

AUSTRALIAN CAPITAL TERRITORY

Business Franchise (Tobacco and Petroleum Products) (Amendment) Ordinance (No. 2) 1987

No. 58 of 1987

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No. 58 of 1987

I, THE ADMINISTRATOR of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 29 October 1987.

J. A. ROWLAND
Administrator

By His Excellency's Command,

JOHN BROWN
Minister of State for the Arts, Sport, the Environment,
Tourism and Territories

An Ordinance to amend the *Business Franchise (Tobacco and Petroleum Products) Ordinance 1984*

Short title

1. This Ordinance may be cited as the *Business Franchise (Tobacco and Petroleum Products) (Amendment) Ordinance (No. 2) 1987*.¹

Commencement

2. This Ordinance shall commence on 1 November 1987.

Principal Ordinance

3. In this Ordinance, “Principal Ordinance” means the *Business Franchise (Tobacco and Petroleum Products) Ordinance 1984*.²

Interpretation

4. Section 3 of the Principal Ordinance is amended:

(a) by inserting in subsection (1) the following definition in its appropriate alphabetical position:

“ ‘exemption certificate’ means a diesel fuel exemption certificate issued under section 36C;”;

(b) by omitting from subsection (1) the definition of “voting share”; and

(c) by omitting subsections (5) and (9).

Relevant period: interpretation

5. Section 3A of the Principal Ordinance is amended by adding at the end the following subsection:

“(2) In this Ordinance, a reference to a relevant period in relation to the grant or renewal of:

(a) a retail tobacconist’s licence or a group retail tobacconist’s licence; or

(b) a petroleum retailer’s licence or a group petroleum retailer’s licence;

shall be read as a reference to the last preceding period of 12 months ending:

(c) in the case of a licence referred to in paragraph (a)—at the expiration of 31 August; and

(d) in the case of a licence referred to in paragraph (b)—at the expiration of 30 June.”.

Heading to Division 1 of Part III

6. Before section 24 of the Principal Ordinance the following heading is inserted in Part III:

“Division I—General”.

Sale of petroleum products: offences

7. Section 25 of the Principal Ordinance is amended by omitting subsection (4).

Fees: tobacco licences

8. Section 28 of the Principal Ordinance is amended:

- (a) by omitting subsection (10); and
- (b) by inserting in paragraph (13) (a) “or a group retail tobacconist’s licence” after “licence” (first occurring).

Fees: petroleum products licences

9. Section 31 of the Principal Ordinance is amended:

- (a) by omitting subsection (1) and substituting the following subsection:
 - “(1) Subject to this section, the fees to be paid for petroleum products licences are:
 - (a) for the grant of a licence—the specified amount; and
 - (b) for the renewal of a licence—the specified amount together with the prescribed amount calculated in accordance with subsection (2) by reference to the volume of motor spirit or diesel fuel sold in the relevant period.”;
- (b) by omitting from subparagraphs (2) (b) (i) and (ii) “wholesaler’s” and substituting “wholesalers”;
- (c) by inserting in paragraph (2) (c) “for the sale of motor spirit or diesel fuel sold before 1 November 1987 in the course of interstate trade,” after “licence.”;
- (d) by omitting from paragraph (2) (c) “or”;
- (e) by inserting after paragraph (2) (c) the following paragraph:
 - “(ca) for a petroleum retailer’s licence, for the sale of motor spirit or diesel fuel sold on or after 1 November 1987, the sum of:
 - (i) the determined amount per litre of motor spirit (other than motor spirit sold to the applicant by the holder of a petroleum wholesaler’s licence or a group petroleum wholesaler’s licence) sold by the applicant in the course of petroleum retailing; and
 - (ii) the determined amount per litre of diesel fuel (other than diesel fuel sold to the applicant by the holder of a petroleum wholesaler’s licence or a group petroleum

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wholesaler's licence) sold by the applicant in the course of petroleum retailing; or”;

