

1983-84

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(Presented pursuant to leave granted and read 1^o, 22 August 1984)

(THE MINISTER FOR INDUSTRY AND COMMERCE, SENATOR BUTTON)

A BILL

FOR

An Act to amend the *Petroleum Retail Marketing Franchise Act 1980*, and for related purposes

BE IT ENACTED BY THE QUEEN, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title, &c.

5 **1. (1)** This Act may be cited as the *Petroleum Retail Marketing Franchise Amendment Act 1984*.

(2) The *Petroleum Retail Marketing Franchise Act 1980*¹ is in this Act referred to as the Principal Act.

Commencement

10 **2. (1)** Sections 1, 2 and 25 shall come into operation on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act shall come into operation on 1 January 1985.

Interpretation

3. Section 3 of the Principal Act is amended—

(a) by inserting after the definition of “agreement” in sub-section (1) the following definition:

“ ‘business day’, in relation to entering into a franchise agreement, means a day other than— 5

(a) a Saturday or a Sunday; or

(b) a day that is a public holiday in the place where the person proposing to be the franchisee resides;”;

(b) by inserting in sub-paragraph (c) (i) of the definition of “franchise agreement” in sub-section (1) “accustomed,” before “entitled”; 10

(c) by omitting from sub-section (1) the definition of “motor fuel” and substituting the following definition:

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

(d) by omitting from sub-section (1) the definition of “person with prescribed experience” and substituting the following definition:

“ ‘prescribed person’, in relation to the supply of motor fuel that is, or is to be, sold at particular marketing premises, means—

(a) the franchisor; 20

(b) a corporation related to the franchisor; or

(c) the person (not being the franchisee or franchisor) referred to in sub-paragraph (c) (ii) of the definition of ‘franchise agreement’;”;

(e) by inserting after the definition of “share” in sub-section (1) the following definition: 25

“ ‘supply tank’, in relation to a road vehicle, means that part of the vehicle in which motor fuel for the propulsion of the vehicle is stored;”;

(f) by omitting from sub-section (3) “sub-section 6 (6)” and substituting “sections 6 and 15”; 30

(g) by omitting sub-section (4) and substituting the following sub-sections:

“(4) For the purposes of this Act, where, at the expiration of a franchise agreement, the franchisee and the franchisor or, in circumstances described in sub-section 17B (2), another franchisor, enter into a new franchise agreement concerning the same subject matter, the new agreement shall be taken to be a renewal of the earlier agreement notwithstanding that the provisions of the new agreement may differ from those of the earlier agreement. 35

“(4A) In this Act, except so far as the contrary intention appears, a reference to renewal shall be read as including a reference to further renewal.”; 40

- (h) by omitting from sub-section (5) “sub-section 6 (8)” and substituting “sub-section 19 (3)”;
- (j) by omitting from sub-section (8) “to which this Act applies by virtue of” and substituting “described in”; and
- (k) by omitting sub-section (12) and substituting the following sub-sections:

“(12) For the purposes of this Act, motor fuel shall not be taken to be sold by retail at marketing premises unless it is delivered at those premises into the supply tanks of road vehicles by a metered pump, and references to the retail sale of motor fuel shall be construed accordingly.”.

“(13) Unless the contrary intention appears, references in this Act to the term of an agreement do not include references to any period of extension of the agreement by holding over or otherwise.”.

Application of Act

4. Section 6 of the Principal Act is amended—

- (a) by omitting sub-sections (1) and (2) and substituting the following sub-sections:

“(1) This Act does not apply in relation to a franchise agreement unless the agreement—

- (a) contains provisions of the kinds referred to in paragraphs (a) and (b), and of the kind referred to in sub-paragraph (c) (i) or (ii), of the definition of ‘franchise agreement’ in sub-section 3 (1); or
- (b) is one of 2 or more franchise agreements that together contain provisions of the kinds referred to in paragraphs (a) and (b), and of the kind referred to in sub-paragraph (c) (i) or (ii), of that definition, where—
 - (i) the franchisees in relation to those agreements are the same person or are connected with each other;
 - (ii) the franchisors in relation to those agreements are the same corporation or are related to each other; and
 - (iii) those agreements relate to the same marketing premises.

“(1A) Where—

- (a) a franchise agreement (in this sub-section referred to as the ‘relevant agreement’), being—
 - (i) an agreement entered into otherwise than by way of renewal; or
 - (ii) an agreement entered into by way of renewal, where the franchisor is not required by this Act so to enter into the agreement,
- is entered into on or after 1 January 1985;

- (b) immediately before the relevant agreement is entered into, the franchisor believes on reasonable grounds that the quantity of motor fuel (being motor fuel to be supplied under the relevant agreement or a related agreement by prescribed persons) that will be sold by retail by or on behalf of the franchisee at the marketing premises during the term of the relevant agreement will amount to less than the relevant number of litres; and 5
- (c) the franchisor has served on the franchisee, not less than 3 business days before the relevant agreement is entered into, a statement in writing setting out particulars of the grounds for his belief, 10

this Act does not apply in relation to the relevant agreement.

“(1B) For the purposes of paragraph (1A) (b), the relevant number, in relation to an agreement, is the number ascertained by multiplying the number of complete months included in the term of the agreement by 30,000 or such other number as is prescribed. 15

“(1C) In any proceedings in which a franchisor claims that he had the belief referred to in sub-section (1A)—

- (a) the onus of establishing—
 - (i) that the grounds for that belief were reasonable; and 20
 - (ii) that a statement was served in accordance with paragraph (1A) (c), lies on the franchisor; and
- (b) the franchisor is not entitled to rely on any grounds for that belief other than grounds whose particulars were set out in a statement served in accordance with that paragraph. 25

“(1D) Where—

- (a) premises were, in a statement lodged under section 11 of the *Petroleum Retail Marketing Sites Act 1980* at any time before 1 September 1984, specified as being a retail site operated by a particular corporation; and 30
- (b) the premises have been operated as a retail site by the corporation or a related corporation on a day or days occurring during each of the following months, namely, September, October, November and December in the year 1984, 35

then, in relation to any franchise agreement (whether entered into before, on or after 1 January 1985) in relation to which the premises are the marketing premises, this Act does not apply at any time before the end of the first month during which neither the corporation nor a related corporation operates the premises as a retail site. 40

