



PETROLEUM PRODUCTS EMERGENCY ACT 1994

No. 59 of 1994

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**PETROLEUM PRODUCTS EMERGENCY ACT 1994**

No. 59 of 1994

AN ACT to provide for the conservation of petroleum products in the event or likely event of shortages of supplies of petroleum products occurring in the State and for related purposes

[Royal Assent 27 October 1994]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title

1—This Act may be cited as the *Petroleum Products Emergency Act 1994*.

Commencement

2—This Act commences on a day to be proclaimed.

Interpretation

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

“**aircraft**” means any machine or craft that can derive support in the atmosphere from the reactions of the air or from buoyancy;

“**authorized officer**” means a person appointed under section 13 and includes a police officer;

“**condition**”, in relation to a permit, includes a limitation or restriction;

“**exemption**” means an exemption under section 12;

“**motor vehicle**” has the meaning assigned to that expression by section 3 (1) of the *Traffic Act 1925*;

“**period of emergency restriction**” means a period declared by proclamation to be a period of emergency restriction (whether or not it is also a rationing period);

“**permit**” means a permit under this Act;

“**permit holder**” means a person to whom a permit is issued under this Act;

“**petroleum**” means—

(a) a naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state; or

(b) a naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or

(c) a naturally occurring mixture of a hydrocarbon or hydrocarbons and of another substance or substances, whether in a gaseous, liquid or solid state—

and includes any petroleum as defined by paragraph (a), (b) or (c) that has been returned to a natural reservoir;

“**petroleum product**” means any derivative of petroleum obtained by distillation, catalysis, cracking or other refining process, and includes motor fuel, aviation fuel, heating oil, kerosene, furnace oil, diesel fuel and every kind of liquefied or gaseous petroleum;

“**police officer**” has the meaning assigned to that expression by section 5 of the *Police Regulation Act 1898*;

“**premises**” means any land or any building or other structure;

“**rationed petroleum product**” means a petroleum product of a kind declared by proclamation under this Act to be a rationed petroleum product;

“**rationing period**” means a period of emergency restriction declared by proclamation under this Act to be a rationing period;

“**sell**” includes—

- (a) barter or exchange; and
 - (b) offer or agree to sell, barter or exchange; and
 - (c) deliver in pursuance of sale, barter or exchange; and
 - (d) authorize, direct, cause, attempt or permit an act referred to in paragraph (a), (b) or (c)—
- and “**sale**” has a corresponding meaning;

“**ship**” means a vessel or boat of any description and includes—

- (a) a floating structure; or
- (b) an air-cushioned vehicle.

Act to bind Crown

4—This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

Declaration of periods of emergency restriction and rationing periods

5—(1) Where it appears to the Governor that an emergency exists or is likely to exist because of circumstances that have arisen or are likely to arise which have caused or are likely to cause shortages of petroleum products in the State—

- (a) the Governor may, by proclamation, declare a period, commencing on the date of the proclamation, or a later date specified in the proclamation, and extending for not more than 14 days, to be a period of emergency restriction throughout the State in relation to the petroleum products specified in the proclamation; and

- (b) the Governor may, by the same or a subsequent proclamation—
- (i) declare that the period of emergency restriction specified in the proclamation is, as from the commencement of the proclamation or a later date specified in the proclamation, to be a rationing period in relation to the petroleum products specified in the proclamation made under paragraph (a); and
 - (ii) declare those petroleum products to be rationed petroleum products.
- (2) The Governor may, by proclamation—
- (a) extend a period of emergency restriction for successive periods (each not to exceed 7 days) but not so that the total period exceeds 28 days; or
 - (b) extend a period of emergency restriction by such other period or periods as may be authorized by a resolution of both Houses of Parliament.
- (3) A period of emergency restriction that has been declared to be a rationing period continues to be a rationing period during any extension of the period of emergency restriction unless the proclamation by virtue of which it became a rationing period is revoked.
- (4) A proclamation under this section—
- (a) is not a statutory rule within the meaning of the *Rules Publication Act 1953*; and
 - (b) is to be published in the *Gazette* and in each daily newspaper published in the State.

Directions in relation to petroleum products

6—(1) If, during a period of emergency restriction, it is, in the opinion of the Minister, in the public interest to do so, the Minister may give directions in relation to the production, supply, storage, distribution, transportation, sale, purchase, use or consumption of the petroleum products in respect of which the period of emergency restriction is in force.

- (2) A direction under this section may be given—
- (a) to a particular person; or

- (b) to persons of a particular class; or
- (c) to members of the public generally.

(3) A direction under this section is to be given—

- (a) by instrument in writing served on the person to whom the direction is addressed; or
- (b) by publication of the direction in the *Gazette* and in each daily newspaper published in the State.

(4) Where a direction is published as provided in subsection (3) (b), the direction is deemed to have been sufficiently brought to the notice of all persons concerned with or affected by the direction.

