without paying for it;
 - (d) may require a person having possession of petrol to produce for inspection any documents relating to the petrol.
- (2) Where an authorized officer takes and retains a sample of petrol for analysis under subsection (1) (c) he shall take a further sample of that petrol which shall be placed in a sealed and marked container and shall be given to the person having possession of the petrol sampled.

14. Offences

A person shall not —

- (a) obstruct or interfere with an authorized officer exercising any of his powers under this Act;
- (b) fail or refuse to obey a direction reasonably given by an authorized officer for the purposes of, or in the course of, exercising any of his powers under this Act;

- (c) fail or refuse to produce for inspection by an authorized officer any document the production of which is required under section 13 (1) (d); or
- (d) tamper with any sample taken under this Act by an authorized officer.

Penalty: \$2 000.

15. Institution of prosecutions

- (1) A prosecution for an offence against this Act may be instituted by any person authorized in that behalf by the Minister.
- (2) There shall be served with the summons issued upon complaint of an offence a copy of any analyst's report intended to be used by the prosecution in the proceedings in respect of the offence, and service of a copy of the report may be proved in the same manner as is service of the summons.

16. Evidence of authority

In any proceedings for an offence against this Act, parol evidence that any person is an analyst or an authorized officer or is otherwise authorized under this Act shall be sufficient.

17. Sample to represent whole

Where in any proceedings for an offence against this Act proof is given of the contents of any sample analysed under this Act and that the sample was taken in accordance with AS 1876, the sample shall be taken to be representative of the petrol sampled.

18. Analyst's report

- (1) In any proceedings for an offence against this Act a report purporting to be signed by an analyst stating the result of the analysis of a sample is, without proof of the signature of the person purporting to have signed the report or that that person is an analyst, sufficient evidence —

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- (a) that the contents of the sample are as set out in the report; and
- (b) that the sample was analysed in accordance with AS 1876,

and, where the report contains a statement that the sample was taken under this Act by an authorized officer sufficient evidence —

- (c) that the sample was taken in accordance with AS 1876; and
 - (d) that the sample was taken from the petrol identified in the report as the petrol sampled.
- (2) In proceedings for an offence against this Act the defendant shall not adduce evidence in rebuttal of an analyst's report in relation to any matter of which the report is, pursuant to subsection (1), sufficient evidence unless, within 4 days after a copy of the report is served on him in accordance with section 15 (2), or such further time as the court may allow, the defendant gives notice in writing to the Minister to the effect that he intends to adduce evidence in rebuttal of the report in relation to that matter.

19. Method of analysis

In proceedings for an offence against this Act the result of an analysis of petrol, whether made by an analyst or not, shall not be admitted as evidence of the lead or phosphorus content of the petrol unless —

- (a) it is contained in a report of an analyst to which section 18 (1) applies; or
- (b) it is first proved that the analysis was carried out in accordance with AS 1876.

20. Sale through agent or employee

- (1) For the purposes of this Act, where an offence is committed by a person who is acting as an agent or employee, the offence is

committed by the principal as well as by the agent or employee except where, or to the extent that, the agent or employee acted outside his authority as an agent or outside the course of his employment, as the case may be, or acted contrary to the instructions of his principal.

- (2) In proceedings for an offence against this Act the defendant, upon complaint made by him and on giving to the prosecution, not less than 4 days before the hearing of the proceedings, notice in writing of his intention to do so, may have any person to whose act or default he alleges that the contravention of the provisions in question was due brought before the court in the proceedings; and if, after the contravention has been proved —
 - (a) the original defendant proves that the contravention was due to the act or default of that other person, that other person may be convicted of the offence; and
 - (b) the original defendant further proves that he has used all due diligence to secure that the provisions in question were complied with, he shall be acquitted of the offence.
- (3) Where a defendant seeks to avail himself of subsection (2) the prosecution, as well as the person whom the defendant charges with the offence, may —
 - (a) cross-examine the defendant, if the defendant gives evidence, and any witness called by the defendant; and
 - (b) adduce evidence in rebuttal of the evidence adduced by the defendant.
- (4) Where it appears to a person authorized to institute a prosecution for an offence against this Act (in this subsection referred to as “the prosecutor”) that an offence has been committed in respect of which proceedings might be taken under this Act against a person (in this subsection referred to as “the offender”), and the prosecutor is reasonably satisfied —
 - (a) that the offence was due to an act or default of another person; and

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- (b) that the offender could establish a defence under subsection (2),

the prosecutor may institute proceedings against that other person in respect of the offence without first proceeding against the offender, and, in proceedings so instituted, that other person may be charged with, and, on proof that the contravention was due to his act or default, be convicted of, the offence with which the offender might have been charged.

21. Protection

The Minister or any person who is or has been an analyst, authorized officer, or other officer, shall not be personally liable in civil proceedings and the Crown in right of the State is not liable, for any act done or omission made by him for the purposes of this Act and in good faith in the course of the exercise or purported exercise of a power or duty which he had reasonable and probable cause to believe was conferred or imposed by this Act.

22. Review of Act

- (1) As soon as practicable after 1 July 1993 the Minister shall cause an investigation and review to be conducted, and a report to be prepared, as to the need for this Act to continue in operation.
- (2) The Minister shall cause a copy of the report prepared for the purposes of subsection (1) to be laid before each House of Parliament as soon as practicable after it is completed

NOTES

- ^{1.} This is a compilation of the *Unleaded Petrol Act 1984* and includes all amendments effected by the other Acts referred to in the following Table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Unleaded Petrol Act 1984</i>	127 of 1984	5 Jan 1985	5 Feb 1985
<i>Acts Amendment (Public Sector Management) Act 1994 Part 4</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see <i>Gazette</i> 30 Sep 1994 p.4948)