“(1E) Where—

- (a) a franchise agreement, being—
 - (i) an agreement entered into otherwise than by way of renewal; or

- (ii) an agreement entered into by way of renewal, where the franchisor is not required by this Act so to enter into the agreement,

is entered into on a day (in this sub-section referred to as the 'relevant day'), being 1 January 1985 or a later day;

- (b) before the relevant day, neither the franchisor nor a related corporation operated the marketing premises as a retail site;
- (c) the franchisor has served on the franchisee, not less than 3 business days before the relevant day, a notice in writing stating that—

- (i) the marketing premises will be operated by the franchisor as a retail site on and after the relevant day; and

- (ii) the premises will, in a statement to be lodged under section 11 of the *Petroleum Retail Marketing Sites Act 1980* not later than 30 days after the end of the month in which the relevant day occurs, be specified as a retail site operated by the franchisor,

this Act does not apply in relation to the agreement at any time before the end of the first month during which the franchisor does not operate the premises as a retail site.

“(1F) Expressions used in sub-sections (1D) and (1E) have the same respective meanings as in the *Petroleum Retail Marketing Sites Act 1980*.”

“(2) Subject to this section, the provisions of sections 9A, 10, 11A, 17, 17A, 17B and 19A and Parts III and IV and, to the extent necessary for the application of those provisions by virtue of this sub-section, this Part and section 8A, extend to a franchise agreement in effect at the commencement of this Act.”;

- (b) by omitting from sub-section (3) “sub-section (1)” and substituting “this section”;
- (c) by omitting from paragraph (5) (a) “a provision of”;
- (d) by omitting from paragraph (5) (b) “other than motor fuel, for retail sale by that person,” and substituting “being lubricants, parts, accessories or other materials for road vehicles, for retail sale by that person at the marketing premises,”;
- (e) by inserting after paragraph (7) (c) the following paragraph:
 - “(ca) where the person is a body corporate—any officer of the body corporate;”;
- (f) by adding at the end of sub-section (7) the following paragraph:
 - “(e) any person who is, by virtue of this sub-section, connected with any other person who is connected with the person (including a person who is connected with the person by another application or other applications of this paragraph).”.
- (g) by omitting sub-section (8) and substituting the following sub-section:

“(8) So long as, by virtue of a provision of this section, this Act does not apply in relation to a franchise agreement, this Act does not apply in relation to any related agreement.”.

Act to have effect notwithstanding agreements

5 5. Section 7 of the Principal Act is amended by adding at the end thereof the following sub-sections:

“(4) Where a provision of a franchise agreement would, but for sub-section (1), have the effect of restricting the volume of motor fuel to be sold by retail at the marketing premises, then, if, and only if—

- (a) petroleum products in liquid form were dealt with at those premises at any time or times during the period of 4 months immediately before the agreement was entered into; and 10
- (b) the volume of motor fuel (if any) sold by retail at those premises during that period did not exceed 25% of the total volume of those products so dealt with during that period, 15

that sub-section does not apply to that provision by reason only that the provision would have that effect.

“(5) For the purposes of paragraph (4) (a), a quantity of a petroleum product shall be taken to have been dealt with at marketing premises at a time if, and only if, at that time— 20

- (a) it was sold from the premises and had not been previously sold from the premises; or
- (b) it was transported from the premises for purposes of sale elsewhere and had not been previously transported from the premises for those purposes.”. 25

6. After section 8 of the Principal Act the following section is inserted in Part II:

Interpretation

“8A. In this Part, unless the contrary intention appears, ‘franchise agreement’ means a franchise agreement in relation to which this Act applies, and ‘franchisee’ and ‘franchisor’ shall be construed accordingly.”. 30

Franchisor not to impose impossible or unreasonable obligations

7. Section 9 of the Principal Act is amended—

- (a) by omitting sub-section (2) and substituting the following sub-section: 35

“(2) Where a franchise agreement contains a provision of a kind referred to in sub-section (1), the provision is void.”; and
- (b) by omitting from sub-section (3) “Sub-section (1)” and substituting “This section”.

8. After section 9 of the Principal Act the following section is inserted:

Payments by franchisee not to be increased unreasonably

“9A. (1) Where—

- (a) a provision of a franchise agreement or any other agreement to which the franchisee is a party has the effect, directly or indirectly, of conferring a right on the franchisor to increase an amount, or the aggregate of the amounts, that would, but for the exercise of that right, be payable by the franchisee in accordance with, or in a manner calculated or determined under, the franchise agreement;
- (b) in the exercise of that right, the franchisor increases such an amount, or the aggregate of such amounts; and
- (c) the whole or part of the amount of the increase is unreasonable, having regard to the market value of any interest, goods or services to which any amount included in the increase relates,

the amount of the increase is, by force of this section, reduced by so much of the amount of the increase as is unreasonable.

“(2) Where—

- (a) by reason of any agreement providing for any rebate, waiver, discount, allowance or like arrangement, an amount, or the aggregate of the amounts, payable by a franchisee in accordance with, or in a manner calculated or determined under, the franchise agreement is less than it would otherwise be;
- (b) at a later time, by reason of the reduction or withdrawal of the whole or part of the benefit of the agreement referred to in paragraph (a), any such amounts, or the aggregate of such amounts, is increased; and
- (c) the whole or part of the amount of the increase is unreasonable, having regard to the market value of any interest, goods or services to which any amount included in the increase relates,

the amount of the increase is, by force of this section, reduced by so much of the amount of the increase as is unreasonable.

“(3) For the purposes of this section, where a franchise agreement has been renewed, the franchise agreement and the franchise agreement as renewed shall be treated as a single franchise agreement.

“(4) This section shall be deemed to have extended to an increase or, where more than one, to have extended successively to each increase, made at any time before the date of commencement of this section, but, in relation to any such increase, has effect only for purposes of determining the amount of a payment that becomes due on or after that date.

