

1980

COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PETROLEUM RETAIL MARKETING SITES BILL 1980

EXPLANATORY MEMORANDUM

(Circulated by the Minister for Business and
Consumer Affairs, the Honourable R.V. Garland, M.P.)

Petroleum Retail Marketing Sites

Bill 1980

Outline

This Bill seeks to reduce the level of direct operation of petroleum retail marketing sites by corporations which are engaged in the refining of petroleum in Australia by operating a refinery or through having petroleum refined for them.

The reduction is to be to approximately 50% of the overall total number of retail sites operated by oil companies as at 30 May 1980.

The Bill allocates each of the nine integrated oil companies carrying on business in Australia a quota of site numbers for direct retail operation. Where current site numbers exceed the quota reduction to the quota is required to be achieved over a period of two years.

There is no requirement for oil companies to utilize their full quota.

Clauses 1, 2 and 3 : Short title, Commencement and
Interpretation

1. Clauses 1 and 2 are normal machinery clauses.

2. Clause 3 interprets certain terms used in the Bill.

In particular:

- diesel fuel site means a retail site the principal use of which is the sale by retail at the site of diesel fuel for trucks.
- motor fuel means petrol or diesel fuel to be used in propelling a road vehicle.
- prescribed corporation means a corporation specified in the Schedule, any other corporation that refines petroleum or a corporation that is an associate of any of those corporations.
- retail site means premises at which motor fuel for road vehicles is sold by retail.

3. Also by virtue of clause 3 jurisdiction to hear actions under the Act is to vest exclusively in the Federal Court.

Clauses 4, 5 and 6 : Related bodies corporate, Associates
and Groups of prescribed corporations

4. These clauses cover oil companies which operate through subsidiary, associated or related corporations.

5. Clause 4 and 5 inter alia bring within the Bill those oil companies in which the operation of retail sites is carried out by different corporations from those which operate a refinery, or which are listed in the Schedule.

6. Clause 4 provides a definition of related bodies corporate. For the purposes of the Bill a related body corporate is deemed to be related to another body corporate if it is the holding company of the other or a subsidiary of the other or if they are both subsidiaries of the one holding company. Certain tests relating to control are provided to determine whether a body corporate is a subsidiary of another.

7. Clause 5 provides that corporations will be associated where, directly or indirectly one has a 15% shareholding in the other, or the directors of one are accustomed or obliged to act in accordance with the wishes of the directors of the other, or they are related bodies corporate.

8. To provide for operation of sites by other companies in a corporate group clause 6 enables a prescribed corporation specified in the Schedule to designate an associated corporation. The latter corporation may then, subject to clause 10, operate retail sites subject to its sites being counted against the site numbers of the group of corporations of which the designating corporation is a member.

Clause 7 : Operation of retail sites

9. This clause deems a retail site to be operated by a prescribed corporation if:-

- the corporation owns a site, or occupies a site under a lease or license; and
- motor fuel is sold by retail by or on behalf of the prescribed corporation at that site.

Clause 8 : Temporary operation of retail sites

10. A prescribed corporation may operate a retail site temporarily for a period up to 90 days where neither it nor a related corporation has previously operated the site; after rebuilding or restoration of the site; in a period between an outgoing and an incoming franchisee; prior to selling a

site or leasing it for other purposes; or during the incapacity or following the death of the franchisee, if requested by the franchisee or his personal representative. A site may not be temporarily operated on one or other of the three last-mentioned grounds more than once in any twelve month period.

Clause 9 : Operation of State and Territory laws

11. The Act is not intended to affect the operation of a State or Territory law to the extent that it is capable of operating concurrently with this Act.

Clause 10 : Restrictions on the operation of retail sites

12. This clause prohibits the operation of retail sites at which motor fuel is sold by a prescribed corporation in excess of the quota of site numbers specified in the Schedule for the corporation (and members of its group).

13. The reduction in overall company operated direct retail site numbers will be phased in. For one year from the commencement of the Act prescribed corporations will be able to operate up to the number of retail sites they operated immediately prior to commencement of the Act, or the number allocated to them in the second column of the Schedule,

whichever is greater. During the second year prescribed corporations will be allowed to operate up to the numbers specified in the second column of the Schedule, and thereafter up to the number specified in the third column of the Schedule. This approach allows for a staged reduction in retail site numbers by those companies whose current numbers exceed their final allocation (third column of the Schedule).

14. The clause also provides that -

- diesel fuel sites;
- temporary operation sites;
- one training site in each State or Territory; and
- one market research site in each State

shall be disregarded in ascertaining the number of retail sites operated by a prescribed corporation.

Clause 11 : Returns

15. The prescribed corporations listed in the Schedule will be required to lodge within 30 days after the commencement of the Act returns giving particulars of the retail sites they and other members of their group (i.e. associated corporations they have chosen to designate) operated on the day immediately preceding the commencement of the Act. Changes in these particulars will have to be lodged on a monthly basis. Returns are to be lodged with an authorized officer (defined in clause 3).

16. The requirement for returns is for the purpose of enforcement of the prohibition and to enable operation of the legislation to be monitored.

17. Any person will be able to inspect, and copy, the returns which have been lodged.

Clause 12 : Orders

18. On the application of the Minister, or any other person, the Court may make an order restraining a contravention of the prohibition on retail site operation.

Clause 13 : Pecuniary penalties

19. The operation of a retail site by a prescribed corporation in contravention of the Act and the provision of false information are each punishable by civil penalties not exceeding \$10,000. Failure to lodge returns, failure to offer a franchise in contravention of sub-clause 16(3) and entering into a franchise agreement in breach of sub-clause 16(5) are each punishable by civil penalties not exceeding \$1,000. Criminal proceedings do not lie against a person for a contravention of the Act, other than under clause 14.

Clause 14 : Production of books, &c.

20. This clause empowers an authorized officer to require production of books and other records relating to the operation of retail sites by a corporation. Notice may be given to the corporation or to a person who is or has been acting for or on behalf of the corporation.

21. Failure to produce books or records when requested by an authorized officer is to be punishable on conviction by a fine not exceeding \$1,000.

Clause 15 : Regulations

22. This clause provides for the making of regulations, not inconsistent with the Act, necessary or convenient for giving effect to the provisions of the Act.

Clause 16 : Transitional

23. Where at any time during the first two years after commencement of the Act a prescribed corporation is operating a number of sites in excess of that which it may lawfully operate at the end of that period, and it intends to cease operating one of its sites, being a site operated on its behalf by a person as its agent, it is required to offer a franchise agreement in respect of that site to that person provided he had previously operated that site as a lessee or licensee of the corporation. This requirement does not apply where the corporation sells the site, or leases it for a use other than the retail sale of motor fuel, in each case other than to an associate of the corporation.

24. The offer of a franchise in respect of the site is to be made at least 90 days prior to cesser of operation by the corporation and is to remain open for 30 days. If not accepted within that period the offer shall be deemed to be rejected. A corporation shall not grant a franchise over the site to any other person on terms more favourable than those offered to the agent.

25. On the application of an agent, the Court will be able to make orders to restrain a contravention of this clause, to direct a corporation to comply with sub-clause 16(3), to set aside or restrain the making of any instrument prejudicial to a right of an agent and to make such ancillary orders as may be necessary. The interests of bona fide third parties are protected.

Schedule

26. The Schedule lists the holding companies of the nine integrated oil company groups in Australia. The second column sets out the number of sites each prescribed corporation (and the associated corporations which it has designated) may operate after the expiration of one year from the commencement of the Act whilst the third column specifies the number applicable after the expiration of two years.