



AUSTRALIAN CAPITAL TERRITORY

Fair Trading (Fuel Prices) Act 1993

No. 40 of 1993

An Act to make provision for the regulation of prices of certain fuels and for related purposes

[Notified in ACT Gazette S111: 29 June 1993]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Fair Trading (Fuel Prices) Act 1993*.

Interpretation

2. (1) In this Act, unless the contrary intention appears—
“base wholesale price”, in relation to a specified fuel, means the wholesale price payable for that fuel, excluding—
 - (a) the amount per litre included in that price on account of freight charges in connection with the supply of that fuel; and
 - (b) the amount per litre included in that price on account of the relevant wholesaler’s licence fee payable in accordance with the *Business Franchise (Tobacco and Petroleum Products) Act 1984*;

“determination” means a determination by the Minister under subsection 4 (1);

“Director” means the Director of Consumer Affairs;

“fuel” means leaded petrol, unleaded petrol or distillate;

“leaded petrol” means petrol other than unleaded petrol;

“price” includes a charge of any description;

“Prices Surveillance Authority” means the Authority established under that name by the *Prices Surveillance Act 1983* of the Commonwealth;

“recommendation” means a recommendation by the Director under subsection 3 (1);

“retail margin”, in relation to a specified fuel, means the amount included in the retail price that is equal to the difference between that price and the base wholesale price of that fuel, excluding—

- (a) the amount per litre included in the retail price on account of the freight charges in connection with the supply of that fuel; and
- (b) the amount per litre included in the retail price on account of the relevant licence fees payable in accordance with the *Business Franchise (Tobacco and Petroleum Products) Act 1984*;

“specified fuel” means the fuel that is specified in a recommendation or a determination, as the case requires;

“unleaded petrol” means petrol that—

- (a) contains not more than 0.013 grams of lead per litre;
- (b) contains not more than 0.0013 grams of phosphorous per litre;
- (c) contains not more than 0.10% of sulphur by weight or, while a determination under section 42A of the *Air Pollution Act 1984* specifying a higher percentage is in force, not more than that percentage;
- (d) has a research octane number not less than 91.0; and
- (e) has a motor octane number of not less than 82.0.

(2) A reference to the wholesale price of a specified fuel shall be read as the price per litre payable on the sale of that fuel by wholesale.

(3) A reference to the retail price of a specified fuel shall be read as the price per litre payable on the sale of that fuel by retail.

Director may make recommendation to Minister

3. (1) The Director may make a recommendation in writing to the Minister as to—

- (a) the maximum base wholesale price of a specified fuel;
- (b) the maximum retail price of a specified fuel; and
- (c) the maximum retail margin in relation to a specified fuel.

(2) For the purpose of making a recommendation in relation to a particular fuel, the Director shall have regard to such matters as he or she considers to be relevant, including, any one or more of the following matters:

- (a) the wholesale price of that fuel that, for the purposes of subsection 22 (2) of the *Prices Surveillance Act 1983* of the Commonwealth, is the “relevant price” applicable to that fuel under that subsection;
- (b) the price at which that fuel is being sold in the Territory, whether by wholesale or by retail;
- (c) the price at which that fuel is being sold in any one or more of the State capital cities (and particularly Sydney), whether by wholesale or by retail;
- (d) any consultations he or she has had with the Prices Surveillance Authority, the Motor Trades Association or representatives of the petroleum industry;
- (e) submissions received from the bodies or representatives referred to in paragraph (d);
- (f) information furnished to the Director in accordance with a requirement under subsection 6 (1);
- (g) anomalies or disparities in relation to the price of a fuel arising in connection with any one or more of the matters referred to in the preceding paragraphs.

Minister may determine fuel prices

4. (1) The Minister may, on the recommendation of the Director in relation to a specified fuel, by notice in the *Gazette*, determine—

- (a) the maximum base wholesale price of that fuel;

- (b) the maximum retail price of that fuel; and
- (c) the maximum retail margin in relation to that fuel.

(2) The Minister shall not determine a maximum base wholesale price of a specified fuel that is greater than the “relevant price” that, for the purposes of subsection 22 (2) of the *Prices Surveillance Act 1983* of the Commonwealth, is applicable to that fuel under that subsection.

(3) A determination—

- (a) takes effect on the day on which it is notified in the *Gazette* or on such later date and at such time, if any, as is specified in the notice; and
- (b) ceases to have effect on the date, if any, specified in the notice.

(4) The Minister may, by notice in the *Gazette*, amend or revoke a determination.

(5) The Minister shall, as soon as practicable after making a determination, ensure that a copy of the notice of the determination is published in a newspaper circulating generally in the Territory and that such notice includes a statement of the date on which and time, if any, at which the determination takes effect.

(6) A determination is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Price offences

5. (1) Where the maximum base wholesale price of a specified fuel has been determined under paragraph 4 (1) (a), a person shall not, without reasonable excuse, sell or offer for sale, by wholesale, any such fuel at a price greater than that maximum base wholesale price.

(2) Where the maximum retail price of a specified fuel has been determined under paragraph 4 (1) (b), a person shall not, without reasonable excuse, sell or offer for sale, by retail, any such fuel at a price greater than that maximum retail price.

(3) Where the maximum retail margin in relation to a specified fuel has been determined under paragraph 4 (1) (c), a person shall not, without reasonable excuse, sell or offer for sale, by retail, any such fuel at a retail margin greater than that maximum retail margin.

Penalty:

- (a) in the case of a natural person—\$5,000 or imprisonment for 6 months, or both;
- (b) in the case of a body corporate—\$25,000.

Power to obtain information

6. (1) Where the Director believes, on reasonable grounds, that—

- (a) a person is a prescribed person; and
- (b) that person is capable of furnishing information that the Director considers to be necessary in connection with making a recommendation in relation to a particular fuel;

the Director may by notice served on that person, require the person to furnish to the Director, within the time and in the manner specified in the notice, such information as is specified in the notice.

(2) A person shall not—

- (a) without reasonable excuse, fail to comply with a notice under subsection (1); or
- (b) in purported compliance with such a notice, knowingly furnish information that is false or misleading.

Penalty:

- (a) in the case of a natural person—\$5,000 or imprisonment for 6 months, or both;
- (b) in the case of a body corporate—\$25,000.

(3) In this section—

“prescribed person” means—

- (a) a person, whether within or outside the Territory, who supplies fuel in the Territory; or
- (b) a person, whether within or outside the Territory, who is a party to an agreement, arrangement or understanding that may affect or be connected with the price, or supply, of fuel in the Territory;

“supply” means to supply (including re-supply), or to offer to supply, by way of sale (whether by wholesale or by retail) or exchange.

Use of information

7. (1) Information furnished to the Director by a person in accordance with a requirement under subsection 6 (1) shall not, without reasonable excuse, be used otherwise than in connection with a recommendation or a determination under this Act.

(2) A person who contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a natural person—\$5,000 or imprisonment for 6 months, or both; or
- (b) in the case of a body corporate—\$25,000.

(3) Subsection (1) does not apply to the communication of information, or the production of a document, to a court for the purposes of proceedings for an alleged offence against paragraph 6 (2) (a) or (b).

Regulations

8. The Executive may make regulations, not inconsistent with this Act, prescribing all matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

[Presentation speech made in Assembly on 25 June 1992]