PETROLEUM RETAIL MARKETING FRANCHISE AMENDMENT BILL 1984

Date Introduced: 22 August 1984
House: Senate
Presented by: Senator, the Hon. John N. Button, Minister for Industry and Commerce

Short Digest of Bill

Purpose

To amend the Petroleum Retail Marketing Franchise Act 1980 (Franchise Act) in order to improve the franchisor-franchisee relationship, to simplify various mechanical and administrative procedures and to introduce a new application test.

Background

This digest should be read in conjunction with the digest for the Petroleum Retail Marketing Sites Amendment Bill 1984.

The petroleum marketing industry has had a long history of discontent. In 1976, the report by the Royal Commission on Petroleum was released. It highlighted problems of unfair price discrimination, increasing vertical integration by the major oil companies and unfair leasing arrangements between the companies and their lessee dealers. The Commission recommended that a Regulatory Agency should be established whose functions would include the standardisation of lease agreements between oil companies and their dealers and the establishment of a suitable degree of contractual independence for dealers. The Government rejected the recommendation. The Commission did believe, however, that interested groups within the industry should, primarily, develop practical solutions to the industry's problems. The Oil Industry Marketing Committee and the National Oil Industry Conference were subsequently formed but failed to find an agreed industry solution. In December 1977, the former Prime Minister, Rt Hon. Malcolm Fraser, announced that if the petroleum industry could not develop more equitable distribution and marketing policies, the
Government would legislate to achieve a fair solution. The industry did not reach agreement. Consequently, on 30 October 1978, the former Minister for Business and Consumer Affairs, the Hon. W. Fife, announced a package of measures to provide a solution. These measures included:

- the prohibition of oil companies from unfairly discriminating in price between their lessee or licensed dealers;
- the prohibition of oil companies retailing petroleum themselves through direct sales sites; and
- giving lessee or licensed dealers the right to obtain compensation from oil companies for an unjust termination of their lease or licence or a refusal by the oil company to renew a lease or licence.

After detailed examination of comments and submissions from the industry and interested parties on the package, the Government eventually incorporated the measures into the Petroleum Retail Marketing Franchise Act 1980 and the Petroleum Retail Marketing Sites Act 1980 (Sites Act).

The Franchise Act provides protection of tenure to franchisees (lessee service station operators) who are parties to petroleum marketing franchise agreements, and prohibits price discrimination in the sale of motor fuel by franchisors (oil companies) to their franchisees. The basic protection for franchisees occurs both in the pre-franchise and franchise periods. Three basic elements are required for a franchise relationship:

- use by a franchisee dealer of a franchisor's trademark in connection with the retail sale of motor fuel;
- the franchisor permits the franchisee to possess, occupy or use premises for the retail sale of motor fuel; and
- the franchisor supplies motor fuel for retail sale at those premises.

The franchisee has a guaranteed tenure of a minimum three year term with an entitlement to two three-year renewals in most cases. A franchisor may terminate the agreement only
on limited and specific grounds and is prohibited from
discriminating between its franchisees in the price of motor
fuel supplied to them. This also applies to any discounts,
allowances, rebates or credits given or allowed to
franchisees in respect of such fuel.

An amending Bill was introduced into the House of
Representatives on 25 February 1982 but was never enacted.
The Bill aimed to remove ambiguities in the Franchise Act
and to extend its coverage to all "service stations" with
retail sales exceeding 15 per cent of their total sales.

In a Press Release, dated 18 May 1983, the Minister
for Industry and Commerce announced that the Government
would undertake a limited review of some aspects of the
Franchise Act and the Sites Act. Service station dealer
associations, oil companies, State Government officials and
consumer groups provided input to the review. On 18 April
1984, in a Press Release, the Minister announced details of
the Government's decisions on amendments to these Acts
following from the review.

Outline

This Bill will replace the current percentage-based
application test for determining whether particular
agreements are subject to the Franchise Act with a
volume-based test. A one-year transitional period will also
be provided by the Bill to allow the franchisees to
reorganise their activities in order to meet the new
application test. A "bulk site agreement" will be defined
to exempt wholesale fuel establishments from the Act's
application. New grounds for the termination and
non-renewal of franchise agreements will be introduced as
well as a provision preventing payments made by a franchisee
from increasing unreasonably during the term of the
agreement.