- (f) by omitting subparagraph (2) (d) (ii) and substituting the following:
- “(ii) the determined amount per litre of diesel fuel sold by the members of the group of petroleum retailers, of which the applicant is a member, in the course of petroleum retailing; whether or not they were members of that group during the whole or any part of the relevant period”;
- (g) by omitting from subsection (3A) “paragraph (2) (c)” and substituting “paragraphs (2) (c) and (ca)”;
- (h) by omitting subsection (5) and substituting the following subsection:
- “(5) Where a person who is the holder of a petroleum wholesaler's licence or a group petroleum wholesaler's licence sells petroleum products in the course of petroleum wholesaling (being petroleum products sold to that person by the holder of a petroleum wholesaler's licence or a group petroleum wholesaler's licence), that person is liable to pay to the Commissioner the fee in respect of the sale of those products, unless the fee has been paid to the Commissioner in respect of the sale of those products to that person.”;
- (i) by inserting in subsection (5A) “, (ca)” after “(c)”;
- (j) by omitting from subsection (8) “value” and substituting “volume”;
- (k) by inserting in subsection (8) “before 1 November 1987” after “sold”;
- (l) by omitting subsections (8A) and (9) and substituting the following subsection:
- “(9) The volume of diesel fuel sold during the relevant period by the holder of a petroleum wholesaler's licence or a group petroleum wholesaler's licence to the holder of an exemption certificate shall be disregarded in assessing fees payable under this section.”; and
- (m) by adding at the end the following subsection:
- “(12) For the purposes of this section, the volume of petroleum products sold in the Territory for delivery and consumption in a State or another Territory, being petroleum products:
- (a) sold before 1 November 1987 by the holder of a petroleum retailer's licence or a group petroleum retailer's licence;

- (b) sold on or after 1 November 1987 by the holder of a petroleum retailer's licence or a group petroleum retailer's licence where the petroleum products were not purchased by the retailer from the holder of a petroleum wholesaler's licence or a group petroleum wholesaler's licence; or
- (c) sold, whether before, on or after 1 November 1987, by the holder of a petroleum wholesaler's licence or a group petroleum wholesaler's licence;

shall not be taken into account when calculating the fees payable under this section if the licensee who sold the petroleum products would, if the products had been sold in the State or other Territory, be liable to pay a fee in respect of the products, and the licensee has paid an amount equal to the fee to the appropriate authority in that State or other Territory.”.

10. After section 31 of the Principal Ordinance the following section is inserted:

Petroleum products sold interstate: refund of fees

“32. If:

- (a) petroleum products sold in the Territory for delivery and consumption in a State or another Territory are subsequently resold in that State or other Territory; and
- (b) by virtue of that resale, a person has paid a fee to the appropriate authority under a corresponding law of that State or other Territory;

the Commissioner shall, on application made in writing, refund to the person who paid it any fee paid to the Commissioner under this Ordinance in respect of the sale of the petroleum products in the Territory.”.

Persons deemed to hold licences

11. Section 36 of the Principal Ordinance is amended:

- (a) by inserting in paragraph (1) (a) “or a group retail tobacconist's licence” after “licence”; and
- (b) by inserting in paragraph (1) (b) “or a group petroleum wholesaler's licence” after “licence”.

12. After section 36 of the Principal Ordinance the following Division is inserted in Part III:

“Division 2—Diesel fuel exemption certificates

Interpretation: exempt purpose

“36A. For the purposes of this Division, a person shall be taken to use diesel fuel for an exempt purpose if the person uses the fuel for any purpose, other than for propelling a diesel engined road vehicle on a public road.

Diesel fuel exemption certificate

“36B. (1) An application for a diesel fuel exemption certificate may be made to the Commissioner by a person who uses diesel fuel for an exempt purpose.

“(2) An application shall:

- (a) be in a form approved by the Commissioner and signed by or on behalf of the applicant;
- (b) specify the name and address of the applicant;
- (c) specify the purposes for which the applicant proposes to use diesel fuel purchased pursuant to the certificate; and
- (d) contain an estimate by the applicant of the volume of diesel fuel the applicant proposes to purchase pursuant to the certificate.

Issue of exemption certificate

“36C. (1) The Commissioner shall approve an application for an exemption certificate if the Commissioner is satisfied that the applicant uses diesel fuel for an exempt purpose.

“(2) The Commissioner may, by notice in writing, require an applicant to furnish to the Commissioner, either orally or in writing, such further information relating to the application as is specified in the notice.

“(3) Where the Commissioner approves an application under this section the Commissioner shall:

- (a) issue to the applicant an exemption certificate; and
- (b) endorse on that certificate an identifying number in respect of the certificate.

Revocation of exemption certificate

“36D. The Commissioner may revoke an exemption certificate if the holder of the certificate:

- (a) fails to keep the records required to be kept under section 36H;

- (b) is convicted of an offence against this Ordinance or the Administration Ordinance; or
- (c) ceases to use diesel fuel for an exempt purpose.

