

**ACTS AMENDMENT
AND REPEAL
(ROAD MAINTENANCE).**

No. 9 of 1979.

AN ACT to repeal the Road Maintenance (Contribution) Act, 1965-1978 and to amend the Road Traffic Act, 1974-1977, the Transport Commission Act, 1966-1977 and the Main Roads Act, 1930-1977.

[Assented to 18th May, 1979.]

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

1. This Act may be cited as the *Acts Amendment and Repeal (Road Maintenance) Act, 1979.* Short title.

Commence-
ment.

2. (1) Subject to subsection (2) of this section the provisions of this Act shall come into operation on the date on which this Act receives the Royal Assent.

(2) Parts I and II of this Act shall come into operation on the first day of July, 1979.

PART I—ROAD MAINTENANCE (CONTRIBUTION)
ACT, 1965-1978.

Repeal.

3. The Road Maintenance (Contribution) Act, 1965-1978 is hereby repealed.

Application
of funds
existing or
arising
under
repealed
Act.

4. (1) In this section—

“the repealed Act” means the Road Maintenance (Contribution) Act, 1965-1978;

“the Roads Maintenance Trust Fund” means the fund opened and kept under section 12 of the repealed Act.

(2) The following moneys shall be applied by the Treasurer on and only on the maintenance of roads in the State, including grants to the Councils of Municipalities constituted under the Local Government Act, 1960, that is to say—

(a) money standing to the credit of the Roads Maintenance Trust Fund immediately before the coming into operation of this Part;

(b) money received or recovered after the coming into operation of this Act in respect of charges that became due under the repealed Act before the coming into operation of this Part.

PART II—ROAD TRAFFIC ACT, 1974-1977.

Citation.

5. (1) In this Part the Road Traffic Act, 1974-1977 is referred to as the principal Act.

(2) The principal Act as amended by this Act may be cited as the Road Traffic Act, 1974-1979.

Act No. 59
of 1974 as
amended by
Acts Nos. 77
and 93 of
1975, 17, 48
and 135 of
1976 and
4 of 1977.

6. (1) Section 19 of the principal Act is amended—

Section 19
amended.

(a) by repealing subsections (8), (9) and (10) and substituting a subsection as follows—

(8) Where pursuant to subsection (8), (9) or (10) of this section as in force before the 1st day of July, 1979 the Authority has allowed a reduction or made a repayment in respect of the fee paid for the issue of a licence for a vehicle and the period in respect of which that reduction was allowed or that repayment was made, as the case may be, falls wholly or partly after the 30th day of June, 1979 the Authority may, in writing, demand from the person to whom the licence was issued such amount of that reduction or repayment as bears the same proportion to the whole of that reduction or repayment as the portion of the period in respect of which the reduction or repayment was allowed or made that falls after the 30th day of June, 1979 bears to the whole of that period, and, if that amount is not paid within thirty days after the demand is made, the Authority may recover it from that person in a court of competent jurisdiction. ;
and

(b) by deleting paragraph (b) of subsection (14).

PART III—TRANSPORT COMMISSION ACT, 1966-1977.

7. (1) In this Part the Transport Commission Act, 1966-1977 is referred to as the principal Act.

Citation.

No. 9.] *Acts Amendment and Repeal* [1979.
(Road Maintenance).

Approved
for
reprint 21st
June, 1977
and
amended
by Act No.
53 of 1977.

(2) The principal Act as amended by this Act may be cited as the Transport Commission Act, 1966-1979.

Long title
amended.

8. The long title of the principal Act is amended by adding after the word “sub-contracts” in the penultimate line the words “and to provide for the licensing of certain persons who carry on the business of selling petroleum products”.

Section 3
amended.

9. Section 3 of the principal Act is amended—

(a) by deleting the word “LICENCES” in the reference to Part III and substituting the words “LICENSING OF VEHICLES AND SHIPS”; and

(b) by inserting immediately under the reference to Division 5 of Part III a reference as follows—

PART IIIA.—BUSINESS FRANCHISE
(PETROLEUM PRODUCTS) LICENSING.
Ss. 47G-47X. .

Section 21
amended.

10. Subsection (2) of section 21 of the principal Act is amended by deleting the words “for any” in line two and substituting the words “in respect of any public vehicle”.

Part IIIA
added.

11. The principal Act is amended by adding after section 47F a Part as follows—

PART IIIA.—BUSINESS FRANCHISE
(PETROLEUM PRODUCTS) LICENSING.

