

WESTERN AUSTRALIA

**BUSINESS FRANCHISE (TOBACCO)
ACT 1975**

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**SCHEDULE 1 RELEVANT PERIODS FOR WHOLESALE TOBACCO
MERCHANTS LICENCES, RETAIL TOBACCONISTS LICENCES AND
GROUP TOBACCO LICENCES.**

NOTES

WESTERN AUSTRALIA

**BUSINESS FRANCHISE (TOBACCO)
ACT 1975**

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

Short title

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

Interpretation

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

“Commissioner” means the person for the time being holding the office of Commissioner of State Taxation under the *Public Service Act 1978*,

“corporation” has the same meaning as it has under section ~~5(1)~~ of the *Companies (Western Australia) Code*, except that for the purposes of this Act the term includes the bodies that are for the purposes of that Code excluded by paragraphs (c) to (g) of that definition of the term;

“group tobacco licence” means a group tobacco licence which is in force under this Act and relates to a group of wholesale tobacco merchants, a group of retail tobacconists or a group comprising wholesale tobacco merchants and retail tobacconists;

“licence” means a licence issued or renewed 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;

“person” includes a corporation, a company, a body or association whether corporate or unincorporate, and a partnership;

“premises” includes a part of any premises;

“relevant period” in relation to a licence which if issued would expire at the end of a period specified in column 1 of Schedule 1, means the preceding period of 2 months as specified opposite that period in column 2 of Schedule 1;

“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 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 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:

“voting share” has the meaning ascribed to that expression by section 5 (1) of the *Companies (Western Australia) Code*.

(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) For the purposes of this Act, a person—

- (a) sells tobacco;
- (b) carries on tobacco wholesaling; or
- (c) carries on tobacco retailing,

if another person does so as his employee.

(5) Subsection (4) does not affect any liability that may attach to the employee for an offence against section 6 (1) or (2) or 8 (1).

(5a) For the purposes of this Act, a person sells tobacco if he effects a sale as agent of another person.

(5b) Subsection (5a) does not affect the liability of the agent's principal for an offence against section 8 (1).

(5c) For the purposes of this Act, a person—

- (a) sells tobacco;
- (b) carries on tobacco wholesaling; or
- (c) carries on tobacco retailing,

if another person does so as his agent, unless the firstmentioned person proves that the agent acted beyond his authority and that he did not directly nor indirectly ratify, approve of, or benefit from, the acts of the agent.

(5d) For the purposes of this Act—

- (a) a person who, in relation to tobacco wholesaling, acts as an agent of a person who carries on tobacco wholesaling also carries on tobacco wholesaling; and
- (b) a person who, in relation to tobacco retailing, acts as an agent of a person who carries on tobacco retailing also carries on tobacco retailing.

(5e) The authority of a licence—

- (a) extends to a sale by an agent or employee on behalf of the holder of the licence; and
- (b) in the case of a wholesale tobacco merchant's licence, a retail tobacconist's licence, or a group tobacco licence, extends to an agent who carries on tobacco wholesaling or tobacco retailing as mentioned in subsection (5d).

(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.

(8) A reference in this Act to a holder of a group tobacco licence includes a reference to each person whose name is under section 7 (6) specified in a group tobacco licence.

(9) A reference in this Act to the issue of a licence includes a reference to the renewal of a licence.

[Section 2 amended by No. 22 of 1981 s. 2; No. 10 of 1982 s. 28; No. 39 of 1987 s. 4.]

Membership of a group

2A. (1) For the purposes of this Act, a person is a member of a group of—

- (a) wholesale tobacco merchants;
- (b) retail tobacconists; or
- (c) wholesale tobacco merchants and retail tobacconists,

if—

- (d) that person is one of the persons who constitute a group for the purposes of this Act; and
- (e) there is not in force a determination under subsection (2) or (4) by the Commissioner to the effect that such person is not a member of the group.

(2) The Commissioner may, by writing under his hand, determine that a person who would, but for the determination, be a member of a group for the purposes of this Act is not a member of the group for such purposes if he is satisfied that that person—

- (a) has continuously carried on and will continue to carry on the business of selling tobacco independently of the group; and
- (b) is not subject to control by any other member of the group.