Term of exemption certificate

“36E. Subject to this Division, an exemption certificate remains in force until the expiration of 31 October next following the issue of the certificate, but may be renewed in accordance with section 36F.

Renewal of exemption certificate

“36F. The Commissioner shall, on application being made within 1 month before the date on which an exemption certificate is due to expire, renew the certificate for the period of 12 months commencing on the day immediately following the day on which, but for its renewal, the certificate would have expired.

Issue of copy of exemption certificate

“36G. Where the Commissioner is satisfied that an exemption certificate issued to a person has been lost or destroyed, the Commissioner may issue to the person a copy of the certificate and the copy has, for the purposes of this Ordinance, the same force and effect as the certificate.

Records

“36H. The holder of an exemption certificate who purchases diesel fuel from the holder of a petroleum wholesaler’s licence or a group petroleum wholesaler’s licence shall keep a record of particulars of:

- (a) the name and address of the licensee;
- (b) the volume in litres of diesel fuel purchased;
- (c) the price at which the diesel fuel was purchased; and
- (d) the date of the purchase.

Returns

“36I. The holder of an exemption certificate who purchases diesel fuel pursuant to the certificate from the holder of a petroleum wholesaler’s licence or a group petroleum wholesaler’s licence shall, not later than 7 November next following the date of purchase, furnish to the Commissioner a return specifying:

- (a) the name and address of the person from whom the diesel fuel was purchased;
- (b) the volume in litres of the diesel fuel purchased;
- (c) the date of the purchase; and
- (d) the volume in litres of the diesel fuel used by the holder of the certificate for a purpose other than an exempt purpose.

Liability of holder of exemption certificate

“36J. The holder of an exemption certificate is liable to pay to the Commissioner, in respect of the use by the holder of diesel fuel for a purpose other than an exempt purpose, the fee determined for the purposes of subparagraph 31 (2) (a) (ii) or (b) (ii), as the case requires.

Offences

“36K. The holder of an exemption certificate shall not sell, or otherwise dispose of for valuable consideration, diesel fuel purchased by the holder pursuant to the certificate.

Penalty:

- (a) in the case of a natural person—\$2,000; and
- (b) in the case of a body corporate—\$10,000.”.

Notification of decisions

13. Section 37 of the Principal Ordinance is amended:

- (a) by omitting from paragraph (1) (c) “or”;
- (b) by inserting after paragraph (d) the following paragraphs:
 - “(da) refusing to issue an exemption certificate under section 36C;
or
 - (db) revoking an exemption certificate under section 36D;”;
- (c) by omitting from paragraph (1) (e) “or”; and
- (d) by adding at the end the following paragraphs:
 - “(g) in the case of a decision to refuse to issue an exemption certificate under section 36C—to the applicant for the certificate; or

- (h) in the case of a decision referred to in section 36D—to the holder of the exemption certificate”.

Review of decisions

14. Section 38 of the Principal Ordinance is amended:

- (a) by omitting from paragraph (c) “or”; and
- (b) by adding at the end the following paragraphs:
 - “(e) refusing to issue an exemption certificate under section 36C;
or
 - (f) revoking an exemption certificate under section 36D.”.

Returns

15. Section 38A of the Principal Ordinance is amended:

- (a) by omitting the penalty set out at the foot of the section; and
- (b) by adding at the end the following subsection:
 - “(2) The holder of a petroleum retailer’s licence or a group petroleum retailer’s licence who, in any month, purchases petroleum products for sale in the Territory from a person who is not the holder of a petroleum wholesaler’s licence or a group petroleum wholesaler’s licence, shall, not later than 7 days after the last day of the month in which the petroleum products were purchased, furnish to the Commissioner a return specifying:
 - (a) the name and address of the person from whom the petroleum products were purchased;
 - (b) the date of the purchase;
 - (c) the volume in litres of the motor spirit or diesel fuel purchased;
 - (d) in the case of the purchase of motor spirit—the grade of the motor spirit; and
 - (e) the value of those petroleum products.”.

Saving

16. Notwithstanding the amendments effected by section 5 of the *Business Franchise (Tobacco and Petroleum Products) (Amendment) Ordinance 1987*, the provisions of the definition of “petroleum wholesaler’s licence” in subsection 3 (1) of the Principal Ordinance, as in force immediately before 1 August 1987, shall be taken to have continued in operation during the period commencing on that date and ending at the expiration of 31 October 1987.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 30 October 1987.
2. No. 38, 1984; as amended by No. 36, 1985; No. 86, 1986; No. 38, 1987.