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**PETROLEUM PRODUCTS PRICING AMENDMENT  
BILL 2000**

Libraries & Information  
Department of Justice

**EXPLANATORY MEMORANDUM**

The purpose of this Bill is to amend the *Petroleum Products Pricing Act 1983* ('the Act') in order to implement a number of the recommendations contained in the report of the Select Committee on Pricing of Petroleum Products tabled in the Legislative Assembly on 12 October 2000.

In addition the Bill implements a number of legislative initiatives approved by Cabinet in order to achieve increased transparency in the pricing of petroleum products in this State.

In particular, the amendments in the Bill will result in the following changes to the Act:

- Extend the price monitoring and control powers of the Prices Commissioner to include LPG Autogas and LPG bottled gas.
- Allow the Prices Commissioner to declare fuel terminals for the purposes the Act.
- Allow the Prices Commissioner to fix a maximum price for which motor fuel can be sold from particular terminals.
- Require suppliers supplying motor fuel from declared terminals to display at the terminal the price at which they offer motor fuel for wholesale sale as well as any maximum wholesale price fixed by the Prices Commissioner for that terminal.
- Require suppliers supplying motor fuel from a declared terminal to display the average weighted wholesale price of motor fuel sold during the previous calendar month.
- Require a supplier to notify the Prices Commissioner of any changes in the wholesale price at which motor fuel is offered for sale from a declared terminal where that price has not been fixed by the Prices Commissioner.
- Where a maximum wholesale price has been fixed by the Prices Commissioner for a declared terminal, require the supplier to show in an invoice the price so fixed as well as the price at which the motor fuel is supplied.

- Require suppliers at terminals not subject to a maximum wholesale price order to show in an invoice the wholesale price for fuel supplied and, where that price exceeds the maximum wholesale price set for any other terminal, any details as the difference between those prices that the regulations require to be shown.
- Require suppliers which are required to display the wholesale price at a terminal to show in an invoice any additional charge which relates to:
  - delivery of the fuel;
  - the use of a brand;
  - provision of a credit facility; and
  - any other service provided in connection with supply of the fuel.
- Require a supplier selling fuel from a declared terminal to supply fuel to a person wishing to purchase at the displayed price unless the supplier has a good reason for refusing to supply and has given the person notice in writing of that reason.
- Allow a person who is refused supply from a declared terminal to apply to the Prices Commissioner for a review of the decision to refuse supply.
- Allow the Prices Commissioner to award compensation to a person who is refused supply of fuel at the displayed price without good reason.
- Allow for a compensation order made by the Prices Commissioner to be enforced in the Local Court as if it were a judgment or order of that Court.
- Require retailers to display at retail premises the standard price at which motor fuel is offered for sale in accordance with the regulations.
- Make it an offence for a retailer of motor fuel to change the standard price at which motor fuel is offered for sale unless the retailer has first notified the Prices Commissioner the preceding day of the new price in accordance with the regulations.
- Give the Prices Commissioner enhanced powers to require a person to provide the Commissioner with any information he requires for the purposes of the Act without having to commence an investigation or inquiry under the Act.
- Give the Prices Commissioner the power to publish any information received by the Commissioner if he or she believes publication of that information is necessary to achieve the objects and purposes of the Act.
- Provide for inspectors to issue infringement notices for prescribed offences.

Detailed below is an explanation of the contents of the Bill on a clause by clause basis.

Clause 1: Short title and citation – The amendments will come into operation on the 28<sup>th</sup> day after the Bill receives Royal Assent.

Clause 2: Provides that the amendments are to the *Petroleum Products Pricing Act 1983*.

Clause 3: Amends the definition of motor fuel in section 3 by inserting LPG (liquefied petroleum gas).

Deletes the definitions of 'petroleum' and 'petroleum products' in section 3 and inserts new definitions. LPG is now included in the definition of 'petroleum product'.

Inserts a new subsection (4) in section 3 to allow the Minister to exclude from the definition of 'petroleum product' a product not already listed in schedule 1.

Clause 4: Amends section 6 by including an additional object of the Act, being to provide for transparency of pricing of petroleum products.

Clause 5: Amends the statement of the functions of the Prices Commissioner set out in section 7(1)(b) by deleting the words 'the scheme of price control established under '. This amendment reflects the broader nature of the functions of the Prices Commissioner under the amended Act.

Clause 6: Inserts new subsection 12(2a) to give the Prices Commissioner the power to fix the maximum price of motor fuel sold at a particular terminal.

Clause 7: Deletes existing section 19(2)(b) and inserts a new section.

New section 19(2)(b)(i) provides that it is a defence to a charge of refusing to supply motor fuel from a declared terminal at the maximum wholesale price if the person who made the demand was not either a reseller or a prescribed person.