“(5) In this section—

‘agreement’, except in the expression ‘franchise agreement’, includes an agreement that is not a franchise agreement;

‘amount’ does not include an amount payable in respect of motor fuel or other stock in trade.”.

Supply of motor fuel

9. Section 10 of the Principal Act is amended—

(a) by omitting sub-section (1) and substituting the following sub-section:

“(1) The succeeding provisions of this section apply in relation to a franchise agreement to the extent that they are not inconsistent with the operation of an emergency law (including a direction or order given or made under such a law);

(b) by omitting from sub-section (5) “its franchisees” (first occurring) and substituting “all persons who are franchisees in relation to franchise agreements to which the franchisor is a party (in this sub-section referred to as ‘its franchisees’);

(c) by inserting in sub-section (6) “at the marketing premises” after “retail sale” (first occurring);

(d) by omitting from sub-section (6) “the franchisor” (second occurring) and substituting “prescribed persons”;

(e) by inserting in sub-section (6) “at those premises” after “retail sale” (second occurring); and

(f) by inserting in sub-section (6) “, or was a franchise agreement to which this Act applied,” after “was in effect”.

Assignment of rights, &c., of franchisee

10. Section 11 of the Principal Act is amended—

(a) by omitting the definition of ‘prescribed agreement’ from sub-section (1);

(b) by inserting after sub-section (1) the following sub-section:

“(1A) In this section, ‘person with prescribed experience’, in relation to a particular time, means a person who, for a period amounting, or for periods amounting in the aggregate, to one year or more during the period of 6 years preceding that time, was a franchisee in relation to a franchise agreement or franchise agreements, where the agreement, or each of the agreements, as the case may be, was not terminated by reason of a ground referred to in any of paragraphs 16 (2) (a) to (j) (inclusive) or by reason of any other breach of the agreement by the person.”;

(c) by omitting from sub-sections (3), (4) and (5) “prescribed” and substituting “franchise”.

(d) by omitting from sub-section (5) “he shall serve on the franchisor a notice in writing, offering” and substituting “(in this sub-section and sub-section (5A) referred to as the proposed assignment), he shall serve on the franchisor a notice in writing setting out particulars of the proposed assignment and offering to do whichever of the following acts is required by the franchisor to be done, namely”;

(e) by inserting after sub-section (5) the following sub-section:

“(5A) Within 30 days after the service on a franchisor of a notice under sub-section (5), the franchisor shall serve on the franchisee a notice in writing—

- (a) granting or withholding consent to the proposed assignment;
- (b) rejecting the offers made in the first-mentioned notice;
- (c) accepting the offer to terminate the franchise agreement; or
- (d) nominating a person to whom the franchisee may assign his interest in the agreement,

and if, at the expiration of that period of 30 days, the franchisor has not served such a notice, the franchisor shall be taken to grant consent to the proposed assignment.”;

(f) by omitting from sub-section (6) “prescribed” and substituting “franchise”;

(g) by omitting paragraph (6) (b) and substituting the following paragraph:

“(b) after having served on the franchisor such a notice, makes an assignment of the whole of his interest under the agreement to a person other than a person nominated by the franchisor in accordance with sub-section (5A),”;

(h) by omitting from sub-section (9) “prescribed” and substituting “franchise”; and

(j) by omitting from paragraph (10) (a) “prescribed” (wherever occurring) and substituting “franchise”.

11. After section 11 of the Principal Act the following section is inserted:

Disposition of interests, &c., of franchisor

“11A. (1) A franchisor in relation to a franchise agreement shall not grant or transfer any interest in any marketing premises to which the agreement relates, or assign any of its rights under the agreement, to a person other than the franchisee if, as a result of the grant, transfer or assignment, this Act would, by virtue of the operation of paragraph 6 (1) (a) or sub-paragraph 6 (1) (b) (ii), cease to apply in relation to the agreement, whether wholly or so far only as it relates to any particular marketing premises.

“(2) A purported grant, transfer or assignment in contravention of sub-section (1) is void to the extent that it would have a result referred to in that sub-section.”.

Addition of further franchisees by novation

12. Section 12 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(6) In this section, ‘person with prescribed experience’ has the same meaning as in section 11.”.

Duration of franchise agreements

13. Section 13 of the Principal Act is amended—

(a) by omitting sub-section (5) and substituting the following sub-section:

“(5) In ascertaining the length of the term of an agreement for the purposes of paragraph (4) (b), so much of the term of the agreement as has occurred at a time when this Act did not apply to the agreement shall be disregarded.”; 5

(b) by omitting from paragraph (6) (c) “or (4)” and substituting “, (3) or (4)”; and

(c) by inserting in sub-section (10) “or this Act commences to apply in relation to an existing franchise agreement whose term contravenes a sub-section of this section” after “section”; and 10

(d) by adding at the end thereof the following sub-section:

“(12) In this section, ‘person with prescribed experience’, in relation to a particular time, means a person who, for a period amounting, or for periods amounting in the aggregate, to one year or more during the period of 6 years preceding that time, was a franchisee in relation to a franchise agreement or franchise agreements (whether or not this Act applied at any time to the agreement or agreements), where the agreement, or each of the agreements, as the case may be, was not terminated by reason of a ground of a kind referred to in any of paragraphs 16 (2) (a) to (j) (inclusive) or by reason of any other breach of the agreement by the person.”. 15 20

Disclosure of information by franchisor

14. Section 15 of the Principal Act is amended— 25

(a) by omitting from sub-section (1) “made in accordance with such form as is prescribed or, if no form is prescribed, such form as the Minister approves,” and substituting “in writing”;

(b) by adding at the end of sub-section (2) the following paragraph:

“(s) any other prescribed matters.”; 30

(c) by inserting after sub-section (3) the following sub-section:

“(3A) The regulations may, for the purposes of sub-section (1), specify the information, and the manner of presenting the information, required to be included in a statement referred to in that sub-section, being information relating to any of the matters referred to in paragraphs (2) (a) to (s) (inclusive).”; and 35

(d) by omitting sub-section (12).