Interpre-
tation.

47G. (1) In this Part unless the contrary intention appears—

“diesel fuel” means a petroleum or shale product used or capable of use in propelling a diesel engined road vehicle;

“licence” means a licence granted under this Part;

“licensee” means the holder of a licence;

“motor spirit” means gasoline and other petroleum or shale spirit, having a flash point of less than 23° Celsius when tested in an Abel Pensky closed test apparatus;

“petroleum products” means motor spirit or diesel fuel;

“road vehicle” means a vehicle designed solely or principally for transporting persons, goods or animals by road;

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

“wholesaling petroleum products” means—

(a) selling motor spirit where that motor spirit has not previously been sold in the State; or

(b) selling diesel fuel for use only in propelling diesel engined road vehicles where that diesel fuel has not previously been sold in the State for use only in propelling such vehicles,

and “wholesaled” in relation to motor spirit and diesel fuel has a correlative meaning.

(2) For the purposes of the interpretations of “wholesaling petroleum products” and “wholesaled” in subsection (1)—

(a) the supply of petroleum products from a refinery for the purposes of resale shall not be regarded as constituting a sale of those petroleum products; and

(b) the delivery of petroleum products into the State from elsewhere shall not be regarded as constituting a sale of those products in the State.

(3) A reference in this Part to the carrying on of the business of wholesaling petroleum products includes a reference to the carrying on of that business as part of or in conjunction with any other business.

(4) A reference in this Part to a person who carries on the business of wholesaling petroleum products does not extend to a person who carries on such a business as an agent or employee of another person who carries on such a business.

Functions
of Com-
missioner,
etc.

47H. (1) The Commissioner shall consider and determine applications for licences under this Part and shall have such other powers and functions as are conferred on him by this Part.

(2) The Commissioner may by instrument in writing under his hand delegate to the Deputy Commissioner or to any other officer assisting the Commissioner in the administration of this Part all or any of his powers or functions under this Part, except this power of delegation.

(3) A delegation under subsection (2) may be revoked at any time by the Commissioner.

(4) A power or function, the exercise or performance of which has been delegated under this section may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the terms of the delegation by the delegate.

(5) A delegation under this section may be made subject to such conditions or such limitations as to the exercise or performance of any of the powers or functions delegated, or as to time or circumstance, as may be specified in the instrument of delegation.

(6) Notwithstanding the provisions of subsection (2) or any delegation made under this section, the Commissioner may continue to exercise or perform all or any of the powers or functions conferred or imposed on him by this Part.

(7) Any act or thing done or suffered by a delegate of the Commissioner while acting in the exercise of a delegation under this section, shall have the same force and effect as if the act or thing done had been done or suffered by the Commissioner.

(8) Where the exercise or performance by the Commissioner of any power or function under this Part or the operation of any provision of this Part is dependent upon the opinion, belief or state of mind of the Commissioner in relation to any matter, that power or function may be exercised or performed by a delegate of the Commissioner acting as such in relation to that matter, or that provision may operate, as the case may be, upon the opinion, belief or state of mind of that delegate acting as such.

(9) The provisions of this section shall be read and construed as being in addition to and not in derogation of or in substitution for those of section eighteen.

47I. (1) The Commissioner or any officer authorized by him in that behalf may at any reasonable time—

Investi-
gations.

- (a) enter and remain in any premises at which, or at which he reasonably suspects, the business of selling petroleum products is carried on or which is, or which he reasonably suspects, is being used for the storage or custody of any accounts, records, books or documents relating to the sale or purchase of petroleum products;

- (b) take copies of, or extracts or notes from, any such accounts, records, books or documents; and
 - (c) request any person found in or upon any premises used for the sale or purchase of petroleum products or on which petroleum products are stored for sale—
 - (i) to produce any accounts, records, books or documents which relate to, or which the Commissioner or an officer reasonably suspects relate to, the sale or purchase of petroleum products and which at the time of the request are in the possession or under the control of that person; and
 - (ii) to answer any question with respect to any such accounts, records, books or documents or the sale or purchase of any petroleum products.
- (2) A person shall not—
- (a) prevent or attempt to prevent the Commissioner or an officer from exercising any power conferred on him by subsection (1);
 - (b) hinder or obstruct the Commissioner or an officer in the exercise of any such power;
 - (c) fail to comply with a request of the Commissioner or an officer under paragraph (c) of subsection (1); or
 - (d) furnish to the Commissioner or an officer information which is false or misleading in a material particular.

