

1980-81

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PETROLEUM PRODUCTS PRICING BILL 1981

EXPLANATORY MEMORANDUM

(Circulated by the Authority of the
Minister for Business and Consumer
Affairs, the Honourable John Moore, M.P.)

PETROLEUM PRODUCTS PRICING BILL 1981

Purpose of the Bill

The purpose of this Bill is to give effect to the Government's decision to establish the Petroleum Products Pricing Authority concurrently with the abolition of the Prices Justification Tribunal.

The Authority will conduct inquiries and determine whether prices for the supply of petroleum products or services relating to the production or supply of petroleum products, are justified.

Surveillance of the prices of the industry will extend only to defined petroleum products and to services related to the production or supply of such products.

Companies which are declared by the Minister by notice in the Gazette will be required to notify the Authority of any proposed increases in the prices at which they supply petroleum products or associated services in a particular locality. Provision does exist, however, for the Authority to withhold increases or allow interim price increases pending the outcome of an inquiry.

The Minister may direct the Authority as to matters to which special consideration is to be given. The Authority is also required to observe the confidentiality of certain material.

Petroleum Products Pricing Bill 1981

NOTES ON CLAUSES

Clause 1 Short title

Clause 2 Commencement date to be fixed by Proclamation.

Clause 3 Defines a number of words and expressions for the purposes of the legislation and in particular defines:

- "Authority" to mean the Petroleum Products Pricing Authority established by this legislation;
- "Company" means a body corporate that-
 - (a) is a foreign corporation;
 - (b) is a trading or financial corporation incorporated or deemed to be incorporated under the law relating to companies in force in a State or in a Territory forming part of Australia; or
 - (c) is a holding company of a body corporate of a kind referred to in paragraph (a) or (b).
- "Declared Company" to mean a company declared by the Minister by notice published in the Gazette to be a declared company for the purposes of this legislation;
- "Petroleum" to mean -
 - (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" to mean any product derived from petroleum not to include -
 - (a) petroleum;
 - (b) any product specified in the Schedule; or
 - (c) any product that the Minister has, by notice in writing published in the Gazette, declared not to be a petroleum product for the purposes of this legislation.
- "Prices justification inquiry" to mean an inquiry of a kind referred to in paragraph 16(2)(a) of this legislation;

Clause 4

Contains other interpretative provisions and in particular indicates that:

- a reference to the supply of petroleum products does not include a reference to a supply for use outside Australia or a supply for which a charge is not made;
- a reference to the supply of services is similarly restricted; and
- the question of whether a body corporate is a holding company of another body corporate shall be determined in the same manner as the question is determined under the Australian Capital Territory Companies Ordinance 1962.

Clause 5

Creates the Petroleum Products Pricing Authority which is to be constituted by a full time Commissioner appointed by the Governor-General. However nothing in this legislation prohibits the appointment of the person who holds the office of full time member of the Temporary Assistance Authority as the Commissioner.

Clause 6

Provides that the Commissioner shall be appointed for a period not exceeding 5 years but is eligible for re-appointment. However a person who has attained the age of 65 years is not eligible for appointment as Commissioner and a person shall not be appointed or re-appointed for a period which extends beyond the date on which that person attains the age of 65 years.

- Clause 7 States the terms and conditions of appointment of the Commissioner.
- Clause 8 Provides that the Minister may grant leave of absence to the Commissioner on such terms and conditions as the Minister determines.
- Clause 9 States that the Commissioner shall not, except with the consent of the Minister, engage in paid employment outside the duties of his office.
- Clause 10 Provides for the appointment of an acting Commissioner by the Minister during a vacancy in the office of Commissioner or where the Commissioner is absent or otherwise unable to perform the functions of his office but restricts the period of acting during a vacancy to a period of less than 12 months. While a person is acting as Commissioner he has and may exercise all the powers and functions of the Commissioner under this legislation. The Minister may terminate an appointment of an acting Commissioner at any time and the acting Commissioner may resign his appointment.
- Clause 11 Provides that the Minister may appoint an associate Commissioner or associate Commissioners for the purposes of an inquiry. Where such an appointment or appointments have been made, the Authority for the purposes of that inquiry, is to be constituted by the Commissioner and the associate Commissioner or associate Commissioners.
- Clause 12 Requires the Commissioner or acting Commissioner to give written notice to the Minister specifying, to the best of his knowledge, all direct and indirect pecuniary interests that he has or acquires in any business in Australia. Unless so disclosed, a Commissioner or acting Commissioner shall not exercise any power that is conferred upon him by this legislation in any matter in which he has a pecuniary interest. Sub-clause 12(2) contains corresponding provisions in respect of an associate Commissioner.
- Clause 13 Provides that the Commissioner or an associate Commissioner may resign his office.