Termination of franchise agreements

15. Section 16 of the Principal Act is amended—

(a) by omitting from paragraph (2) (j) “condition” and substituting “provision”; and 40

(b) by inserting after paragraph (2) (j) the following paragraphs:

“(ja) the whole or a substantial part of the marketing premises is, or is to be, acquired by, or by a public authority of, the Commonwealth, a State or the Northern Territory under a law relating to the compulsory acquisition of land;

5 (jb) the sale of motor fuel at the marketing premises is prohibited by or under a law relating to the use of land;”.

16. Section 17 of the Principal Act is repealed and the following sections are substituted:

Renewal of franchise agreement

10 “17. (1) Subject to this section and sections 17A and 17B, a franchisor shall not fail or refuse to renew the franchise agreement except on one or more of the following grounds:

 (a) the existence of circumstances, or the occurrence of an event, of a kind referred to in any of paragraphs 16 (2) (a) to (k) (inclusive);

15 (b) the franchisee rejects a proposal made in accordance with sub-section 17A (2) in a notice served under sub-section 17A (1);

 (c) the number of litres of motor fuel supplied under the agreement (in this paragraph referred to as the ‘relevant agreement’) or a related agreement by prescribed persons that was sold by retail by or on behalf of the franchisee at the marketing premises during any of the 3 years immediately preceding the date of expiry of the relevant agreement was less than 360,000 or such other number as is prescribed;

20 (d) the franchisor proposes, in good faith and in the normal course of business—

25 (i) to enter into an agreement, or negotiations for an agreement, to grant a lease of the marketing premises to a person other than an associate of the franchisor wholly for purposes other than the retail sale of motor fuel; or

30 (ii) to enter into an agreement, or negotiations for an agreement, (other than an agreement containing a provision having the effect of prohibiting the use of the marketing premises for the retail sale of motor fuel) to dispose of the whole of its interest in the marketing premises to a person other than an associate of the franchisor and not to acquire or re-acquire any interest in the premises;

35 (e) the franchisor proposes, in good faith and in the normal course of business—

 (i) to occupy and use the marketing premises wholly for purposes other than the retail sale of motor fuel; or

40 (ii) to redevelop the marketing premises wholly or principally for purposes other than the retail sale of motor fuel, whether the premises are to be used for those purposes by the franchisor or another person.

“(2) A franchisor shall not enter into an agreement to dispose of its interest in the marketing premises to a person other than the franchisee or an associate of the franchisee unless—

- (a) by notice in writing served on the franchisee at least 30 days before entering into the agreement, the franchisor has offered the interest to the franchisee or an associate of the franchisee on terms that were no less favourable than the terms of the agreement with that person; or 5
- (b) the agreement was entered into in the following manner, namely, the franchisor offered the interest for sale at a public auction of which at least 30 day’s notice in writing was served on the franchisee, and the franchisor— 10
 - (i) sold the interest at the auction to a person other than an associate of the franchisor; or
 - (ii) sold the interest by private treaty, after the auction, to a person other than an associate of the franchisor for a price not lower than the amount of the highest bid at the auction and, subject to sub-section (3), on other terms substantially the same as the terms on which the interest was so offered. 15

“(3) Where, in pursuance of an offer made, or agreement entered into, in accordance with sub-section (2), a franchisor disposes of its interest in the marketing premises to the franchisee or an associate of the franchisee (in this sub-section and in sub-section (4) referred to as the ‘relevant person’), then, if there is included in the terms of the disposition or in any collateral agreement— 20

- (a) a provision having the direct or indirect effect of requiring a fixture on the premises to be removed or rendered useless, whether before or after the transfer of the premises; 25
- (b) a provision having the direct or indirect effect of entitling the franchisor to remove or render useless a fixture on the premises; or
- (c) any other provision that would prevent the relevant person from, or impede that person in, carrying on the business of selling motor fuel by retail at the premises (whether or not that person actually wishes to do so), 30

the provision is void.

“(4) Sub-section (3) does not apply to a provision having the effect that a fixture on the premises is to be, or may be, removed or rendered useless by the franchisor with the consent of the relevant person. 35

“(5) Except where paragraph 17A (4) (b) applies, if, before the date of expiry of a franchise agreement—

- (a) the franchisor, in the manner described in paragraph (1) (d), proposed to enter into negotiations for an agreement of a kind referred to in paragraph (1) (d); and 40
- (b) the franchise agreement is not renewed,

the term of the agreement shall be deemed to be extended until whichever of the following first occurs, namely—

(c) the entry into an agreement of the kind referred to in paragraph (1) (d);

5 (d) the expiration of the period of 6 months after the date of expiry of the franchise agreement; or

(e) a time agreed upon between the franchisor and the franchisee.

“(6) If, at the expiration of the period referred to in paragraph (5) (d), no agreement of a kind referred to in paragraph (1) (d) has been entered into—

10 (a) paragraph (1) (d) ceases to be a ground for failure or refusal to renew the franchise agreement;

(b) unless the franchisee has consented in writing to its non-renewal, the franchisor shall renew the franchise agreement; and

15 (c) if the franchise agreement is renewed, the rate of the amounts payable by the franchisee under the franchise agreement may, in the agreement as renewed, be increased to such extent as is agreed upon between the franchisee and the franchisor or, failing agreement, as is determined by a court, having regard to the market value of any interest, goods or services to which those amounts relate.

20 “(7) In this section, ‘date of expiry’, in relation to an agreement, means the day immediately following the last day on which, or on part of which, the term of the agreement is current.

Procedures relating to renewal and non-renewal

25 “17A. (1) If a franchisor proposes to renew the franchise agreement, it shall, not earlier than 120 days, nor later than 60 days, before the date of expiry of the agreement, serve on the franchisee a notice in writing offering to renew the agreement.

30 “(2) A notice under sub-section (1) may include a proposal, made in good faith and in the normal course of business, by the franchisor that the provisions of the agreement as proposed to be renewed differ from those of the existing agreement in the manner specified in the notice.