Penalty: Two hundred dollars.

(3) A person is not guilty of an offence under paragraph (c) of subsection (2) by reason of his failure to answer any question if he proves to the satisfaction of the court that he did not know, and could not with reasonable diligence have ascertained, the answer to the question.

(4) A person is not excused from answering any question if required to do so under paragraph (c) of subsection (1) on the ground that the answer might tend to criminate him or make him liable to a penalty but the information furnished by him shall not be admissible against him in any proceedings, civil or criminal, except in proceedings for an offence under subsection (2).

47J. (1) The Commissioner may communicate— Secrecy provisions.

- (a) to any officer administering any law of the Commonwealth relating to taxation or to any person authorized by any such officer; or
- (b) to any officer of any State or Territory of the Commonwealth administering any law of that State or Territory relating to the licensing of persons to carry on the business of selling any petroleum products or to any person authorized by any such officer,

any information respecting the affairs of any person disclosed or obtained under the provisions of this Part.

(2) The Commissioner or any other person who is or has been employed in the administration of this Part shall not either while he is or after he ceases to be so employed—

- (a) either directly or indirectly, except in the performance of any function or duty in relation to this Part or in accordance with subsection (1), make

a record of or divulge or communicate to any person any information acquired by him respecting the affairs of any other person in the course of that employment;

- (b) be required to produce in court any document in his custody in the course of his employment or to divulge or communicate to any court any matter or thing coming under his notice in the course of his employment except where it is necessary to do so for the purpose of carrying into effect the provisions of this Part.

Penalty: One thousand dollars.

Petroleum
product
wholesalers
to be
licensed.

47K. A person shall not on or after the 1st day of July, 1979 carry on the business of wholesaling petroleum products unless he is the holder of a licence.

Penalty: One thousand dollars.

Application
for
licences.

47L. (1) Subject to this Part any person may apply to the Commissioner for a licence.

(2) An application for a licence shall be made in the form approved by the Commissioner.

(3) Subject to section forty-seven O the Commissioner shall not issue a licence to the applicant until the fee payable in respect of the licence has been paid.

Duration of
licence.

47M. A licence shall be in force on and from the day specified in the licence as the date from which the licence commences until, unless it sooner ceases to have effect, the 30th day of June next following.

47N. (1) The fee payable for a licence that will have effect for any period ending on or before the 30th day of June, 1980 shall be five hundred dollars together with—

^{Fees.}

- (a) an amount of nine tenths of a cent for every litre of motor spirit wholesaled by the applicant in the period commencing on the 1st day of April, 1978 and ending on the 31st day of March, 1979; and
- (b) an amount of three cents for every litre of diesel fuel wholesaled by the applicant in the period commencing on the 1st day of April, 1978 and ending on the 31st day of March, 1979 and used in propelling diesel engined road vehicles on roads.

(2) The fee payable for a licence that will have effect for any period after the 30th day of June, 1980 shall be five hundred dollars together with—

- (a) an amount as prescribed for the purposes of this paragraph in relation to that period for every litre of motor spirit wholesaled by the applicant in the year ending on the 31st day of March last preceding the date on and from which the licence will be in force; and
- (b) an amount as prescribed for the purposes of this paragraph in relation to that period for every litre of diesel fuel wholesaled by the applicant in the year ending on the 31st day of March last preceding the date on and from which the licence will be in force and used in propelling diesel engined road vehicles on roads.

his business operations so as to take account of his obligation to pay licence fees under this Part, the Minister may reduce the fee.

(6) A reduction shall not be granted under subsection (5) after the 30th day of June, 1980.

47O. (1) The Commissioner may authorize an applicant for a licence to pay the licence fee payable in respect of that licence by instalments in accordance with this section.

Fees payable by instalments in certain cases.

(2) The Commissioner shall determine the instalments that shall be payable and the days on or before which the instalments shall be payable, and shall cause particulars thereof to be specified in the licence or in a notice in writing served on the licensee.

(3) If an instalment payable in respect of a licence is not paid on or before the day upon which it is determined to be payable by the Commissioner or if any additional amount that is due and payable under section forty-seven P is unpaid, the Commissioner may revoke the licence and thereupon the licence shall cease to be in force and the balance payable in respect of the licence shall become due and payable immediately.