Clause 14

Provides that the Governor-General may terminate the appointment of the Commissioner or of an associate Commissioner by reason of misbehaviour or physical or mental incapacity. The Governor-General shall terminate the appointment of the Commissioner if he becomes bankrupt, compounds with his creditors or makes an assignment of his remuneration for their benefit fails to disclose his pecuniary interests, engages in outside paid employment without the consent of the Minister or is absent without leave for 14 consecutive days or for 28 days in any period of 12 months. Sub-clause 14(3) contains corresponding provisions in respect of an associate Commissioner.

Clause 15

Requires that where an associate Commissioner or associate Commissioners have been appointed for the purposes of a particular inquiry, the Commission shall-

- convene such meetings of the Authority as he thinks necessary;
- determine the place at which the meeting are to be held;
- preside at those meetings; and
- subject to Part III or a direction under Sub-clause 17(4) by the Minister, give directions regarding the procedures to be followed at those meetings.

The Authority is to keep records of its meetings. All questions shall be decided by a majority of votes and the Commissioner has a deliberative vote and a casting vote in the event of an equality of votes. Sub-clause 15(7) states that a reference in that clause to the Commissioner shall be read as a reference to an acting Commissioner.

Clause 16

States the functions of the Authority and the nature of the inquiries that the Authority is to conduct. Sub-clause 16(5) specifies the matters that the Authority shall have regard to in the conduct of a prices justification inquiry.

Clause 17

Provides that the Minister, by notice to the Authority, has the power to require the Authority to conduct inquiries and to furnish a report to him as to the results of that inquiry within a specified time, or, if no time is specified in the notice, within the time specified in Sub-clause 22(1)(c). A notice shall specify the petroleum products or services to which the inquiry is to relate without specifying the particular company or companies in relation to which the inquiry is to be conducted or shall specify both the petroleum products or services and the particular company or companies.

Where a notice does not specify the particular company or companies, the Authority shall determine the company or companies and inform the Minister accordingly.

Where the Minister by notice requires the Authority to conduct an inquiry other than a prices justification inquiry, he may give directions as to the conduct of the inquiry or the matters to be taken into consideration.

Clause 18

Provides that the Minister may direct the Authority to give special consideration to the matter or matters specified in a notice and the Authority shall comply with any such direction.

Clause 19

Sub-clauses (1) and (2) require a declared company not to supply petroleum products or services in a locality at a price higher than the highest price at which those products or services were supplied in that locality within the immediately preceeding period of 90 days or earlier unless-

- a notice to that effect has been given by that company to the Authority, and the following event or events has or have occurred:
 - the prescribed period has expired;
 - the Authority has served notice on the company stating that the Authority does not intend to hold an inquiry as to whether the proposed price is justified;
or

- the Authority has served a notice on the company specifying a price for the supply of those products or services in that locality which is lower than the price notified by the company and the company has given a further notice stating that the price at which those petroleum products or services will be supplied in that locality will not be higher than the price specified by the Authority.

Sub-clause 19(3) imposes a similar requirement on a declared company where it has not previously supplied petroleum products or services in a locality and it has not previously supplied those products or services in Australia or the price at which the company supplies those products or services is higher than the highest price at which the company has previously supplied those products or services in Australia.