“(3) For the purposes of this Part, a proposal shall not be taken to be made in accordance with sub-section (2) if, under the proposal—

35 (a) an amount payable by the franchisee under the franchise agreement as proposed to be renewed (other than an amount payable in respect of motor fuel or other stock in trade) would be, or would be calculated or determined in such a manner as to be, unreasonable, having regard to the market value of any interest, goods or services to which the amount relates; or

40 (b) the provisions of the agreement as proposed to be renewed (not being provisions providing for an amount payable by the franchisee) would be unreasonable.

“(4) Where, at the expiration of 45 days after the service of a notice on a franchisee under sub-section (1), the parties have not agreed to renew the franchise agreement—

- (a) if the notice included a proposal (whether made in accordance with sub-section (2) or not) that the provisions of the agreement as proposed to be renewed differ from those of the existing agreement—the franchisee shall be deemed, for the purposes of paragraph 17 (1) (b), to have rejected the proposal; and 5
- (b) in any other case—the franchisor is not required to renew the franchise agreement. 10

“(5) Except where paragraph (4) (b) applies, a franchisor shall not refuse or fail to renew the franchise agreement unless it has served on the franchisee, before the date of expiry of the agreement, notice in writing of its decision not to renew the agreement, setting out full particulars of the ground or grounds, including a statement of the facts relating to the ground or each ground, on which the decision is based. 15

“(6) If a notice is served on a franchisee under sub-section (5), the term of the franchise agreement shall (unless the agreement is sooner renewed) be deemed to be extended for a period of 90 days (or, if proceedings are instituted under sub-section (7) within that period, such longer period (if any) as the court determines before the end of the first-mentioned period) after— 20

- (a) if the term of the agreement is extended under sub-section 17 (5)—the end of that extension; or
- (b) in any other case—the date of service of the notice under sub-section (5). 25

“(7) Except where paragraph (4) (b) applies, a court shall, on the application of a franchisee, make an order directing the franchisor to renew the franchise agreement unless—

- (a) the franchisor has served on the franchisee a notice in accordance with sub-section (5); 30
- (b) a ground specified in the notice is established by the franchisor to the satisfaction of the court; and
- (c) the court is satisfied that it is just and equitable, having regard to all the circumstances, for the agreement and any related agreement or agreements not to be renewed. 35

“(8) Without limiting the generality of paragraph (7) (c), the circumstances referred to in that paragraph include the conduct of the franchisor and the franchisee after the time when the franchisor became aware of the existence of the circumstances, or the occurrence of the event, constituting a ground referred to in paragraph (7) (b). 40

“(9) Where the court makes an order under sub-section (7), it may make—

- (a) orders determining any amount, or the manner of calculating or determining any amount, to be payable by the franchisee under the franchise agreement as to be renewed;
- (b) orders determining any other provisions of the agreement as to be renewed; and
- (c) such ancillary or consequential orders as it thinks fit, including orders directing the preparation and execution of documents.

“(10) In this section, ‘date of expiry’ has the same meaning as in section 17.

General provisions relating to renewal and non-renewal

“17B. (1) Without limiting the generality of sub-sections 17 (1) and 17A (5), where—

- (a) a franchisor offers to renew the franchise agreement;
 - (b) the provisions of the agreement as proposed to be renewed differ from those of the earlier agreement; and
 - (c) the differences have not been set out in a proposal made in accordance with sub-section 17A (2) in a notice served under sub-section 17A (1),
- the franchisor shall, for the purposes of this Part, but subject to sub-sections (2) and (3), be taken to have refused or failed to renew the earlier agreement.

“(2) For the purposes of this Part, a franchisor shall not be taken to have failed or refused to renew a franchise agreement by reason only that, in relation to the agreement as renewed, there is substituted for that franchisor a different franchisor, if—

- (a) that different franchisor is a corporation related to the first-mentioned franchisor; and
- (b) the first-mentioned franchisor has agreed in writing to indemnify the franchisee in respect of any loss or damage resulting from any breach by that different franchisor of its obligations under this Act or under the franchise agreement as renewed.

“(3) For the purposes of this Part, a franchisor is not required, and shall not be taken to have failed or refused, to renew the franchise agreement if consent in writing to the non-renewal was given by the franchisee at any time after the commencement, and before the expiration, of the agreement, being a time, in the case of an agreement in effect immediately before the date of commencement of this Act—

- (a) except where paragraph (b) applies—on or after that date; or
- (b) where the franchisor has, before that date, in good faith and in the normal course of business, entered into an agreement to grant or dispose of an interest in, or to grant a licence in relation to, the marketing premises—before that date.

“(4) Where—

- (a) a franchise agreement (in this sub-section referred to as the ‘original agreement’) has been entered into otherwise than by way of renewal;
- (b) the provisions of section 17 of this Act as in force before 1 January 1985, or of sections 17 and 17A of this Act as in force on and after that date, or both, have applied in relation to a renewal, or 2 or more consecutive renewals, of the original agreement; and
- (c) the term or terms of the agreement as so renewed, together with the term of the original agreement, amount in the aggregate to 9 years or more,

sections 17 and 17A of this Act as in force on and after that date do not apply in relation to the renewal of the agreement when the term of the agreement next expires, but, if the franchisor voluntarily renews the agreement, those sections and this section (subject to section 6) apply again as if the agreement as so voluntarily renewed were entered into otherwise than by way of renewal.

“(5) Sections 17 and 17A do not apply in relation to a franchise agreement whose term is 9 years or more.

“(6) For the purposes of this section, a reference to the term of an agreement includes a reference to any part of the term that occurred at a time when this Act did not apply in relation to the agreement, other than a time before 19 September 1980.”.

Application of sections 15, 16, 17, 17A and 17B to related agreements

17. Section 18 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(3) Where—

- (a) the term of a franchise agreement is extended for a period by or under sub-section 17 (5) or 17A (6); and
- (b) the agreement is one of 2 or more related agreements,

the term or terms of the related agreement or agreements shall be deemed to be extended until the expiration of that period.”.

