

# BUSINESS FRANCHISE (TOBACCO).

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No. 84 of 1975.

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**AN ACT to provide for the licensing of persons who carry on the business of selling tobacco, and for incidental and other purposes.**

*[Assented to 17th November, 1975.]*

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Business Franchise (Tobacco) Act, 1975.* Short title.

2. (1) In this Act unless inconsistent with the context or subject matter— Interpretation.

“Commissioner” means the person for the time being holding the office of Commissioner of

State Taxation under the Public Service Act, 1904;

“licence” means a licence granted under this Act;

“licensed premises” means premises which are specified in a licence as premises which are to be used for or in connection with the business carried on under the licence;

“licensee” means the holder of a licence;

“premises” includes a part of any premises;

“section” means section of this Act;

“subsection” means a subsection of the section in which the term is used;

“tobacco” means tobacco prepared for consumption and includes any mixture that contains tobacco and is intended to be consumed;

“tobacco retailing” means the business of selling tobacco by retail in the course of intrastate trade either alone or in conjunction with any other merchandise and includes such business carried on as part of or in conjunction with any other business;

“tobacco wholesaling” means the business of selling tobacco in the course of intrastate trade for the purposes of resale either alone or in conjunction with any other merchandise and includes such business carried on as part of or in conjunction with any other business;

“vending machine” means any machine, device, or contrivance that is constructed to contain articles that may be obtained therefrom by an operation that involves the insertion in the machine, device or contrivance of a coin, token, or similar object.

(2) References in this Act to premises shall be read and construed as including references to any building or structure, including a building or

structure that is of a temporary nature or that is capable of being moved or transported, and to any vehicle, vessel or aircraft.

(3) The presence on any premises of a vending machine from which tobacco may be obtained by an operation that involves the insertion in the machine of a coin, token, or similar object shall be deemed to constitute the carrying on on those premises by the occupier thereof of tobacco retailing unless the machine is owned and operated by a licensee in accordance with his licence.

(4) A reference in this Act to—

(a) a person who sells tobacco; or

(b) a person who carries on the business of selling tobacco,

does not extend to a person who, as an agent or employee of a person referred to in paragraph (a) or (b) of this subsection, sells tobacco or carries on such a business.

(5) A reference in this Act to “intrastate trade” is a reference to trade carried on in Western Australia which is not trade or commerce among the the States within the meaning of section 92 of the Constitution of the Commonwealth of Australia.

(6) A reference in this Act to “tobacco” includes a reference to any wrapping, package or container in which the tobacco was sold, purchased, received or handled.

(7) This Act binds the Crown.

3. (1) The Commissioner shall have the general administration of this Act.

Functions  
of  
Commis-  
sioner, etc.

(2) The Commissioner may by instrument in writing under his hand delegate to the person holding office as the Assistant Commissioner (Stamp

Duties) or to any other officer assisting the Commissioner in the administration of this Act all or any of his powers or functions under this Act, except this power of delegation.

(3) A delegation under subsection (2) may be revoked at any time by the Commissioner.

(4) A power or function, the exercise or performance of which has been delegated under this section may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the terms of the delegation by the delegate.

(5) A delegation under this section may be made subject to such conditions or such limitations as to the exercise or performance of any of the powers or functions delegated, or as to time or circumstance, as may be specified in the instrument of delegation.

(6) Notwithstanding the provisions of subsection (2) or any delegation made under this section, the Commissioner may continue to exercise or perform all or any of the powers or functions conferred or imposed on him by this Act.

(7) Any act or thing done or suffered by a delegate of the Commissioner while acting in the exercise of a delegation under this section, shall have the same force and effect as if the act or thing done had been done or suffered by the Commissioner.

(8) Where the exercise or performance by the Commissioner of any power or function under this Act or the operation of any provision of this Act is dependent upon the opinion, belief or state of mind of the Commissioner in relation to any matter, that power or function may be exercised or performed by a delegate of the Commissioner acting as such in

relation to that matter, or that provision may operate, as the case may be, upon the opinion, belief or state of mind of that delegate acting as such.

4. (1) The Commissioner or any officer authorized by him in that behalf may at any reasonable time—

Investigations.