(4) Notwithstanding subsection (3) where an instalment payable in respect of a licence is not paid within fourteen days of the day upon which it is determined to be payable by the Commissioner, the Commissioner may recover in any court of competent jurisdiction the balance due in respect of the licence as a debt due to the Crown by the person who was the holder of the licence at the time the instalment became payable.

Adjustment
of fee.

47P. (1) Where, in the opinion of the Commissioner, the fee assessed in respect of any licence was assessed incorrectly, the Commissioner may at any time reassess the fee in accordance with the principles of assessing fees under section forty-seven N.

(2) Where on a reassessment of a fee under subsection (1) the fee is reduced, the amount overpaid shall be refunded by the Commissioner in accordance with the provisions of subsections (3) and (4).

(3) Where—

- (a) during the whole of the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by one person, the amount to be refunded shall be refunded to that person; or
- (b) during the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by two or more persons, the amount to be refunded shall be refunded to those persons in proportion to the periods, in days, for which they held the licence.

(4) Notwithstanding subsection (3), in a case where—

- (a) the licence has not ceased to be in force;
- (b) the Commissioner has authorized the applicant to pay the licence fee by instalments;
- (c) any instalment has not become due and payable; and
- (d) the instalments paid do not exceed the amount of the fee as reassessed,

a refund shall not be made to the holder of the licence in accordance with paragraph (a) or (b) of subsection (3) but in that case each of the remaining instalments payable in respect of the licence shall be reduced by an amount that bears to the amount that but for this subsection would be required to be refunded to that holder under subsection (3) the same proportion as one bears to the number of those remaining instalments.

(5) Where on a reassessment of a fee under subsection (1) the fee is increased, the additional amount payable by virtue of the reassessment shall be due and payable in accordance with the provisions of subsections (6) and (7).

(6) For the purposes of subsection (5) where—

(a) during the whole of the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by one person, the additional amount shall be due and payable within fourteen days after notice of the reassessment is served on that person; or

(b) during the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by two or more persons, the additional amount shall be due and payable, within fourteen days after notice of the reassessment is served on them, by those persons in proportion to the periods, in days, for which they held the licence,

unless, in respect of that additional amount or any part of that additional amount so due and payable by that person or any of those persons,

approval has been given under subsection (7) for the payment of that amount or part by instalments.

(7) A person by whom any additional amount or part is payable under subsection (6) may, within fourteen days after the service on him of notice of the reassessment by virtue of which the additional amount or part became so payable by him, apply to the Commissioner for approval to pay that amount or part by instalments, and if the Commissioner approves of the amount or part being so paid, it shall be due and payable by that person by such instalments payable at such times as are specified in the instrument of the Commissioner's approval.

(8) For the purposes of making the apportionment referred to in paragraph (b) of subsection (3) or (6), where the licence has not ceased to be in force the period, in days, for which the licensee who was the holder of the licence at the time of the reassessment has held the licence together with the unexpired period, in days, of the licence shall be deemed to be the period for which that licensee held the licence.

(9) Any amount which is due and payable by any person under subsection (6) or (7) and which is unpaid may be recovered by the Commissioner, as a debt, in any court of competent jurisdiction.

Transfers.

47Q. (1) A licensee and any person to whom the licensee proposes to transfer his licence may by application in the form approved by the Commissioner accompanied by the prescribed fee request the Commissioner to transfer the licence as on and from such day as is specified in the application.

(2) On receipt of the application and the prescribed fee and upon production of the licence the Commissioner shall endorse the transfer on the licence and the licence shall thereupon be deemed to be transferred.

47R. (1) A person who carries on the business of wholesaling petroleum products shall keep such accounts, records, books and documents as may be prescribed containing such particulars as may be prescribed and shall preserve each of those accounts, records, books and documents for a period of five years after the last entry was made in it.

Accounts
to be
kept by
licensees.

Penalty: One thousand dollars.

(2) This section shall not apply so as to require the preservation of any books, accounts or documents—

- (a) in respect of which the Commissioner has certified that preservation is not required; or
- (b) of a company which has gone into liquidation and which has been finally dissolved.

47S. (1) The Commissioner may, by notice in writing, require any person—

Power to
Commis-
sioner to
require
information.