(3) The Commissioner shall not make a determination under subsection (2) so as to exclude a person from a group if that person is or was on the date of the determination a corporation which, by reason of section 7 (5) of the *Companies (Western Australia) Code*, is to be deemed for the purposes of that Act to be related to another corporation which is a member of that group.

(4) The Commissioner may, by writing under his hand, determine that a person who would, but for the determination, be a member of a group for the purposes of this Act is not a member of any group for the purposes of this Act if he is satisfied that the person is not carrying on and has no intention of carrying on the business of selling tobacco.

(5) A determination made under subsection (2) or (4) shall come into force at the time when it is made and shall continue in force until it is revoked by the Commissioner and notice of the revocation has been served on the person in respect of whom the determination was made.

(6) Notice of a determination under subsection (2) or (4) shall be given by the Commissioner to the person in respect of whom the determination was made and to every member of the group concerned who he considers is carrying on tobacco wholesaling or tobacco retailing.

(7) The Commissioner may at any time revoke a determination made under subsection (2) or (4).

(8) Notice of the revocation of a determination made under subsection (2) or (4) shall be given by the Commissioner to the person in respect of whom the determination was made and to every member of the group who he considers is carrying on tobacco wholesaling or tobacco retailing.

[Section 2A inserted by No. 22 of 1981 s. 3; amended by No. 10 of 1982 s. 28; No. 39 of 1987 s. 19.]

Grouping of corporations

2B. For the purposes of this Act, 2 corporations constitute a group if they are by reason of section 7 (5) of the *Companies (Western Australia) Code* to be deemed for the purposes of that Act to be related to each other.

[Section 2B inserted by No. 22 of 1981 s. 3; amended by No. 10 of 1982 s. 28.]

Grouping where employees used in another business

2C. For the purposes of this Act, if—

- (a) an employee of an employer, or 2 or more employees of an employer, perform or performs duties solely or mainly for or in connection with a business carried on by that employer and another person or other persons or by another person or other persons; or
- (b) an employer has, in respect of the employment of or the performance of duties by one or more of his employees, an agreement, arrangement, or undertaking (whether formal or informal, whether expressed or implied and whether or not the agreement, arrangement, or undertaking includes provisions in respect of the supply of goods or services or goods and services) with another person or other persons relating to a business carried on by that other person or those other persons, whether alone or together with another person or other persons,

that employer and—

- (c) each such other person or
- (d) both or all of those other persons,

constitute a group.

[Section 2C inserted by No. 22 of 1981 s. 3.]

Grouping of commonly controlled businesses

2D. (1) A reference in this section to 2 businesses does not include a reference to 2 businesses both of which are owned by the same person, not being a trustee, or by the trustee or trustees of a trust.

(2) For the purposes of this Act, where the same person has or the same persons have together, a controlling interest, as referred to in subsection (3), in each of 2 businesses, the persons who carry on those businesses constitute a group.

(3) For the purposes of subsection (2), the same person has, or the same persons have together, a controlling interest in each of 2 businesses if that person has, or those persons have together, a controlling interest under any of the following paragraphs in one of the businesses and a controlling interest under the same or another of the following paragraphs in the other business—

- (a) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation, if the directors, or a majority of the directors, or one or more of the directors, being a director or directors who is or are entitled to exercise a majority in voting power at meetings of the directors of the corporation, are or is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions, or wishes of that person or of those persons acting together;
- (b) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation that has a share capital, if that person or those persons acting together could (whether directly or indirectly) exercise, control the exercise of, or substantially influence the exercise of, half or more than half of the voting power attached to voting shares issued by the corporation;
- (c) a person has, or persons have together, a controlling interest in a business, being a business carried on by a partnership, if that person or those persons—
 - (i) owns, or own together, (whether beneficially or not) half or more than half of the capital of the partnership; or
 - (ii) is, or are together, entitled (whether beneficially or not) to half or more than half of the profits of the partnership;
- (d) a person has, or persons have together, a controlling interest in a business, being a business carried on under a trust, if that person (whether or not as the trustee of another trust) is the beneficiary, or those persons (whether or not as the trustees of another trust) are together the beneficiaries, in respect of half or more than half of the value of the interests in the trust firstmentioned in this paragraph;

- (e) a person has a controlling interest in a business if, whether or not he is a trustee of a trust, he is the sole owner of the business, or persons, being 2 or more trustees of a trust, have a controlling interest in a business if they are the owners of the business.