Franchisee to be offered new agreement after destruction or redevelopment of premises

18. Section 19 of the Principal Act is amended—

- (a) by omitting sub-section (1) and substituting the following sub-sections:

“(1) Subject to sub-section (2), where—

- (a) a corporation, being a franchisor, has terminated under section 16 or, in accordance with sections 17 and 17A (other than paragraph 17A (4) (b)), not renewed, a franchise agreement on the ground that the whole or a substantial part of the marketing premises was destroyed, or was damaged to such an extent as to render the operation of the premises impracticable, and subsequently the premises have been rebuilt or restored; or

(b) a corporation, being a franchisor, has, in accordance with sections 17 and 17A (other than paragraph 17A (4) (b)), not renewed a franchise agreement on the ground that the marketing premises were to be redeveloped as described in sub-paragraph 17 (1) (e) (ii),

and, after the rebuilding, restoration or redevelopment, as the case may be, the premises are suitable for the retail sale of motor fuel, sub-section (1A) applies in relation to the premises.

“(1A) If the corporation intends the premises to be used for the retail sale of motor fuel under a prescribed agreement, the corporation shall not enter into a prescribed agreement in relation to the premises with a person other than the former franchisee unless, before entering into the agreement with that person, the corporation, by notice in writing served on the former franchisee, has offered to enter into a prescribed agreement in relation to the premises with the former franchisee on terms no less favourable to the former franchisee than the terms of the proposed agreement with that person, and the offer has remained open for at least 30 days after the date of service of the notice.”;

(b) by omitting from sub-section (2) “sub-section (1)” and substituting “sub-section (1A)”;

(c) by adding at the end thereof the following sub-section:

“(3) In this section—

‘agency agreement’, in relation to a corporation, means an agreement in pursuance of which motor fuel will be sold by retail by a person (not being an employee of the corporation) acting as agent of the corporation;

‘prescribed agreement’ means—

(a) a franchise agreement described in paragraph 6 (1) (a) or (b); or

(b) an agency agreement.”.

19. After section 19 of the Principal Act the following section is inserted in Part II:

Records to be kept by franchisee

“19A. A franchisee in relation to a franchise agreement—

(a) shall at all times keep such records as are reasonably sufficient to disclose to the franchisor the quantities of motor fuel sold by retail at the marketing premises, being motor fuel supplied by prescribed persons; and

- (b) shall permit the servants and agents of the franchisor, at all reasonable times, to inspect, and take extracts from, those records for the purposes of enabling the franchisor—

(i) to ascertain whether or not paragraph 17 (1) (c) applies or will apply in relation to the agreement; and

(ii) to comply with section 20.”.

Price discrimination in sales of motor fuel to franchisees

20. Section 20 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “A franchisor shall not, in relation to motor fuel supplied or to be supplied by it, discriminate between its franchisees in relation to” and substituting “A corporation that is a franchisor in relation to 2 or more franchise agreements shall not, in relation to motor fuel supplied or to be supplied under those agreements (whether by it or by any other person), cause or permit any discrimination between the persons who are franchisees in relation to those agreements in respect of”; and

- (b) by omitting sub-sections (3) and (4) and substituting the following sub-sections:

“(3) This section does not apply in relation to the supply or proposed supply of motor fuel to a franchisee for a purpose other than retail sale at the marketing premises to which the franchise agreement relates.

“(4) Sub-section 22 (1) does not apply in relation to loss or damage suffered by a franchisee by reason of a discrimination referred to in sub-section (1) if the franchisor believed on reasonable grounds that the motor fuel concerned was acquired by the franchisee for a purpose other than retail sale at the marketing premises to which the franchise agreement relates.

“(5) In any proceedings—

- (a) the onus of establishing that, by reason of sub-section (2), sub-section (1) does not apply in relation to a discrimination is on the person asserting that fact; and

- (b) the onus of establishing that, by reason of sub-section (4), sub-section 22 (1) does not apply in relation to loss or damage suffered by a franchisee is on the person asserting that fact.

“(6) In this section, ‘franchise agreement’ means a franchise agreement in relation to which this Act applies, and ‘franchisee’ and ‘franchisor’ shall be construed accordingly.”.

21. Sections 21 and 22 of the Principal Act are repealed and the following sections are substituted:

Interpretation

5 “20A. In this Part, unless the contrary intention appears, ‘franchise agreement’ means a franchise agreement in relation to which this Act applies, and ‘franchisee’ and ‘franchisor’ shall be construed accordingly.

Injunctions

10 “21. (1) Where, on the application of a party to a franchise agreement, a court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute—

- (a) a contravention of a provision of this Act or the regulations;
- (b) attempting to contravene such a provision;
- (c) aiding, abetting, counselling or procuring a person to contravene such a provision;
- 15 (d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision;
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
- (f) conspiring with others to contravene such a provision,
- 20 or conduct that otherwise defeats or prejudices, or is likely to defeat or prejudice, any right or remedy of or available to the applicant under this Act, the court may grant an injunction in such terms as the court determines to be appropriate.

25 “(2) Without limiting the generality of sub-section (1), the power to grant injunctions under that sub-section includes the power to grant injunctions for the purpose of setting aside any instrument or disposition, but the court shall not grant such an injunction that would adversely affect the interests of a *bona fide* purchaser or assignee or other *bona fide* person interested (not being the defendant or an associate of the defendant).

30 “(3) 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 sub-section (1).

“ (4) The court may rescind or vary, or suspend the operation of, an injunction granted under sub-section (1) or (3).

35 “(5) The power of the court to grant an injunction 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 to continue to engage, in conduct of that kind;
- 40 (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 person if the first-mentioned person engages in conduct of that kind.

“(6) The power of the court to grant an injunction requiring a person to do an act or thing may be exercised—

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- (a) whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;
- (b) whether or not the person has previously refused or failed to do that act or thing; and
- (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

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“(7) Without limiting the generality of sub-section 3 (2), a reference in this section to a party to an agreement includes a reference to a person who has been a party to an agreement.

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Compensation

“22. (1) Where a party to a franchise agreement suffers loss or damage by reason of the other party to the agreement contravening a provision of this Act or of the regulations, that other party is liable to compensate the first-mentioned party for the loss or damage.