(5) A person to whom a direction is given under this section must not contravene or fail to comply with the direction.

Penalty: Fine not exceeding 100 penalty units in the case of a natural person; fine not exceeding 1 000 penalty units in the case of any other person.

(6) Where a person is convicted of an offence against subsection (5), the court may—

- (a) make an order forfeiting to the Crown the petroleum products in relation to which the offence was committed; and
- (b) make such order in respect of the discontinuance of the supply to that person of the petroleum products in relation to which the offence was committed during such period as the court thinks fit.

(7) An order made under subsection (6) (b) has no further force or effect if the period of restriction in relation to which the direction was made is no longer in force.

(8) In any proceedings for an offence against subsection (5), a document purporting to be a copy of a direction given in pursuance of this section is, in the absence of proof to the contrary, evidence of the making and contents of the direction.

(9) A direction under this section—

- (a) has no effect after the expiration of the period of emergency restriction in relation to which it was made; and
- (b) may be revoked by the Minister at any time.

Directions to prevail

7—(1) Except as provided in subsection (2), where a direction given under section 6 is inconsistent with a provision of any Act, other than this Act, or an instrument made under any such Act, the direction prevails.

(2) Where a declaration made under section 25 of the *Emergency Services Act 1976* is inconsistent with a direction given under section 6 of this Act, the declaration prevails.

Restrictions on sale and use of rationed petroleum products

8—(1) Subject to any exemption, a person must not, during a rationing period, sell rationed petroleum products except to a permit holder.

Penalty: Fine not exceeding 100 penalty units in the case of a natural person; fine not exceeding 1 000 penalty units in the case of any other person.

(2) Subject to any exemption, a person, other than a permit holder, must not purchase rationed petroleum products during a rationing period.

Penalty: Fine not exceeding 10 penalty units.

(3) This section does not apply to the sale of rationed petroleum products to, or the purchase of rationed petroleum products by, a person who carries on the business of trading in petroleum products and purchases the petroleum products in the ordinary course of that business.

Permits

9—(1) The Minister may, if satisfied that it is in the public interest to do so, issue a permit to any person.

(2) A permit under this section is subject to such conditions as the Minister thinks fit.

(3) The conditions referred to in subsection (2) may limit the quantity or value of rationed petroleum products that may be purchased in pursuance of the permit—

(a) by reference to specified maximum quantities; or

(b) by reference to coupons to be delivered up by the permit holder on purchasing rationed petroleum products; or

(c) by any other means of limitation.

(4) A permit holder must not contravene or fail to comply with a condition contained in the permit.

Penalty: Fine not exceeding 50 penalty units.

(5) The Minister may, by instrument in writing served on a permit holder, cancel the permit.

(6) Where a permit is cancelled, a former permit holder must deliver the permit to the Minister or a person nominated by the Minister.

Penalty: Fine not exceeding 50 penalty units.

(7) A permit is not transferable.

(8) A person must, while driving a motor vehicle or operating a ship or aircraft to which petroleum products have been supplied in pursuance of a permit, carry the permit in the motor vehicle, ship or aircraft.

Penalty: Fine not exceeding one penalty unit.

(9) A permit holder must, at the request of an authorized officer, produce the permit for inspection by the authorized officer.

Penalty: Fine not exceeding 5 penalty units.

(10) A person must not, in connection with an application for a permit, make a statement or representation that is to that person's knowledge false or inaccurate in a material particular.

Penalty: Fine not exceeding 50 penalty units.

Appeal

10—(1) A person who is aggrieved by a decision of the Minister to refuse to grant or to cancel a permit may appeal against that decision to a magistrate.

(2) An appeal under this section is instituted by giving written notice to the clerk of the court of petty sessions for the municipality in which the appellant resides within 14 days after the date on which the appellant was notified of the Minister's decision.

(3) At the hearing of an appeal under this section, a magistrate may—

- (a) confirm or reverse the decision of the Minister; and
- (b) make such other orders as the magistrate considers necessary.

Delegation

11—The Minister may delegate any of the Minister's functions or powers other than this power of delegation.

Exemptions from provisions of Act

12—(1) The Minister may, in writing, grant an exemption from the provisions or specified provisions of this Act or from any direction given under section 6 in respect of—

- (a) any specified person or class of persons; or
- (b) any specified part of the State; or
- (c) any specified class of transactions.

(2) The Minister may, in writing, vary or revoke an exemption.

(3) An exemption may be granted subject to such conditions as the Minister thinks fit.

(4) A person in whose favour an exemption under this section operates must not contravene or fail to comply with a condition of the exemption.

Penalty: Fine not exceeding 50 penalty units.

Authorized officers

13—(1) The Minister may, by instrument in writing, appoint a person to be an authorized officer for the purposes of this Act.

