



AUSTRALIAN CAPITAL TERRITORY

Fair Trading (Petroleum Retail Marketing) Act 1995

No. 32 of 1995

An Act relating to the regulation of retail marketing of motor fuel in the Territory and for related purposes

[Notified in ACT Gazette S262: 20 October 1995]

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

Short title

1. This Act may be cited as the *Fair Trading (Petroleum Retail Marketing) Act 1995*.

Commencement

2. This Act shall be taken to have commenced on 17 August 1995.

Interpretation

3. In this Act, unless the contrary intention appears—

“Court” means the Supreme Court;

“Franchise Act” means the *Petroleum Retail Marketing Franchise Act 1980* of the Commonwealth;

“franchise agreement” means a franchise agreement to which the Franchise Act applies;

“gazettal day” means the day on which this Act is notified in the *Gazette* pursuant to subsection 25 (1) of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth;

“marketing premises” has the same meaning as in the Franchise Act;

“prescribed corporation” means a corporation of the kind referred to in paragraph (a), (b) or (c) of the definition of “prescribed corporation” in subsection 3 (1) of the Sites Act;

“prescribed oil company” has the same meaning as in the Sites Act;

“retail site” has the same meaning as in the Sites Act;

“Sites Act” means the *Petroleum Retail Marketing Sites Act 1980* of the Commonwealth.

Entry into franchise agreements restricted

4. (1) A franchise agreement relating to marketing premises situated in the Territory that is entered into on or after 17 August 1995 is illegal if, immediately before the agreement is entered into, there is in force another franchise agreement relating to other marketing premises, whether situated in the Territory or elsewhere, under which—

- (a) the franchisor is—
 - (i) the franchisor under the first-mentioned agreement; or
 - (ii) a corporation related to that person; and
- (b) the franchisee is any of the following:
 - (i) the franchisee under the first-mentioned agreement;
 - (ii) a company controlled by that person;
 - (iii) a body corporate related to that person;
 - (iv) an associate of that person;
 - (v) a consortium, joint venture, partnership or other group of persons, however described, being a group in which the person referred to in subparagraph (a) (i) holds an interest at least equal to any other interest held in the group.

(2) A franchise agreement relating to marketing premises on 2 or more sites at least 1 of which is situated in the Territory that is entered into on or after 17 August 1995 is illegal.

Assignment of franchisee’s interest restricted

5. An agreement under which a franchisee assigns 50% or more of his or her interest under a franchise agreement (in this Act called an “assignment agreement”) is illegal if—

- (a) the assignment agreement is entered into on or after 17 August 1995; and
- (b) the assignee under that agreement is one of the following:
 - (i) a franchisee under another franchise agreement;
 - (ii) a company controlled by that person;
 - (iii) a body corporate related to that person;

- (iv) an associate of that person;
- (v) a consortium, joint venture, partnership or other group of persons, however described, being a group in which a franchisor holds an interest at least equal to any other interest held in the group.

Control and association

6. For the purposes of sections 4 and 5—
- (a) a company is controlled by a franchisee if it is a company controlled by a franchisee for the purposes of the Franchise Act;
 - (b) bodies corporate are related to each other if they are related to each other for the purposes of the Franchise Act; and
 - (c) a person is an associate of another person if the person is an associate of that other person for the purposes of the Franchise Act.

Operation of retail sites restricted

7. (1) A prescribed oil company that is not a member of a group of prescribed corporations shall not operate in the Territory a number of retail sites exceeding the number of retail sites operated in the Territory by that company immediately before the gazettal day.

(2) A member of a group of prescribed corporations 1 of which is a prescribed oil company shall not operate a retail site in the Territory if the total number of retail sites (including that site) that would be operated in the Territory by the members of that group would exceed the total number of retail sites operated in the Territory by those members immediately before the gazettal day.

(3) A prescribed corporation operates a retail site for the purposes of this section if it operates the site for the purposes of the Sites Act.

(4) A prescribed corporation is a member of a group of prescribed corporations for the purposes of this section if it is a member of a group of prescribed corporations for the purposes of the Sites Act.

Minister may lift restrictions

8. (1) Sections 4, 5 and 7 of this Act have effect subject to any declaration in force under subsection (2).