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“(2) Where a franchisee avoids the franchise agreement under sub-section 9 (4) or 15 (5), the franchisor is liable to pay to the franchisee such amount of compensation as is necessary to put the franchisee in the same position as the franchisee would have been in if the agreement had not been entered into.

“(3) Where—

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- (a) the marketing premises to which a franchise agreement relates are held by the franchisor (in this sub-section referred to as the ‘original franchisor’) under a lease (in this sub-section referred to as the ‘head lease’);
- (b) the head lease is terminated in such circumstances that the franchisee—

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- (i) continues to have the same right to possess, occupy or use the premises as the franchisee had before the termination of the head lease; or
- (ii) obtains, or is entitled to seek, that right by way of relief against the termination of the head lease;

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- (c) that right is or will be held, as the case may be, from a person who is neither the original franchisor nor a corporation related to the original franchisor; and
- (d) by reason of the operation of paragraph 6 (1) (a) or sub-paragraph 6 (1) (b) (ii), this Act (other than this section) does not, or will not, as the case may be, apply in relation to any agreement under or by virtue of which that right is or will be held,

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then, if the franchisee surrenders that right, or the entitlement to seek that right, as the case may be, together with all other rights held in respect of the premises under or by virtue of any franchise agreement, the original franchisor is liable to pay to the franchisee such amount of compensation as is necessary to put the franchisee in the same position as the franchisee would have been in if the head lease had not been terminated.

“(4) Without limiting the generality of sub-sections (2) and (3), where—

(a) compensation is payable to a franchisee under either of those sub-sections;

(b) after 3 days’ notice in writing served on the franchisor, the franchisee leaves on the marketing premises, and abandons his rights to, any motor fuel or other goods sold to the franchisee by the franchisor; and

(c) the motor fuel or other goods are unadulterated and undamaged,

the compensation payable to the franchisee includes an amount equal to the sum of all amounts paid by the franchisee to the franchisor in respect of the motor fuel or other goods (including any amount so paid at a time when this Act did not apply in relation to the franchise agreement or at a time before the commencement of that agreement).

“(5) Without limiting the generality of sub-sections (1) and (3), in assessing any compensation payable to the franchisee, regard shall be had to any goodwill in respect of the marketing premises attributable to the franchisee.

“(6) Where, in accordance with sub-section (3), a corporation is liable to pay compensation, then, if the corporation is related to one or more other corporations, both, or all, as the case may be, of those corporations are jointly and severally liable to pay the compensation and, where one of those corporations has paid any of the compensation, it may recover, by way of contribution and as a debt, from the other corporation or any of the other corporations, as the case may be, such part of the amount paid as the court considers just and equitable.

“(7) A corporation is not liable to pay compensation to a franchisee by virtue of sub-section (6) unless it is the franchisor in relation to a franchise agreement under or by virtue of which rights have been surrendered by the franchisee under sub-section (3).

“(8) Compensation may be recovered under this section by action in a court, commenced at any time within 6 years after the day on which the liability to pay the compensation arose.”.

Jurisdiction of courts

22. Section 26 of the Principal Act is amended—

(a) by omitting from sub-section (2) “and 13 (8)” and substituting “, 13 (8) and 17 (6)”;

(b) by inserting after sub-section (3) the following sub-sections:

“(3A) The inferior courts of each State are invested with federal jurisdiction, and jurisdiction is conferred on the inferior courts of each

Territory, within the limits of their several jurisdictions, whether as to locality, subject-matter or otherwise, with respect to matters arising under this Act other than matters referred to in sub-sections (2) and (3).

“(3B) Nothing in sub-section (3A) shall be taken to enable an inferior court of a State or Territory to grant a remedy other than a remedy of a kind that the court is able to grant under the law of that State or Territory.”.

23. Section 28 of the Principal Act is repealed and the following section is substituted:

Regulations

“28. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing 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.

“(2) Without limiting the generality of sub-section (1), where regulations are made for the purposes of paragraph 17 (1) (c), the regulations may include such transitional provisions, including provisions modifying the operation of that paragraph, as are necessary or convenient to be made in consequence of the change in any number referred to in that paragraph.”.

Consequential amendments

24. The Principal Act is amended as set out in the Schedule.

Transitional

25. (1) In this section—

“amended Act” means the Principal Act as amended by this Act;

“bulk site agreement” means a franchise agreement, where, of the volume of petroleum products in liquid form dealt with at the marketing premises during so much of the currency of the agreement as occurred during the year 1984, not more than 25% was motor fuel sold by retail at those premises;

“commencing day” means 1 January 1985;

“date of expiry”, in relation to a franchise agreement, has the same meaning as in section 17 of the amended Act;

“franchise agreement”, except in sub-section (8) or (11), means a franchise agreement described in paragraph 6 (1) (a) or (b) of the Principal Act;

“prescribed franchise agreement” means a franchise agreement in relation to which the Principal Act applied immediately before the commencing day;

“Principal Act” means the Principal Act as in force before the commencing day.

(2) Except so far as the contrary intention appears, expressions used in this section have the same respective meanings as in the amended Act, notwithstanding that they may apply in relation to a time before the commencing day.

5 (3) For the purposes of the definition of "bulk site agreement" in sub-section (1), a quantity of a petroleum product shall be taken to have been dealt with at marketing premises at a time if, and only if, at that time—

(a) it was sold from the premises (whether by wholesale or retail) and had not been previously sold from the premises; or

10 (b) it was transported from the premises for purposes of sale elsewhere (whether by wholesale or retail) and had not been previously transported from the premises for those purposes.

15 (4) For the purposes of this section, a franchise agreement shall be taken to satisfy the volume test during a particular year if, and only if, the number of litres of motor fuel supplied under the agreement or a related agreement by prescribed persons and sold by retail by or on behalf of the franchisee at the marketing premises during so much of the term of the agreement as occurs during that year is equal to or greater than 360,000.