(2) The Minister may issue to an authorized officer, other than a police officer, an identity card in a form approved by the Minister.

(3) A person to whom an identity card has been issued under subsection (2) must, within 7 days after ceasing to be an authorized officer, return the identity card to the Minister or a person nominated by the Minister by instrument in writing.

Penalty: Fine not exceeding 2 penalty units.

(4) An authorized officer, other than a police officer, is not entitled to remain in or on any premises, motor vehicle, ship or aircraft entered pursuant to section 14 if the authorized officer fails to produce the identity card issued under subsection (2) on the request of—

- (a) the occupier of, or person apparently in charge of any business or activity carried on at, the premises; or
- (b) the owner, or person apparently in charge of, the motor vehicle, ship or aircraft.

Powers of authorized officers

14—(1) An authorized officer may—

- (a) enter and remain in or on any premises (other than prescribed premises)—
 - (i) that are used for or in connection with, or that the authorized officer reasonably suspects are or have been used for or in connection with, the production, supply, storage, distribution, transportation, sale, purchase, use or consumption of a petroleum product in respect of which a period of emergency restriction is in force; or
 - (ii) in or on which, or in or on which the authorized officer reasonably suspects, a petroleum product in respect of which a period of emergency restriction is in force is or has been kept for use for any purpose; or
- (b) stop, enter and remain in or on any motor vehicle, ship or aircraft—
 - (i) that is used for or in connection with, or that the authorized officer reasonably suspects is or has been used for or in connection with, the production, supply, storage, distribution, transportation, sale, purchase, use or consumption of any such petroleum product; or

- (ii) in or on which any such petroleum product is kept, or in or on which the authorized officer reasonably suspects that such a petroleum product is or has been kept, for any purpose; or
 - (iii) that is propelled, or that the authorized officer reasonably suspects is propelled, by such a petroleum product; or
- (c) seize and retain or take samples of any petroleum product found in or on any premises referred to in paragraph (a) or in or on any motor vehicle, ship or aircraft referred to in paragraph (b); or
- (d) for the purpose of ascertaining whether directions given by the Minister under section 6 in relation to any such petroleum product are being, or have been, complied with, request any person found in or on any such premises, motor vehicle, ship or aircraft so entered by the authorized officer to—
- (i) produce any record that relates to, or that the authorized officer reasonably suspects relates to, the production, supply, storage, distribution, transportation, sale, purchase, use or consumption of that petroleum product or to the keeping of that petroleum product for use for any purpose; and
 - (ii) answer any question with respect to any such record or the production, supply, storage, distribution, transportation, sale, purchase, use or consumption of that petroleum product by that person or the keeping of that petroleum product for any purpose by that person; or
- (e) for the purpose of so ascertaining, inspect, or take copies of or make notes in respect of, any record referred to in paragraph (d) (i) or any part of any such record; or
- (f) for the purpose of so ascertaining, inspect and search those premises or that motor vehicle, ship or aircraft; or

- (g) for the purpose of so ascertaining, inspect any equipment or container installed or kept in or on those premises or in or on that motor vehicle, ship or aircraft, being equipment or a container that is, or is apparently, used for storing or dispensing any such petroleum product.
- (2) A person who—
- (a) prevents or attempts to prevent an authorized officer from exercising any power that the authorized officer is authorized to exercise under this Act; or
 - (b) delays, obstructs, hinders, impedes, threatens or assaults an authorized officer in the exercise of any such power; or
 - (c) fails or refuses to comply with a request of an authorized officer made under any such power when it is within that person's power to comply with the request; or
 - (d) fails or refuses to answer a question put to that person under subsection (1) (d) (ii); or
 - (e) gives an answer to such a question that to that person's knowledge is false or misleading in a material particular; or
 - (f) intentionally conceals any person from an authorized officer or prevents any person from appearing or being questioned by an authorized officer or attempts so to conceal or prevent any person—

is guilty of an offence and is liable on summary conviction to a fine not exceeding 50 penalty units.

(3) A person is not excused from answering a question under subsection (1) (d) (ii) on the ground that the answer might tend to incriminate the person or make the person liable to a penalty, but the information provided by the person is not admissible against the person in any proceedings, civil or criminal, except proceedings for an offence against subsection (2).

(4) In subsection (1)—

“enter”, in relation to a ship or an aircraft, includes board;

“prescribed premises” means a dwelling-house or other residential premises, whether or not those residential premises are attached to, or are conjoined with, any other building or are otherwise on the same land as any other building.

Limitation on seizure, &c.

15—(1) Where an authorized officer has seized and retained any petroleum product pursuant to section 14 (1) (c), the petroleum product may be so retained until the expiration of 60 days from its seizure or, if within that period proceedings are commenced in which the petroleum product may afford evidence, until those proceedings (including any appeal to a court in relation to those proceedings) are terminated.