- (2) The Minister may, by notice published in the *Gazette*, declare that—
- (a) section 4 ceases to apply in relation to a franchise agreement;
 - (b) section 5 ceases to apply in relation to an assignment agreement; or
 - (c) section 7 ceases to apply in relation to—
 - (i) a prescribed oil company that is not a member of a group of prescribed corporations; or
 - (ii) the members of a group of prescribed corporations;

and such a declaration has effect according to its tenor.

Injunctions

9. (1) Where, on the application of the Minister or any other person, the Court is satisfied that—

- (a) a franchisor or franchisee has engaged, or is proposing to engage, in conduct for the purpose of giving effect to a franchise agreement that is illegal by virtue of section 4;
- (b) an assignor or assignee has engaged, or is proposing to engage, in conduct for the purpose of giving effect to an assignment agreement that is illegal by virtue of section 5; or
- (c) a prescribed corporation has engaged, or is proposing to engage, in conduct that constitutes or would constitute a contravention of section 7;

the Court may grant an injunction in such terms as the Court determines to be appropriate.

(2) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

(3) The Court may rescind or vary, or suspend the operation of, an injunction granted under subsection (1) or (2).

(4) The power of the Court to grant an injunction under this section restraining a person from engaging in conduct may be exercised—

- (a) whether or not it appears to the Court that the person intends to engage again, or continue to engage, in conduct of that kind;
- (b) whether or not the person has previously engaged in conduct of that kind; and
- (c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.

Return to pre-contractual position in some cases

10. The parties to a franchise agreement or an assignment agreement—

- (a) that is illegal by virtue of section 4 or 5, as the case may be; and
- (b) that is entered into during the period commencing on 17 August 1995 and ending immediately before the gazettal day;

are entitled to be put back, as far as is practicable and reasonable, in the positions in which they were in relation to each other before they entered the agreement.

Pecuniary penalties

11. (1) If the Court is satisfied that a prescribed corporation has contravened section 7, the Court may, subject to subsection (2), order the

corporation to pay to the Territory such pecuniary penalty as the Court determines to be appropriate having regard to all relevant matters, including—

- (a) the circumstances in which the contravention took place; and
- (b) whether the corporation has previously been found by the Court in proceedings under this section to have contravened section 7.

(2) The Court shall not order the payment of a pecuniary penalty under subsection (1) that exceeds—

- (a) in the case of a contravention of subsection 7 (1)—\$10,000 for each retail site exceeding the maximum number of retail sites permitted to be operated by the prescribed oil company under that subsection; or
- (b) in the case of a contravention of subsection 7 (2)—\$10,000 for each retail site exceeding the maximum number of retail sites permitted to be operated by the members of the relevant group of prescribed corporations under that subsection.

(3) A pecuniary penalty ordered to be paid under subsection (1) is a debt due and payable to the Territory by the prescribed corporation.

(4) Criminal proceedings do not lie against a prescribed corporation for a contravention of section 7.

(5) In this section—

“contravention”, in relation to a provision, includes an attempt to contravene that provision.

Power to obtain information

12. (1) Where the Minister believes, on reasonable grounds, that—

- (a) a person is a prescribed person; and
- (b) that person is capable of furnishing information that the Minister considers to be necessary in connection with the operation of this Act;

the Minister may by notice served on that person, require the person to furnish to the Minister, 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 in a material particular.

Penalty:

- (a) in the case of a natural person—50 penalty units or imprisonment for 6 months, or both;

(b) in the case of a body corporate—250 penalty units.

(3) In this section—

“motor fuel” means any fuel to be used in propelling road vehicles, other than diesel fuel or liquefied gas;

“prescribed person” means—

- (a) a person, whether within or outside the Territory, who supplies motor fuel in the Territory; or
- (b) a person, whether within or outside the Territory, who is a party to an agreement, arrangement or understanding to which this Act may apply;

“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

13. (1) Information furnished to the Minister by a person in accordance with a requirement under subsection 12 (1) shall not, without reasonable excuse, be used otherwise than in connection with the operation of 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—50 penalty units or imprisonment for 6 months, or both; or
- (b) in the case of a body corporate—250 penalty units.

(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 12 (2) (a) or (b).

Regulations

14. The Executive may make regulations for the purposes of this Act.

NOTE

Penalty units

See section 33AA of the *Interpretation Act 1967*.

[Presentation speech made in Assembly on 19 September 1995]