20 (5) Where a prescribed franchise agreement (other than a bulk site agreement) in effect immediately before the commencing day satisfied the volume test in the year 1984, then, subject to section 6 of the amended Act, that Act applies in relation to the agreement on and after the commencing day and, in the application of paragraph 17 (1) (c) of that Act to the agreement at a particular time during the year 1985 or 1986, the reference in that paragraph to
25 any of the 3 years immediately preceding the date of expiry of the agreement shall be read as a reference to—

(a) where that time occurs during the year 1985—the year immediately preceding that date; or

30 (b) where that time occurs during the year 1986—either of the 2 years immediately preceding that date.

(6) Where a prescribed franchise agreement (other than a bulk site agreement) in effect immediately before the commencing day did not satisfy the volume test in the year 1984, or a franchise agreement was entered into before, but commenced on or after, that day—

35 (a) subject to sub-section 6 (1) of the amended Act, that Act, other than sections 17, 17A and 17B, applies in relation to the agreement during the year 1985;

(b) if, but for this paragraph, the term of the agreement would expire in the year 1985, the term shall be deemed to be extended until the
40 expiration of 1 January 1986; and

(c) subject to sub-section 6 (1) of the amended Act, that Act applies in relation to the agreement on and after that date and, in the application of paragraph 17 (1) (c) of that Act to the agreement at a particular time during the year 1986 or 1987, the reference in that paragraph to

any of the 3 years immediately preceding the date of expiry of the agreement shall be read as a reference to—

- (i) where that time occurs during the year 1986—the year immediately preceding that date; or
- (ii) where that time occurs during the year 1987—either of the 2 years immediately preceding that date.

(7) In relation to a bulk site agreement in effect immediately before the commencing day, the amended Act does not apply at any time up to and including the date of expiry of the agreement or, if the agreement has no date of expiry, 30 June 1985, but, if the agreement is extended after that date, whether by holding over or otherwise, then, subject to sub-section 6 (1) of that Act, that Act applies in relation to the agreement as so extended.

(8) In relation to a franchise agreement (other than a prescribed franchise agreement or a bulk site agreement) in effect immediately before the commencing day—

- (a) if the agreement did not satisfy the volume test during the year 1984—the amended Act does not apply on or after the commencing day; and
- (b) if the agreement satisfied the volume test during that year—subject to sub-section 6 (1) of the amended Act, that Act applies in relation to the agreement on and after that day and, in the application of paragraph 17 (1) (c) of that Act to the agreement at a particular time during the year 1985 or 1986, the reference in that paragraph to any of the 3 years immediately preceding the date of expiry of the agreement shall be read as a reference to—
 - (i) where that time occurs during the year 1985—the year immediately preceding that date; or
 - (ii) where that time occurs during the year 1986—either of the 2 years immediately preceding that date.

(9) A statement in writing may be served for the purposes of paragraph 6 (1A) (c) of the amended Act at any time before the commencing day.

(10) Where—

- (a) a bulk site agreement was in effect immediately before the commencing day;
- (b) the agreement is renewed immediately after the date of expiry of the agreement or a fresh franchise agreement relating to the same marketing premises is entered into within 45 days after that date of expiry; and
- (c) a provision of the agreement as so renewed, or of the fresh agreement, as the case may be, would, but for sub-section 7 (1) of the amended Act, have the effect of restricting the volume of motor fuel to be sold by retail at the marketing premises,

that sub-section does not apply to that provision by reason only that the provision would have that effect.

(11) Where—

5 (a) a franchise agreement (other than a prescribed franchise agreement) was entered into before the commencing day (whether or not the agreement commenced before that day);

(b) on or after that day, the amended Act commences to apply in relation to the agreement; and

10 (c) at the time when the amended Act so commences to apply, the agreement contains a provision such that, if the Principal Act had applied in relation to the agreement at the time when it was entered into, the agreement would have been entered into in contravention of sub-section 9 (1) of the Principal Act,

15 section 9 of the amended Act has effect as if the agreement had been entered into in contravention of that sub-section.

20 (12) A notice served under sub-section 11 (5) of the Principal Act not more than 30 days before the commencing day has effect on and after that day as if it had been served under sub-section 11 (5) of the amended Act, but, in relation to such a notice, the period of 30 days referred to in sub-section 11 (5A) of the amended Act shall be deemed to commence on the commencing day.

25 (13) The amendments of section 15 of the Principal Act made by this Act do not apply in relation to an agreement entered into before the commencing day (whether or not the agreement commenced before that day), but a statement supplied to a franchisee pursuant to that section before that day in relation to an agreement entered into on or after that day has effect as if it had been supplied under that section as so amended.

30 (14) Notwithstanding sub-sections (5), (6) and (7), where anything has been done, or any step has been taken, before the commencing day by a person in relation to the renewal or non-renewal of a prescribed franchise agreement pursuant to section 17 of the Principal Act, that section shall be deemed to continue in force, and sections 17, 17A and 17B of the amended Act do not apply, in relation to that renewal or non-renewal of the agreement.

35 (15) The amendments of section 19 of the Principal Act made by this Act do not apply in relation to any destruction or damage that occurred before the commencing day.

(16) Where a franchisor has reasonable grounds to believe that the franchise agreement is a bulk site agreement—

40 (a) paragraph 19A (b) of the amended Act has effect as if the purposes referred to in that paragraph included the purpose of ascertaining whether that belief is correct; and

(b) the expression “provision of this Act” in paragraph 21 (1) (a) of the amended Act shall be read as including a reference to paragraph 19A (b) of that Act as modified by this sub-section.

SCHEDULE

Section 24

CONSEQUENTIAL AMENDMENTS

Provision	Amendment
Sub-section 11 (12)	Omit “and 17”, substitute “, 17, 17A and 17B”.
Sub-section 12 (5)	Omit “and 17”, substitute “, 17, 17A and 17B”.
Section 14	Omit “11, 12, 16, 17 and 19”, substitute “11, 11A, 12, 16, 17, 17A, 17B, 19 and 19A”.
Paragraphs 18 (1) (b) and (2) (b)	Omit “section 17”, substitute “sections 17, 17A and 17B”.

NOTE

- 1. No. 139, 1980.