- (a) enter and remain in any premises at which, or at which he reasonably suspects, the business of selling tobacco is carried on or which is, or which he reasonably suspects, is being used for the storage or custody of any accounts, records, books or documents relating to the sale or purchase of tobacco;
- (b) take copies of, or extracts or notes from, any such accounts, records, books or documents; and
- (c) request any person found in or upon any premises used for the sale or purchase of tobacco or on which tobacco is stored for sale—
  - (i) to produce any accounts, records, books or documents which relate to, or which the Commissioner or an officer reasonably suspects relate to, the sale or purchase of tobacco and which at the time of the request are in the possession or under the control of that person; and
  - (ii) to answer any question with respect to any such accounts, records, books or documents or the sale or purchase of any tobacco.

(2) A person shall not—

- (a) prevent or attempt to prevent the Commissioner or an officer from exercising any power conferred on him by subsection (1);
- (b) hinder or obstruct the Commissioner or an officer in the exercise of any such power;

- (c) fail to comply with a request of the Commissioner or an officer under paragraph (c) of subsection (1); or
- (d) furnish to the Commissioner or an officer information which is false or misleading in a material particular.

Penalty: Two hundred dollars.

(3) A person is not guilty of an offence under paragraph (c) of subsection (2) by reason of his failure to answer any question if he proves to the satisfaction of the court that he did not know, and could not with reasonable diligence have ascertained, the answer to the question.

(4) A person is not excused from answering any question if required to do so under paragraph (c) of subsection (1) on the ground that the answer might tend to criminate him or make him liable to a penalty but the information furnished by him shall not be admissible against him in any proceedings, civil or criminal, except in proceedings for an offence under subsection (2).

Secrecy  
provisions.

5. (1) The Commissioner may communicate—
- (a) to the Commissioner, Second Commissioner or a Deputy Commissioner under any law of the Commonwealth relating to taxation or to any person authorized by any such Commissioner, Second Commissioner or Deputy Commissioner; or
  - (b) to the Commissioner or any other officer of any State or Territory of the Commonwealth administering any law of that State or Territory relating to taxation or to any person authorized by any such Commissioner or other officer,

any information respecting the affairs of any person disclosed or obtained under the provisions of this Act.

(2) The Commissioner or any other person who is or has been employed in the administration of this Act shall not either while he is or after he ceases to be so employed—

- (a) either directly or indirectly, except in the performance of any function or duty in relation to this Act or in accordance with subsection (1), make a record of or divulge or communicate to any person any information acquired by him respecting the affairs of any other person in the course of that employment;
- (b) be required to produce in court any document in his custody in the course of his employment or to divulge or communicate to any court any matter or thing coming under his notice in the course of his employment except where it is necessary to do so for the purpose of carrying into effect the provisions of this Act.

Penalty: One thousand dollars.

6. (1) A person shall not on or after the twenty-eighth day of February, 1976 carry on tobacco wholesaling unless he is the holder of a wholesale tobacco merchant's licence.

Tobacco  
sellers to be  
licensed.

(2) A person shall not on or after the first day of July, 1976 carry on tobacco retailing unless he is the holder of a retail tobacconist's licence under this Act.

Penalty: One thousand dollars.

7. (1) Subject to this Act any person may apply to the Commissioner for a wholesale tobacco merchant's licence or a retail tobacconist's licence.

Application  
for  
licences.

(2) An application for a licence under this Act shall be made in the form approved by the Commissioner.

(3) The Commissioner shall not issue a licence to the applicant until the fee required to be paid by this Act before the licence is issued has been paid.

(4) The licence shall specify the premises which are to be used for or in connection with the business carried on under the licence.

(5) The holder of a licence may by notice in writing in the form approved by the Commissioner given to the Commissioner and on payment of the prescribed fee specify additional premises which are to be used for or in connection with the business carried on under his licence or which are no longer to be so used and on receipt of such a notice together with the licence and the prescribed fee the Commissioner shall amend the licence accordingly.

**Offences.**

8. (1) On or after the first day of July, 1976 a person shall not sell tobacco in the course of intrastate trade unless he is the holder of a licence under this Act.

Penalty: One thousand dollars.

(2) Where tobacco is sold on any premises otherwise than by a licensee the occupier of the premises shall be deemed to have sold such tobacco unless it is shown—

(a) that the sale took place without his knowledge or connivance; and

(b) that he took all such steps as are reasonable in the circumstances to prevent the sale being made.

