

Petroleum Retail Marketing Sites Regulations (Amendment)

1997 No. 355

EXPLANATORY STATEMENT

Statutory Rules 1997 No. 355

Petroleum Retail Marketing Sites Regulations (Amendment)

Section 15 of the Petroleum Retail Marketing Sites Act 1980 (the Act) provides that the Governor-General may make regulations for the purposes of the Act.

Section 12 of the Act provides a person the right to obtain an injunction when a prescribed oil company (oil company named in the regulations) operates above its quota. Section 12 is the only provision in the Act where there is a possibility of a private right existing.

The Act is designed to restrain vertical integration (ie. firms producing related goods and services in a supply chain) by the major oil companies, in order to encourage competition between resellers at the retail level. The Act establishes quotas on the number of retail outlets which each company may directly operate.

The Petroleum Retail Marketing Sites Regulations (Amendment) ("the proposed Regulations") amend the Petroleum Marketing Sites Regulations ("the principal Regulations"), to allow a temporary increase in BP Australia Ltd's allocation from 87 to 102 sites for the period 1 August 1997 to 31 December 1997.

The term "retail site" is defined in Section 3, the Interpretation Section of the Act, as "premises at which motor fuel is sold by retail", in other words, a petrol station which sells petrol in retail trade,

the site increase is to operate retrospectively from 1 July 1997 to coincide with the date at which BP Australia exceeded its quota by being unable to divest itself of 15 excess retail sites in Victoria. These sites were acquired together with the 100 per cent ownership of distributor Woolman Petroleum Pty. A temporary increase from 87 to 105 was already approved by the Governor-General for the period 1 April 1996 to 31 July 1997.

The reason for increasing the allocation of sites from 87 to 102 is that BP Australia has sold 3 sites in Tasmania out of the total 18 excess retail sites available. The remaining 15 excess retail sites are located in Victoria, where suitable buyers are lacking due to market uncertainty and increased competition.

The operative part of the amendment (regulation 3) commences retrospectively to 1 August 1997.

Subsection 48(2) of the Acts Interpretation Act 1901 (the Interpretation Act) provides that a retrospective regulation may not adversely affect the rights of a person (other than the Commonwealth or an authority of the Commonwealth).

The Attorney General's Department is of the view that the right to obtain an injunction conferred by section 12 of the Act is unlikely to constitute a right for the purposes of section 48(2)(a) of the Interpretation Act. However, to ensure section 48 of the Interpretation Act is not infringed, a savings provision has been included (regulation 5) which preserves any rights existing under section 12 of the Act between the date the regulations are taken to have commenced and the date of their notification in the Gazette.