(4) Where a corporation has a controlling interest under subsection (3) in a business, it shall be deemed to have a controlling interest in any other business in which another corporation that is, by reason of section 7 (5) of the *Companies (Western Australia) Code*, to be deemed for the purposes of that Act to be related to it, has a controlling interest.

(5) Where—

- (a) a person has, or persons have together, a controlling interest under subsection (3) in a business; and
- (b) the person or persons who carries or carry on that business has or have such a controlling interest in another business,

the person or persons referred to in paragraph (a) shall be deemed to have a controlling interest in the business referred to in paragraph (b).

(6) Where—

- (a) a person is a beneficiary under a trust; or
- (b) 2 or more persons together are beneficiaries under a trust,

in respect of half or more than half of the value of the interests in that trust and the trustee or trustees of that trust has or have under subsection (3) a controlling interest in a business, that beneficiary or those beneficiaries shall, for the purposes of subsection (3), be deemed to have a controlling interest in that business.

[Section 20 inserted by No. 22 of 1981 s. 3; amended by No. 10 of 1982 s. 28.]

Smaller groups subsumed into larger groups

2E. (1) Notwithstanding any other provision of this Act (except subsection (2)), where a person is, whether or not by virtue of this subsection, a member of 2 or more groups (each of which is in subsection (2) referred to as a smaller group), all of the members of those groups constitute, for the purposes of this Act, one group.

(2) Except for the purpose of determining whether a group is constituted under subsection (1), a group which but for this subsection would be a smaller group ceases to be a group if its members are members of a group constituted under subsection (1).

[Section 2E inserted by No. 22 of 1981 s. 3.]

Beneficiaries under discretionary trusts

2F. A person who, as the result of the exercise of a power or discretion by the trustee of a discretionary trust or by any other person or by that trustee and any other person, may benefit under that trust shall be deemed, for the purposes of this Act, to be a beneficiary in respect of half or more than half of the value of the interests in that trust.

[Section 2F inserted by No. 22 of 1981 s. 3.]

Functions of Commissioner, etc.

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

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

[Section 3 amended by No. 32 of 1980 s. 3.]

Investigations

4. (1) Subject to subsection (1a), the Commissioner or any officer or person authorized by him in that behalf may at any reasonable time—

- (a) enter and search any premises on which, or on which he reasonably suspects, there is any relevant material and, in a case where those premises comprise a vehicle, vessel or aircraft, stop and detain and give directions as to the movement of the same;
- (b) break open and search any package or receptacle in the premises;
- (c) secure any relevant material against interference, or seize any relevant material and deliver it to the Commissioner or a person authorized by him to receive it;
- (d) request any person found in or upon the premises to produce any relevant material which at the time of the request is in the possession, under the control, or at the order or disposition, of that person; and
- (e) take copies of, or extracts or notes from, any relevant material referred to in paragraph (d) or of which possession is taken under paragraph (c).

(1a) The Commissioner or any officer or person authorized by him in that behalf shall not under subsection (1) enter any premises, or part of any premises, used for residential purposes unless—

- (a) the consent, express or implied, of the occupier or a person present at the premises has been obtained;
- (b) such entry is authorized by a warrant issued by a Justice of the Peace on complaint made on oath, the Justice being satisfied that there are reasonable grounds for believing that the entry is required for the purposes of subsection (1); or
- (c) in the opinion of the Commissioner or of the officer or person the delay in obtaining a warrant under paragraph (b) could frustrate or impede the purpose of the entry.

(1b) The Commissioner shall furnish to an officer or person authorized by him for the purposes of this section a certificate stating that he is so authorized.

(1c) The Commissioner or a person referred to in subsection (1) (c) may retain possession of any relevant material that comprises accounts, records, books or documents for such period as is necessary to enable them to be inspected and the power in subsection (1) (e) to be exercised.

(1d) The exercise of any power conferred by this section may be accompanied by the use of such force as is necessary in the circumstances.