Sub-clause 19(4) states that a company which is convicted of an offence against Sub-clauses 19(1) (2) or (3) is punishable by a fine not exceeding \$10,000.

Sub-clause 19(5) provides that at any time after a company has given notice to the Authority specifying a proposed new price, but before the Authority commences to hold an inquiry into the proposed price, the company may substitute a lower proposed price for that originally notified.

The prescribed period for the purposes of this clause is 21 days but that period may be extended by the Authority under Sub-clauses 19(7) and 19(8).

Sub-clause 19(9) provides that if the Authority decides to hold an inquiry, the prescribed period ends on the earlier of the following days-

- the day on which a copy of the report by the Authority is received by the company; or
- the fourteenth day after the expiration of
 - the period of 3 months that commenced on the day on which the Authority served notice on the company that it intended to hold the inquiry; or

- such further period or periods that are specified in the notice served on the company under Sub-clause 22(2).

Sub-clause 19(10) provides that when a company receives a copy of a report in relation to the price at which the company proposes to supply petroleum products or services in a particular locality, the company shall notify the Authority within 14 days of the price at which it is supplying or proposes to supply those products or services in that locality and the Authority shall, within 14 days, make available to the public the particulars of that price.

A company that contravenes this provision is punishable, on conviction, by a fine not exceeding \$1000.

Clause 20

Provides that where the Authority serves a notice on a company (other than a notice served by the Authority under Sub-clauses 19(1), (2) or (3)) stating that the Authority intends to inquire and report on whether the price at which the company supplies or proposes to supply petroleum products or services in a particular locality is justified, then-

- a company that has supplied those products or services in that locality during a period of 30 days immediately proceeding the date of service of the notice, or earlier than that period, shall not, before the prescribed day, supply those products or services in that locality at a price which is higher than the highest price at which those products or services were supplied in that locality during that period or earlier;
- a company that has not previously supplied petroleum products or services in that locality nor elsewhere in Australia, shall not, before the prescribed day, supply those products or services in that locality; and
- a company that has not previously supplied petroleum products or services in that locality but has supplied the same elsewhere in Australia, shall not, before the prescribed day, supply those products or services in that locality at a price which is higher than the highest price at which the company has previously supplied those products or services in Australia.

Sub-clause 20(2) specifies the prescribed day for the purposes of Sub-clause 20(1)

Sub-clause 20(3) provides that a company, within 14 days of receiving a report by the Authority, shall notify the Authority of the price at which the company proposes to supply petroleum products or services in that locality and the Authority shall, within a further period of 14 days, make public the particulars of that price

A company that contravenes this provision is liable, on conviction, to a fine not exceeding \$1000.

Clause 21

Allows the Authority at any time, and on the application of a declared company that has given a notice referred to in Sub-clauses 19(1)(a), 19(2)(a) or 19(3)(c) or a company which has been served with a notice under sub-clause 20(1), to give to those companies a notice permitting them to supply petroleum products or services in a specified locality at a price or at prices specified in the notice for a specified period.

Clause 22

Requires the Authority to-

- notify the company or companies, and to give public notice, that an inquiry is to be held
- complete the inquiry and report to the Minister within 3 months of the notification if the matter arose under Sub-clauses 19(1)(a), 19(2)(a) or 19(3)(c) or within 4 months in any other case;
- send a copy of the report to the company or companies on the same day on which it sends the report to the Minister; and
- as soon as practicable thereafter make available to the public copies of the report

However, if the Authority considers that a company has failed to provide sufficient information, it can extend the 3 months period.

Clause 23

Enables the Authority to withdraw a notice that has been served on a company.

Clause 24

Allows applications to be made by a person or a body of persons wishing to be made a party to an inquiry. The Authority has the right to accept or reject such an application depending if the applicant has a substantial interest in the particular inquiry.

Parties to inquiries are entitled to give evidence or call witnesses to give evidence and may make appropriate submissions to the Authority

Clause 25

Provides that, subject to any direction given by the Minister, the Commissioner has a discretion to conduct an inquiry in public or in private and to determine the procedures to be followed.