(2) The Minister may authorize any petroleum product retained under subsection (1) to be released to the owner or to the person from whose possession the petroleum product was seized, either unconditionally or on such conditions as the Minister specifies in the authorization.

Profiteering

16—(1) The Minister may, by notice published in the *Gazette*—

- (a) fix maximum prices in relation to the sale of a petroleum product of a specified kind during a period of emergency restriction; or
 - (b) vary or revoke a notice previously published under this section.
- (2) A notice under subsection (1)—
- (a) may fix differential maximum prices that vary according to factors specified in the notice; and
 - (b) may apply to sales generally or to specified classes of sales; and
 - (c) may apply throughout the State or in specified parts of the State.

(3) A person who, during a period of emergency restriction, sells a petroleum product, in relation to which a maximum price is in force under subsection (1), at a price in excess of the maximum price is guilty of an offence and is liable on summary conviction to a fine not exceeding 1 000 penalty units, or imprisonment for a term not exceeding 12 months, or both.

Power of Minister to require information

17—(1) Subject to subsection (2), the Minister may, by notice in writing, require any person who is, in the opinion of the Minister, in a position to do so, to furnish information specified in the notice relating to the production, supply, storage, distribution, transportation, sale, purchase, use or consumption of petroleum products or a particular kind of petroleum product.

(2) Information may only be sought under subsection (1) if it is relevant to the administration of this Act.

(3) A person required to furnish information under subsection (1) must, within the time allowed in the notice, furnish the information sought in the notice to the best of that person's knowledge, information and belief.

Penalty: Fine not exceeding 100 penalty units in the case of a natural person; fine not exceeding 1 000 penalty units in the case of any other person.

Disclosure of information

18—A person must not disclose any information obtained in connection with the administration of this Act unless that disclosure is made—

- (a) with the consent of the person from whom the information was obtained, being a person who has authority to divulge the information to the first-mentioned person; or
- (b) in connection with the administration of this Act; or
- (c) for the purposes of any legal proceedings arising out of this Act or any report of any such proceedings; or
- (d) with other lawful excuse.

Penalty: Fine not exceeding 100 penalty units.

Certain action may not be taken against Minister, &c.

19—Subject to this Act, no action to compel the Minister or a delegate of the Minister to take, or to restrain from taking, any action in pursuance of this Act may be entertained by any court.

Service of notices or other documents

20—A notice or other document is effectively served under this Act if—

- (a) in the case of a natural person, it is—
 - (i) given to the person; or
 - (ii) left at, or sent by post to, the person's postal or residential address or place or address of business or employment last known to the server of the notice or other document; or
 - (iii) sent by way of facsimile to the person's facsimile number; and
- (b) in the case of any other person, it is—
 - (i) left at, or sent by post to, the person's principal or registered office or principal place of business; or
 - (ii) sent by way of facsimile to the person's facsimile number.

Evidence

21—A certificate purporting to be a certificate signed by or on behalf of the Minister certifying—

- (a) that a period specified in the certificate is or was a period of emergency restriction or a rationing period; and
- (b) that a substance specified in the certificate was, on a date specified in the certificate, a rationed petroleum product; and
- (c) that a person specified in the certificate was or was not, on a date specified in the certificate, a permit holder; and

(d) that a person specified in the certificate was, on a date specified in the certificate, entitled to exercise powers referred to in the certificate by virtue of a delegation under this Act; and

(e) that a person specified in the certificate was, on a date specified in the certificate, an authorized officer—

is admissible in any proceedings under this Act and is, until the contrary is established, evidence of the matters so certified.

Miscellaneous matters

22—(1) This Act has effect notwithstanding anything, whether expressed or implied, in any other Act, in any judgment or order of a court given or made otherwise than pursuant to this Act, in any contract or agreement whether oral or written or in any deed, document, security or writing.

(2) No action, claim or demand lies or may be made by, or allowed in favour of, a person against the Crown or the Minister or any other person acting in good faith in the administration or execution of this Act for or in respect of any damage or injury to, or any loss or destruction of, any property, or the death of, or any injury to, any person, sustained or caused or alleged to be sustained or caused by reason of the operation of this Act or of anything done, purported to be done, or omitted to be done, in good faith in the administration or execution of this Act.

Regulations

23—(1) The Governor may make regulations for the purposes of this Act.

(2) Regulations under this section may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

(3) Regulations under this section—

- (a) may provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
- (b) in respect of such an offence, may provide for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding one penalty unit for each day during which the offence continues.

Administration of Act

24—Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990*—

- (a) the administration of this Act is assigned to the Minister for Police and Emergency Services; and
- (b) the Department responsible to the Minister for Police and Emergency Services in relation to the administration of this Act is the Department of Police.

[Second reading presentation speech made in:—
House of Assembly on 4 August 1994
Legislative Council on 11 October 1994]