(1e) In this section “relevant material” means—

(a) any account, record, book or document—

- (i) that will, or is reasonably believed to afford evidence of the commission of an offence against this Act; or
- (ii) that is, or is reasonably suspected to be, relevant to the assessment of a licence fee under section 10 or 12 or a fee under section 12A;

(b) any tobacco that—

- (i) is reasonably suspected to be the subject of an offence or an intended offence against this Act or is in premises that are reasonably suspected to be being used contrary to section 8 ~~(3)~~;
- (ii) is reasonably suspected to be part of the stock of a person who is reasonably suspected to be carrying on tobacco wholesaling contrary to section 6 (1); or
- (iii) is in any premises in which there is any tobacco within the description in subparagraph (i) or (ii).

(2) A person shall not—

- (a) prevent or attempt to prevent the Commissioner or an officer or person from exercising any power conferred on him by subsection (1);
- (b) hinder or obstruct the Commissioner or an officer or person in the exercise of any such power;
- (c) fail to comply with a direction or request of the Commissioner or an officer or person under subsection (1) (a) or (d); or
- (d) furnish to the Commissioner or an officer or person information which is false or misleading in a material particular.

Penalty: \$20 000.

(3) A person does not commit an offence against paragraph (a), (b) or (c) of subsection (2) in relation to the exercise or attempted exercise of a power referred to in that paragraph, if he proves to the satisfaction of the court that, at the time of the exercise or attempted exercise of the power, the Commissioner did not identify himself as such, or the officer or person did not produce a certificate issued to him under subsection (1b).

(4) A person is not excused from producing any account, record, book or document under subsection (1) (d) on the ground that it contains information that might tend to incriminate him or make him liable to a penalty or forfeiture.

[Section 4 amended by No. 4 of 1983 s. 2; No. 39 of 1987 ss. 5 and 20.]

Disposal of tobacco seized under section 4

4A. (1) Where any tobacco is seized under section 4 (1) (c), the tobacco may, subject to this section, be retained by the Commissioner, or a person authorized by him, and held in such place as the Commissioner may direct.

(2) As soon as practicable after the tobacco is seized, the Commissioner shall give notice in writing of the seizure to every person in the State appearing to him to be a person who claims a financial interest in the tobacco.

(3) A notice under subsection (2) shall set out the effect of this section.

(4) Any person who claims a financial interest in any tobacco referred to in subsection (1) may make a complaint to a justice for an order that the tobacco or any part thereof be released to him.

(5) An application under subsection (4) may be made at any time while the tobacco is in the possession of the Commissioner, or a person authorized by him, and notwithstanding that an order is in force under subsection (6) (a).

(6) A magistrate shall hear and determine the complaint and may order that the tobacco to which the complaint relates, or any part of that tobacco, be either—

(a) retained by the Commissioner, or a person authorized by him, for the purpose of investigation and disposal under subsection (8) or (9); or

(b) released to the complainant or a person appearing to be entitled to possession of it,

and may impose any condition to be complied with by a person referred to in paragraph (b) before the tobacco is released to him or while it is in his possession under the order.

(7) A magistrate shall not make an order under subsection (6) (b) unless he is satisfied that the purposes of subsection (9) would not be defeated by the order.

(8) If no person is tried for an offence against section 6 (1), 6 (2) or 8 (1) in relation to tobacco seized under section 4 (1) (c), or if no person is convicted of such an offence, the Commissioner shall, subject to subsection (9) (b), release the tobacco to the person or persons appearing to him to be entitled to possession of it.

(9) If a person is convicted of an offence against section 6 (1), 6 (2) or 8 (1) in relation to any tobacco held under subsection (1) or under an order made under subsection (6) (b), the court shall order that the tobacco—

(a) that is the subject of the offence; or

(b) in the case of an offence against section 6 (1), that comprises the stock of the offender,

is forfeited to the Crown.

(10) Where any tobacco is forfeited to the Crown under this section it shall be dealt with as the Minister may direct.

[Section 4A inserted by No. 39 of 1987 s. 6.]

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: \$10 000.

[Section 5 amended by No. 39 of 1987 s. 20.]

Licensing of tobacconists

6. (1) A person shall not carry on tobacco wholesaling except under and in accordance with a wholesale tobacco merchant's licence or a group tobacco licence.

Penalty: \$40 000.

(2) A person shall not purchase tobacco in the course of carrying on tobacco retailing—

- (a) except under and in accordance with a retail tobacconist's licence or a group tobacco licence; or
- (b) unless the purchase is exempt under subsection (3).

Penalty: \$40 000.