In an inquiry, evidence shall be taken on oath or affirmation and any party may make submissions. If an inquiry is held in public, the Authority may take confidential evidence in private if it considers that desirable.

The Authority is not bound by rules of evidence.

Sub-clause 25(7) provides that, if a company claims that information by that company at the hearing of an inquiry is confidential and the Authority agrees, all reasonable steps shall be taken by the Authority to ensure that it is not disclosed to any person other than

- the Commissioner;
- an associate Commissioner; or
- a consultant to the Authority or a member of the staff of the Authority

but the provision will not apply to a disclosure of information other than information relating to a secret formula or process where the disclosure is, in the opinion of the Authority, necessary in the public interest.

For the purposes of Sub-clause 25(7) "confidential information" means information relating to a secret formula or process or other information the disclosure of which would damage the competitive position of the company.

Clause 26

Gives to the Commissioner or associate Commissioner the power to require a company, within a specified time, to supply such information and to produce such documents in relation to the affairs of the company as is specified in the notice. Non compliance will attract a penalty of \$1000.

The information or documents produced by a company may be made available to the public in such manner as the Authority sees fit but there are provisions in the clause protecting "confidential information" similar to those contained in Sub-clauses 25(7) and (8).

Clause 27

Provides that the Authority may take evidence on oath or affirmation. The Commissioner or an associate Commissioner may administer an oath or affirmation and may summon a person to appear at an inquiry to give evidence and to produce books and documents.

Clause 28

Provides that a person summoned to appear as a witness at an inquiry is required to attend from day to day unless excused or released from further attendance. Non compliance will attract a penalty of \$1000 or imprisonment for 3 months.

Clause 29

Provides that a witness to an inquiry is subject to a penalty of \$1000 or 3 months imprisonment if he-

- refuses or fails to be sworn or to make an affirmation;
- refuses or fails to answer a question; or
- refuses or fails to produce a document required by summons under this legislation.

Clause 30

Provides that the Commissioner or an associate Commissioner has, in the performance of his duty, the same protection and immunity as a Justice of the High Court and persons appearing on behalf of parties will have the same protection and immunity as barristers of the High Court. A witness summoned to appear at an inquiry has the same protection and, in addition to the penalties provided by this legislation, is subject to the same liabilities in any civil or criminal proceedings as a witness in proceedings in the High Court.

Clause 31 Allows the Commissioner, an associate Commissioner or a member of the staff assisting the Authority to inspect any books or documents furnished to the Authority or produced at an inquiry and may make copies of, or take extracts from those books or documents.

Those books or documents may be retained by the Authority for a reasonable period.

Clause 32 States that a witness summoned to appear at an inquiry is entitled to be paid travelling allowances and other expenses.

Clause 33 Provides that prosecutions for offences against this legislation shall be brought only in the Federal Court and with the consent of the Minister. Jurisdiction is conferred on the Federal Court and it is provided that the jurisdiction may be exercised by a single judge.

Clause 34 Provides that the staff required to assist the Authority shall be appointed or employed under the Public Service Act. The Commissioner has the powers of a Permanent Head in relation to that staff and for certain other purposes the Commissioner shall be deemed to be a Permanent Head.

Clause 35 Permits the Authority, with the approval of the Public Service Board, to engage consultants on terms and conditions approved by the Public Service Board.

Clause 36 Imposes obligations of secrecy on the Commissioner, associate Commissioner, consultant or staff of the Authority in respect of information and documents other than those made available to the public. Contravention of this provision attracts a penalty of \$1000 or imprisonment for 3 months.

Clause 37 Requires the Authority to prepare and furnish an annual report to the Minister, copies of which shall be laid before each House of the Parliament.

Clause 38 Deems notices in respect of petroleum products or services given before the commencement of this legislation to have been given on the date of the commencement.

Clause 39 Provides that the Governor-General has the power to make appropriate regulations prescribing all matters necessary or convenient for the carrying out or giving affect to this legislation.



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