(3) A licensee who carries on the business of tobacco retailing or tobacco wholesaling on premises which are not specified in the licence as premises to be used for that business shall be guilty of an offence against this Act.

Penalty: Two hundred and fifty dollars.

9. A licence shall be in force on and from the day specified in the licence as the date from which the licence commences until, unless it sooner ceases to have effect— Licences.

- (a) the twenty-seventh day of February next following, in the case of a wholesale tobacco merchant's licence;
- (b) the thirtieth day of June next following, in the case of a retail tobacconist's licence.

10. (1) The fees to be paid for licences issued under this Act shall be as follows— Fees.

- (a) for a wholesale tobacco merchant's licence—
  - (i) which is in force for any period ending on or before the twenty-seventh day of February, 1977 a fee of one hundred dollars together with an amount equal to ten per centum of the value of tobacco sold by the applicant in the course of intrastate trade in the period commencing on the first day of December, 1974 and ending on the thirtieth day of November, 1975 (other than tobacco sold to a person who was in the opinion of the Commissioner engaged principally in tobacco wholesaling); and
  - (ii) which is in force for any period after the twenty-seventh day of February, 1977 a fee of one hundred dollars together with an amount of ten per centum of the value of tobacco sold by the applicant in the course of intrastate trade in the year ending on the thirtieth day of November last past (other than tobacco sold to the holder of a wholesale tobacco merchant's licence);

(b) for a retail tobacconist's licence—

(i) which is in force for any period ending on or before the thirtieth day of June, 1977 a fee of ten dollars together with an amount equal to ten per centum of the value of tobacco sold by the applicant in the course of tobacco retailing in the period commencing on the first day of April, 1975 and ending on the thirty-first day of March, 1976 (other than tobacco purchased in the course of intrastate trade from a person who was in the opinion of the Commissioner engaged principally in tobacco wholesaling); and

(ii) which is in force for any period after the thirtieth day of June, 1977 a fee of ten dollars together with an amount equal to ten per centum of the value of tobacco sold by the applicant in the course of tobacco retailing in the year ending on the thirty-first day of March last past (other than tobacco purchased in the course of intrastate trade from the holder of a wholesale tobacco merchant's licence).

(2) The value of tobacco sold for the purpose of subsection (1) shall be determined by the Commissioner as the gross amount (including any duties thereon) for which in his opinion it would ordinarily be expected to be purchased by persons engaged in tobacco retailing.

(3) Where an application is made—

(a) for a wholesale tobacco merchant's licence for a period ending on or before the twenty-seventh day of February, 1977 and the applicant did not carry on tobacco whole-

saling during the whole of the period between the first day of December, 1974 and the thirtieth day of November, 1975;

- (b) for a wholesale tobacco merchant's licence for a period after the twenty-seventh day of February, 1977 and the applicant did not carry on tobacco wholesaling during the whole of the last preceding period of twelve months ending on the thirtieth day of November last past;
- (c) for a retail tobacconist's licence for a period ending on or before the thirtieth day of June, 1977 and the applicant did not carry on tobacco retailing at all on the premises in respect of which the application is made during the whole of the period commencing on the first day of April, 1975 and ending on the thirty-first day of March, 1976; or
- (d) for a retail tobacconist's licence for a period after the thirtieth day of June, 1977 and the applicant did not carry on tobacco retailing at all on the premises in respect of which the application is made during the whole of the period of twelve months ending on the thirty-first day of March last past,

the fee payable by the applicant in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case having regard to the tobacco that would have been handled by the applicant had he been carrying on the business in respect of which the application for the licence was made during the whole of the relevant period, the relevant principles of determining fees under subsection (1) and where the application is made in respect of a licensing period that is less than one year the period that the licence will be in force.

(4) The value of any tobacco sold for delivery and consumption outside the State shall be disregarded in determining the fees payable under this section.

(5) In determining for the purposes of subparagraph (ii) of paragraph (a) of subsection (1) whether any tobacco was sold by an applicant for a wholesale tobacco merchant's licence to the holder of such a licence during the period commencing on the first day of December, 1975 and ending on the twenty-seventh day of February, 1976, a person who holds a wholesale tobacco merchant's licence from the twenty-eighth day of February, 1976 to the twenty-seventh day of February, 1977 shall be deemed to have been the holder of a wholesale tobacco merchant's licence from the first day of December, 1975 to the twenty-seventh day of February, 1976.