Main Provisions

The amending provisions of the Bill will come into
operation from 1 January 1985 except for certain
transitional arrangements which will begin on the date of
Royal Assent (clause 2).

"Motor fuel" is defined as any fuel used in
propelling road vehicles, excluding diesel fuel and
liquified gas (clause 3).

Clause 4 continues to provide for the fundamental
pre-conditions for the application of the Franchise Act to a
petroleum retail marketing franchise agreement. Three basic
elements must exist, all of which must relate to the same marketing premises (see Background).

Furthermore, a new test will be introduced, namely a 'volume threshold' test, replacing the current percentage-based test, for determining whether sufficient retailing is conducted under a particular franchise agreement to bring that agreement under the Franchise Act. The Act will apply to new franchise agreements unless the franchisor can establish, on reasonable grounds, prior to entering into the agreement, that the franchisee will not retail in excess of the volume threshold of 30,000 litres per month.

The Franchise Act will not apply concurrently with the Sites Act to the same marketing premises.

By clause 5, the Franchise Act will not apply to wholesale or bulk-fuel establishments. Marketing premises will be regarded as bulk wholesale sites where not more than 25 per cent of the total petroleum products dealt with at the premises during the four months immediately preceding the entry into the agreement, consisted of retail sales of petrol.

Clause 8 provides protection to franchisees from unreasonable increases in amounts payable, not including those relating to motor fuel and stock in trade, during the period of the franchise agreement. Rebates, waive's discounts, allowances etc., will be taken into consideration. Where these are withdrawn or reduced, the resulting increase in the amount payable must be reasonable. The test for reasonableness will take into account the market value of the interest, goods or services to which the amount included in the increase relates. The new provision will apply to increases in amounts payable which become due on or after 1 January 1985.

Clause 15 provides for additional grounds for the termination of a franchise relationship, namely, where the marketing premises are to be acquired by a government or public authority, or where the sale of motor fuel is no longer permissible due to a change in a law relating to the use of the land.

Clause 16 deals with the renewal of franchise agreements. A ground for non-renewal will occur where the franchisee has not retailed more than 360,000 litres per year (volume threshold) in each of the immediately preceding three years. A franchisor may refuse renewal where it proposes, in good faith and in the normal course of
business, to occupy and use the marketing premises, or to redevelop them, wholly for purposes other than the retail sale of motor fuel.

When selling its interest in the marketing premises to a person other than the franchisee, the franchisor must give the franchisee at least 30 days to consider any agreement for sale.

If a franchisor proposes to renew the franchise agreement, it must serve an offer in writing not earlier than 120 days nor later than 60 days before the date of expiry.

Under clause 18, where a franchisor has not renewed a franchise agreement because of planned redevelopment of the premises which will still be used for the retail sale of motor fuel, though not exclusively, the franchisor will be required, in most cases, to offer the former franchisee the opportunity to remain at the premises under a new agreement, on terms no less favourable than those offered to other persons. This requirement will also apply to premises which have been destroyed and subsequently rebuilt. The offer must remain open for at least 30 days.

The prohibition of price discrimination by a franchisor amongst its franchisees relates only to motor fuel supplied for retail sale (clause 20).

Franchisors as well as franchisees will be allowed to seek court relief to enforce provisions of the Act, as well as compensation for loss or damage arising from the franchisee's contraventions of the provisions (clause 21).

Clause 25 provides for transitional arrangements for existing franchise agreements relating to retail service station premises, and to wholesale fuel establishments or depots. Existing retail outlets will be protected from 1 January 1985, for at least the 1985 year, irrespective of whether or not retail motor fuel sales during 1984 met the new volume threshold test. The franchisor will not be obligated to renew the franchise agreement should the retail outlet fail to meet the test in 1985.

If an existing franchise agreement comes within the definition of "bulk-site" agreement during 1984, the Act will not apply to such sites for the remainder of their fixed lease periods, or where there is no date of expiry, until 30 June 1985.
For further information, if required, contact:

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