The existing defence currently provided by section 19(2)(b) will continue to be available where the alleged offence does not involve a refusal to supply fuel from a declared terminal.

Clause 8: Inserts new Part IIIA containing new sections relating to the wholesale and retail sale of motor fuel.

Division 1 – Before Retail Sale

Inserts new section 22A (1) which contains definitions of 'declared terminal', 'kind of motor fuel', 'offer', 'supplier', 'terminal' and 'displayed price' which are terms used in Division 1 of new Part IIIA of the Act.

Inserts new section 22A(2) which allows the Prices Commissioner to make an order designating a terminal as a declared terminal for the purposes of Division 1.

Inserts new section 22A(3) which extends the ordinary meaning of the word 'offer'.

Inserts a new section 22B to require a supplier who supplies motor fuel from a declared terminal to display at the terminal the price at which each kind of motor fuel would be offered for wholesale sale to a reseller who is not the subject of any existing agreement and who takes delivery of the fuel from the terminal.

Section 22B(2) requires that whenever the price to be displayed is changed the supplier must notify the Prices Commissioner of the new price.

A penalty of \$4000 for an individual and \$10,000 for a body corporate will apply for a failure to comply with this requirement.

Inserts new section 22C which requires a supplier of motor fuel from a declared terminal to display a weighted average price for the previous month calculated in accordance with the regulations.

New section 22C(2) defines the terms "previous month" and "calendar month" which are used in the section.

Section 22C(3) requires the weighted average price to be displayed in a place adjacent to the wholesale price which is required to be displayed under new section 22B.

A penalty of \$4,000 for an individual and \$10,000 for a body corporate will apply for a failure to comply with this requirement.

Inserts new section 22D which provides that if the Prices Commissioner has fixed the maximum wholesale price at which motor fuel can be supplied from a declared terminal under section 12 then a supplier must display that price at the terminal.

A penalty of \$4000 for an individual and \$10,000 for a body corporate will apply for a failure to comply with this requirement.

Inserts a new section 22E(1) which requires that if the price is for the supply of a kind of motor fuel from a declared terminal which has been fixed by an order made by the Prices Commissioner under section 12 then the supplier is required to show both the displayed price and the maximum price fixed by the Prices Commissioner in an invoice.

Section 22E(2) provides that if the terminal from which the fuel is supplied is not subject to a maximum price fixed by the Prices Commissioner under section 12 but a maximum price has been fixed for another terminal then the supplier is required to show in an invoice the displayed price and the maximum price fixed by the Commissioner for that other terminal and, if the displayed price exceeds the maximum price fixed for the other terminal, any details of the components of the displayed price which the regulations require to be shown.

Section 22E(3) provides that where a maximum price has been fixed by the Prices Commissioner for 2 or more other terminals then the supplier may choose between those terminals for the purpose of complying with this requirement subject to any direction made by the Commissioner.

Section 22E(4) provides that where a supplier is required under this section to show details of any price difference in an invoice the supplier shall provide the Prices Commissioner with the same details.

A penalty of \$4000 for an individual and \$10,000 for a body corporate will apply to a failure to comply with this requirement.

Inserts new section 22F which provides that where a supplier from a declared terminal sells or offers to sell motor fuel for a price a component of which is for –

- delivery of the fuel;
- use of a brand name;
- provision of credit; or
- anything else associated with the sale of the fuel; then

the supplier must provide in writing details of the amount for each component to a person reasonably requesting that information.

Section 22F(3) provides that a supplier is also required to provide to a person reasonably requesting it any other information which the supplier is required under Division 1 either to display at the place of sale or disclose in an invoice. This provision is intended to allow prospective purchasers the opportunity to ascertain all relevant pricing information before making a decision to purchase fuel from a supplier.

A penalty of \$4000 for an individual and \$10,000 for a body corporate will apply for a failure to comply with this requirement.

Inserts new section 22G which provides that where a reseller or a prescribed person demands to be supplied with motor fuel from a declared terminal and tenders payment at the price for which motor fuel is offered for sale that reseller or prescribed person shall be supplied the motor fuel unless the supplier has good reason for refusing the supply and gives the reseller or prescribed person notice in writing of that reason.

Section 22G(2) provides that a person who is refused supply may apply to the Prices Commissioner for a decision on whether there was a proper refusal.

Section 22G(3) provides that where the Prices Commissioner decides that the supplier improperly refused to supply the person with motor fuel then the Commissioner may order the supplier to pay compensation to that person including an amount for the cost of the application.

Section 22G(4) provides for a compensation order of the Prices Commissioner to be enforced in the Local Court as if it were a judgment or order of that Court.