(6) Where the Minister is satisfied that payment of a fee assessed by the Commissioner in accordance with this section in respect of a licence would cause substantial hardship to the applicant for, or holder of, the licence, the Minister may reduce the fee.

(7) A reduction shall not be granted under subsection (6) after the thirtieth day of June, 1977.

Fees payable by instalments in certain cases.

11. (1) The Commissioner may authorize an applicant for a licence in respect of which a fee in excess of one hundred dollars is payable to pay the licence fee payable in respect of that licence by instalments in accordance with this section.

(2) The Commissioner shall determine the instalments that shall be payable, the days on or before which the instalments shall be payable, and shall cause particulars thereof to be specified in the licence or in a notice in writing served on the licensee.

(3) If an instalment payable in respect of a licence is not paid on or before the day upon which it is determined to be payable by the Commissioner or if any additional amount that is due and payable under section 12 is unpaid, the Commissioner may revoke the licence and thereupon the licence shall

cease to be in force and the balance payable in respect of the licence shall become due and payable immediately.

(4) Notwithstanding subsection (3) where an instalment payable in respect of a licence is not paid within fourteen days of the day upon which it is determined to be payable by the Commissioner, the Commissioner may recover in any court of competent jurisdiction the balance due in respect of the licence as a debt due to the Crown by the person who was the holder of the licence at the time the instalment became payable.

12. (1) Where, in the opinion of the Commissioner, the fee assessed in respect of any licence was assessed incorrectly, the Commissioner may at any time reassess the fee in accordance with the principles of assessing fees under section 10.

Adjustment  
of fee.

(2) Where on a reassessment of a fee under subsection (1) the fee is reduced, the amount overpaid shall be refunded by the Commissioner in accordance with the provisions of subsections (3) and (4).

(3) Where—

- (a) during the whole of the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by one person, the amount to be refunded shall be refunded to that person; or
- (b) during the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by two or more persons, the amount to be refunded shall be refunded to those persons in proportion to the periods, in days, for which they held the licence.

(4) Notwithstanding subsection (3), in a case where—

- (a) the licence has not ceased to be in force;
- (b) the Commissioner has authorized the applicant to pay the licence fee by instalments;
- (c) any instalment has not become due and payable; and
- (d) the instalments paid do not exceed the amount of the fee as reassessed,

a refund shall not be made to the holder of the licence in accordance with paragraph (a) or (b) of subsection (3) but in that case each of the remaining instalments payable in respect of the licence shall be reduced by an amount that bears to the amount that but for this subsection would be required to be refunded to that holder under subsection (3) the same proportion as one bears to the number of those remaining instalments.

(5) Where on a reassessment of a fee under subsection (1) the fee is increased, the additional amount payable by virtue of the reassessment shall be due and payable in accordance with the provisions of subsections (6) and (7).

(6) For the purposes of subsection (5) where—

- (a) during the whole of the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by one person, the additional amount shall be due and payable within fourteen days after notice of the reassessment is served on that person; or
- (b) during the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by two or more persons, the additional amount shall be due and

payable, within fourteen days after notice of the reassessment is served on them, by those persons in proportion to the periods, in days, for which they held the licence,

unless, in respect of that additional amount or any part of that additional amount so due and payable by that person or any of those persons, approval has been given under subsection (7) for the payment of that amount or part by instalments.

(7) A person by whom any additional amount or part is payable under subsection (6) may, within fourteen days after the service on him of notice of the reassessment by virtue of which the additional amount or part became so payable by him, apply to the Commissioner for approval to pay that amount or part by instalments, and if the Commissioner approves of the amount or part being so paid, it shall be due and payable by that person by such instalments payable at such times as are specified in the instrument of the Commissioner's approval.

(8) For the purposes of making the apportionment referred to in paragraph (b) of subsection (3) or (6), where the licence has not ceased to be in force the period, in days, for which the licensee who was the holder of the licence at the time of the reassessment has held the licence together with the unexpired period, in days, of the licence shall be deemed to be the period for which that licensee held the licence.

(9) Any amount which is due and payable by any person under subsection (6) or (7) and which is unpaid may be recovered by the Commissioner, as a debt, in any court of competent jurisdiction.