- (a) to furnish him with such information as he requires; or
- (b) to attend and give evidence before him or before any officer of the public service employed in the administration or execution of this Part and authorized by him in that behalf,

for the purpose of inquiring into or ascertaining his or any other person's liability or entitlement under any of the provisions of this Part, and may require him to produce all books, documents and other papers whatsoever in his custody or under his control relating thereto.

(2) The Commissioner may require the information or evidence to be given on oath, and either orally or in writing, or to be given by statutory declaration and for that purpose he or the officer so authorized by him may administer an oath.

(2) The Supreme Court shall hear and determine an appeal forwarded to it under subsection (1), and for the purposes of this section—

- (a) the jurisdiction of the Supreme Court may be exercised by a Judge sitting in chambers; and
- (b) Rules of Court may be made for regulating the procedure and practice to be followed on an appeal forwarded to the Supreme Court under subsection (1).

(3) The appellant shall be limited, on the hearing of the appeal, to the grounds stated in his objection.

(4) If the appellant's liability or assessment has been reduced on objection, the reduced liability or assessment shall be the liability or assessment appealed against.

47V. (1) Any person who makes or delivers an application or other document which is false in any particular or makes a false answer whether orally or in writing to any question duly put to him by the Commissioner, or any officer duly authorized by the Commissioner, acting pursuant to the provisions of this Part shall be guilty of an offence.

Offences.

Penalty: Five hundred dollars.

(2) A person who in furnishing any information, giving any notification or keeping any record required to be kept by or under this Part makes or causes to be made any statement or representation that is false or misleading in a material respect is guilty of an offence.

Penalty: Five hundred dollars.

(3) Where a licensee is convicted of an offence against this section his licence shall cease to have effect.

Payments to Main Roads Trust Account.

47W. All moneys received by the Commissioner by way of licence fees under this Part shall be paid by him to the credit of the account called the "Main Roads Trust Account" kept under section thirty-one of the Main Roads Act, 1930.

Regulations for the purposes of this Part.

47X. The Governor may make regulations for or with respect to—

- (a) the records to be kept by licensees;
- (b) the periods within which applications for licences are to be made;
- (c) the issue of duplicate licences;
- (d) fixing and imposing penalties of not more than one hundred dollars for any breach of the regulations; and
- (e) any other matter which is authorized or required to be prescribed or is necessary or convenient to be prescribed for carrying out the provisions of this Part.

Section 56A amended.

12. Subsection (1) of section 56A of the principal Act is amended by inserting after the word "Act" in line two the passage "other than an offence under Part IIIA".

Section 57 amended.

13. Section 57 of the principal Act is amended by adding after subsection (6) a subsection as follows—

(7) In this section "licence" does not include a licence under Part IIIA of this Act. .

14. Section 62 of the principal Act is amended— Section 62 amended.

- (a) as to paragraph (a) of subsection (2), by inserting after the word "Act" in the last line the passage "other than moneys received by the Commissioner in respect of licences under Part IIIA";
- (b) as to paragraph (a) of subsection (3), by deleting the passage "and of the Road Maintenance (Contribution) Act, 1965"; and
- (c) by adding after subsection (5) subsections as follows—

(6) If at any time during any financial year the Treasurer is of opinion, after consulting with the Commissioner, that the moneys standing to the credit of the Fund are not sufficient to meet the whole of the cost of the administration of Part IIIA of this Act, the Treasurer shall in writing, from time to time, direct that such amount of the moneys standing to the credit of the Main Roads Trust Account kept under section thirty-one of the Main Roads Act, 1930 as is sufficient for the time being to make up the deficiency shall be paid into the Fund.

(7) Effect shall be given to any direction of the Treasurer given under subsection (6) of this section. .

PART IV—MAIN ROADS ACT, 1930-1977.

15. (1) In this Part the Main Roads Act, 1930-1977 is referred to as the principal Act. Citation.

No. 9.] *Acts Amendment and Repeal* [1979.
 (Road Maintenance).

Approved
for
reprint 16th
December,
1976 and
amended
by Act No.
54 of 1977.

(2) The principal Act as amended by this Act may be cited as the Main Roads Act, 1930-1979.

Section 32
amended.

16. Subsection (1) of section 32 of the principal Act is amended by deleting subparagraph (ii) of paragraph (b) and substituting a subparagraph as follows—

- (ii) to the credit of the Transport Commission Fund, pursuant to subsection (6) of section sixty-two of the Transport Commission Act, 1966; .
-