#### Division 2 – Retail Sale

Inserts new section 22H which defines 'kind of motor fuel' and 'standard price' which are terms used in new Part IIIA Division 2 which deals with retail sales of motor fuel.

Inserts new section 22I which provides that regulations may be made requiring a person offering motor fuel for retail sale to display the standard price at which each kind of motor fuel is offered for sale so as to be clearly visible to passing motorists.

Section 22I(2) provides that the above requirement does not apply to a place from which motor fuel is only available for retail sale under a prior arrangement between the person and the purchaser. This is to make it clear that the requirement does not extend to depots where retail sale is only made under prior arrangement.

Section 22I(3) provides that the regulations may make provision as to the information and the manner in which that information is to be displayed.

Inserts new section 22J which makes it an offence for a person to offer motor fuel for retail sale at a price that is different from the price at which the motor fuel was last offered for sale before that day unless:

- the person has notified the Prices Commissioner of the new price the preceding day; and
- the price at which the motor fuel is offered for retail sale is the most recent price notified to the Commissioner.

Section 22J(3) provides that the regulations may make provision for the time at which, and the manner and form in which, the notification may be made.

Section 22J(4) provides that a 'day' means a period of 24 hours commencing at midnight.

This provision is to prevent a retailer making more than one price change per day and also to require a retailer to give prior notification to the Prices Commissioner of any change in the price at which motor fuel is offered for sale.

Clause 9: This amendment corrects a drafting error in the Act by deleting an incorrect reference in section 25(2) to paragraph (c) of subsection (1).

The defence provided by section 25(2) can only apply to an offence alleged to have been committed against section 25(1)(a).

Clause 10: Inserts new sections 27A and 27B.

Section 27A gives the Prices Commissioner the power to require a person to provide information for the purposes of the Act without the need to commence an inquiry or investigation under the Act.

This will enable the Prices Commissioner to obtain any information he believes is necessary for any purpose, including the fixing of a maximum price under section 12. Currently the Act only allows the Commissioner to require a person to provide information for the purpose of an inquiry or investigation under the Act.

Section 27A(2) provides that the Prices Commissioner may give written notice to a person requiring the person to provide within a specified time such particulars as are specified in the notice.

Section 27A(3) provides that the notice may require that the information to be furnished be verified by statutory declaration.

Section 27A(4) provides that the information provided under section 27A cannot be used as evidence in any proceedings against the person providing the information other than in proceedings for an offence against that section.

Section 27A(5) makes it an offence for a person to refuse or fail to comply with the requirements of a notice validly given under the section or to wilfully furnish information that is false or misleading.

A penalty of \$4000 for an individual and \$10,000 for a body corporate applies for an offence under section 27A(5).

Section 27A(6) makes it clear that nothing in section 27A prevents the making of regulations requiring a person to provide information to the Prices Commissioner for the purposes of the Act.

Section 27B provides that where necessary for the objects and purposes of the Act the Prices Commissioner may in the Commissioner's discretion publish any information obtained under or in the course of the administration of the Act.

This will allow the Prices Commissioner to publish any information which the Commissioner may receive, including information relating to any prices, rates or charges which a supplier may charge for motor fuel supplied or for any other services provided such as delivery or credit facilities.

Clause 11: Creates Divisions 1 and 2 in Part V and inserts new provisions into Division 2.

Inserts in new division 2 new sections 31A, 31B, 31C, 31D, 31E, 31F, 31G and 32H.

These sections provide that a person authorised by the Prices Commissioner can issue an infringement notice for a prescribed offence under the Act. The person receiving an infringement notice can choose to pay a modified penalty as prescribed (which shall not exceed 20% of the maximum penalty provided by the section) or have the offence heard and determined by a Court. Where a modified penalty is paid no further proceedings can be taken against that person for the offence.



Clause 12: Inserts schedule 1 into the Act.

Schedule 1 lists those products which are excluded from the definition of 'petroleum product' in section 3 of the Act.

Note that clause 3 inserts new section 3(4) which provides that the Minister may by order exclude from the definition of 'petroleum product' in section 3 a product not listed in schedule 1.

The effect of schedule 1 is to exclude from the definition of 'petroleum products' products which would otherwise fall within the definition and be caught by the Act.

Clause 13: Makes minor consequential amendments to sections 4(3)(b), 19(2)(c)(iii), and 20(2)(b)(iii) as a result of the amendment made by clause 4 of the Bill.

Clause 14: Increases the penalties for all offences under the Act from the current maximum of \$2,000 for an individual and \$5,000 for a body corporate to \$4,000 for an individual and \$10,000 for a body corporate.

Amends section 34 to increase the maximum penalty for a breach of the regulations from \$500 to \$1000 for an individual and from \$1,000 to \$2,000 for a body corporate.