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COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PETROLEUM RETAIL MARKETING SITES AMENDMENT BILL 1982

EXPLANATORY MEMORANDUM

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

Petroleum Retail Marketing Sites Amendment Bill 1982

Explanatory Memorandum

Outline

This Bill seeks to amend the Petroleum Retail Marketing Sites Act 1980 to clarify the extent of the Act's application to outlets, including depots, at which sales are made at both the retail and wholesale level or at which a franchisee effects some sales on his own account and some sales as agent of the franchisor.

The Bill also alters the application of the Act from a basis of sales made on a "particular day", which could in marginal cases have required daily analysis of sales, to a basis of sales made during a month.

Clauses 1, 2 and 3 : Short title, Commencement and Interpretation

1. Clauses 1 and 2 are normal machinery clauses.
2. Clause 3 amends Section 3 of the Principal Act by:
 - deleting the definition of business day which is no longer required as the Act's operation is being altered from a day base to a monthly base; and

- amending the definitions of "market research site" and "training site" to reflect the new requirement that use as such a site need only be a substantial use rather than the principal use of these sites.
- adding a definition of "mark". The definition is the same as that contained in the Petroleum Retail Marketing Franchise Act 1980.

3. Also by clause 3 sub-section 3(2) of the Principal Act is omitted and replaced by sub-sections 3(2), 3(2A) and 3(2B) which specify those sales of petrol and diesel fuel which constitute the base for the purposes of the amended section 7(2) exemption test:-

a sale of petrol or diesel fuel effected through particular premises refers to a sale by retail of petrol or diesel fuel:

- at those premises; or
- at another place where the sale has a prescribed connection with those premises

(new sub-section 3(2A)).

- . the place, and the time at which the sale of petrol or diesel fuel is to be taken to be made are the place, and the times of delivery in pursuance of the contract of sale (new sub-section 3(2B)).
- . prescribed connection. A sale of petrol or diesel fuel is to have, for the purposes of sub-section 3(2A), a prescribed connection with particular premises if the sale is not made at other premises being a retail site and:
 - the petrol or diesel fuel was before the sale delivered to those premises; or
 - the sale is in accordance with accounting principles generally applied in commercial practice, appropriate to be recorded in the accounts of that premises' business and not in the accounts of another premises which is a retail site.

Operation of retail sites

4. Clause 4 amends Section 7 of the Principal Act to alter the relevant period for determining the application of the Act to a site from "a particular day" to "during a month" and to amend the exemption test to modify and clarify the scope of its operation.

5. The test is now based on the quantity of motor fuel (defined as petrol or diesel fuel to be used in propelling road vehicles), delivered directly into motor vehicle supply tanks as a proportion of the total retail sales, for any purpose, of petrol and diesel fuel effected at the site. The new test provides that a site shall not be taken to be operated by a company where less than 15% of the total quantity of petrol and diesel fuel sold, during that month by way of sales effected through that site, was motor fuel (as defined) sold by retail - i.e. broadly "service station" sales made by or on behalf of an oil company constitute less than 15% of the total sales of the site other than sales to resuppliers.

Temporary operation of retail sites

6. Clause 5 repeals Section 8 of the Principal Act and substitutes a new section which reflects the change to applying the Act on a monthly basis.

Restriction on operations of retail sites

7. Clause 6 amends Section 10 of the Principal Act to reflect the change to applying the Act on a monthly basis.

Returns

8. Clause 7 amends Section 11 of the Principal Act to reflect the change in the application of the Act to a monthly base and to enable additional requirements in returns to be prescribed by regulation.

Pecuniary Penalties

9. Clause 8 makes consequential amendments to Section 13 of the Principal Act to take account of the amendments to Section 11 of the Principal Act which reflect the change in application of the Act to a monthly base.

Production of Books

10. Clause 9 amends Section 14 of the Principal Act to expand the powers to require the production of books and to enable the making of copies. The powers are similar to those provided in Companies legislation. Other amendments to the section reflect the changes made to Section 7.

Amendment of Schedule

11. Clause 10 amends the Schedule to reflect the change to a monthly base.

Transitional

12. Clause 11 preserves rights which have accrued to certain commission agents on conversion of a retail site to lessee operation under the Act as if it had not been amended.