13. (1) A licensee and any person to whom the licensee proposes to transfer his licence may by application in the form approved by the Commissioner accompanied by the prescribed fee request the Commissioner to transfer the licence as on and from such day as is specified in the application. Transfers.

(2) On receipt of the application and the prescribed fee and upon production of the licence the Commissioner shall endorse the transfer on the licence and the licence shall thereupon be deemed to be transferred.

Account to  
be kept by  
licensees.

14. (1) A person who carries on tobacco retailing or tobacco wholesaling shall keep such accounts, records, books and documents as may be prescribed containing such particulars as may be prescribed and shall preserve each of those accounts, records, books and documents for a period of five years after the last entry was made in it.

Penalty: One thousand dollars.

(2) This section shall not apply so as to require the preservation of any books, accounts or documents—

- (a) in respect of which the Commissioner has certified that preservation is not required; or
- (b) of a company which has gone into liquidation and which has been finally dissolved.

Power to  
Commis-  
sioner to  
require  
information.

15. (1) The Commissioner may, by notice in writing, require any person—

- (a) to furnish him with such information as he requires; or
- (b) to attend and give evidence before him or before any officer of the public service employed in the administration or execution of this Act and authorized by him in that behalf,

for the purpose of inquiring into or ascertaining his or any other person's liability or entitlement under any of the provisions of this Act, and may require him to produce all books, documents and other papers whatsoever in his custody or under his control relating thereto.

(2) The Commissioner may require the information or evidence to be given on oath, and either orally or in writing, or to be given by statutory declaration and for that purpose he or the officer so authorized by him may administer an oath.

(3) The regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

(4) Any person who fails or neglects duly to furnish any information or to comply with any requirement of the Commissioner under this section shall be guilty of an offence.

Penalty: Five hundred dollars.

16. (1) A person who is dissatisfied with the assessment of any fee by the Commissioner may within forty-two days after being informed of the assessment or within such further time as the Commissioner may allow send by post to or lodge with the Commissioner an objection in writing stating fully and in detail the grounds upon which he relies. Objections.

(2) The Commissioner shall consider the objection and either disallow it or allow it either wholly or in part and shall serve the objector by post or otherwise with written notice of his decision.

(3) A licence shall not be issued under this Act without the payment of the appropriate fees notwithstanding the making of any objection.

17. (1) A person who is dissatisfied with a decision of the Commissioner on an objection made by him under section 16 may, within thirty days after service on him of notice of that decision or within such further time as the Commissioner or court may allow, in writing request the Commis- Appeals.

sioner to treat his objection as an appeal and to forward it to the Supreme Court, and the Commissioner shall, within thirty days of the receipt by him of the request, forward it accordingly.

(2) The Supreme Court shall hear and determine an appeal forwarded to it under subsection (1), and for the purposes of this section—

- (a) the jurisdiction of the Supreme Court may be exercised by a Judge sitting in chambers; and
- (b) Rules of Court may be made for regulating the procedure and practice to be followed on an appeal forwarded to the Supreme Court under subsection (1).

(3) The appellant shall be limited, on the hearing of the appeal, to the grounds stated in his objection.

(4) If the appellant's liability or assessment has been reduced on objection, the reduced liability or assessment shall be the liability or assessment appealed against.

**Offences.**

18. (1) Any person who makes or delivers an application or other document which is false in any particular or makes a false answer whether orally or in writing to any question duly put to him by the Commissioner or any officer duly authorized by the Commissioner shall be guilty of an offence.

Penalty: Five hundred dollars.

(2) A person who in furnishing any information, giving any notification or keeping any record required to be kept by or under this Act makes or causes to be made any statement or representation that is false or misleading in a material respect is guilty of an offence.

Penalty: Five hundred dollars.

(3) Where a licensee is convicted of an offence against this section his licence shall cease to have effect.

19. Proceedings for an offence against this Act may be brought by any person thereunto authorized in writing by the Commissioner. Proceedings.

20. The Governor may make regulations for or with respect to— Regulations.

- (a) the records to be kept by licensees;
  - (b) the display of licences or duplicate licences on licensed premises;
  - (c) the periods within which applications for licences are to be made;
  - (d) the issue of duplicate licences;
  - (e) fixing and imposing penalties of not more than one hundred dollars for any breach of the regulations; and
  - (f) any other matter which is authorized or required to be prescribed or is necessary or convenient to be prescribed for carrying out the provisions of this Act.
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