- (3) A purchase of tobacco by a person is exempt from subsection (2) if—
- (a) the purchase is made from the holder of a licence; or
 - (b) the tobacco was previously purchased by another person from the holder of a licence.

[Section 6 substituted by No. 39 of 1987 s. 7.]

Applications for licences

7. (1) An application for a wholesale tobacco merchant's licence a retail tobacconist's licence or a group tobacco licence under this Act shall be made to the Commissioner in a form approved by him.

(2) Upon receiving an application under and in accordance with subsection (1), the Commissioner may, subject to this Act, issue a licence to the applicant and in the case of an application for a group tobacco licence may issue a licence to each member of the group.

(3) The Commissioner shall not issue a licence under this Act 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 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 the Commissioner shall amend the licence accordingly.

(6) In the case of a group tobacco licence, the licence shall specify the name of each person who is a member of the group on behalf of which the application for the licence was made.

[Section 7 amended by No. 32 of 1980 s. 5; No. 22 of 1981 s. 5.]

Offences

8. (1) A person shall not sell tobacco—
- (a) except under and in accordance with a licence; or
 - (b) unless the sale is exempt under subsection (1a).

Penalty: \$40 000.

- (1a) A sale of tobacco by a person is exempt from subsection (1) if—
- (a) it is made in the course of tobacco retailing and the tobacco—
 - (i) was purchased from the holder of a licence; or

(ii) was previously purchased by another person from the holder of a licence; or

(b) the sale is not made in the course of trade or business.

(1b) In this section, and in subsections (4), (5a) and (5c) of section 2 in their application to this section, "sell" includes, without limiting its primary meaning—

(a) attempting to sell;

(b) offering, displaying or exposing for sale; and

(c) with a view to sale—

(i) supplying;

(ii) transporting; or

(iii) holding.

(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: \$5 000.

[Section 8 amended by No. 32 of 1980 s. 6; No. 22 of 1981 s. 6; No. 4 of 1983 s. 4; No. 39 of 1987 ss. 8 and 20.]

Liability of employees

8A. A person is not guilty of an offence against section 6 (1) or (2) or 8 (1) as an employee if he proves to the satisfaction of the court that he acted under an honest and reasonable belief that the tobacco wholesaling, the purchase of tobacco or the sale of tobacco, as the case may be, took place under, and in accordance with, a licence.

[Section 8A inserted by No. 39 of 1987 s. 9.]

Duration of licences

9. A licence shall be in force on and from the day specified in the licence as the date for the licence to come into force (in this section referred to as the commencement date) until, unless it sooner ceases to have effect,—

[(a) to (d) repealed]

- (e) the last day of the period of 2 months for which it is issued in the case of a wholesale tobacco merchant's licence, a retail tobacconist's licence or a group tobacco licence with a commencement date after 28 February 1982.

[Section 9 substituted by No. 22 of 1981 s. 7; amended by No. 39 of 1987 s. 18.]

Renewal of licences

9A. (1) Subject to this section, the holder of a licence under this Act which, unless it sooner ceases to have effect, will expire after 28 February 1982 shall, not later than the 15th day of the second month for which the licence is issued, apply to the Commissioner for the renewal of the licence for a further period of 2 months.

(2) Upon receiving an application under and in accordance with subsection (1), the Commissioner may, subject to prior payment of the fee required to be paid by this Act, renew the licence for a further period of 2 months which shall expire, unless the licence otherwise ceases to have effect, on the last day of the period of 2 months for which the licence is renewed.

(3) If a licensee applies for a renewal of his licence before the licence expires and pays the fee required to be paid by this Act but the Commissioner has not renewed the licence or otherwise made a decision in respect of his application before the licence expires, the licence shall be deemed to have been renewed for such period not exceeding 2 months until the Commissioner has determined the application for renewal.

[Section 9A inserted by No. 22 of 1981 s. 8.]

Fees

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

[(a) to (h) repealed]

- (i) for a wholesale tobacco merchant's licence ~~which is in force for~~ any period after 31 October 1983, a fee of \$20 for each wholesaler together with an amount of 35 per centum of the value of tobacco sold by the applicant during the relevant period (other than tobacco sold to the holder of a wholesale tobacco merchant's licence or a group tobacco licence);
- (j) for a group tobacco licence which is in force for any period after 31 October 1983, a fee of \$20 for each member of the group together with an amount of 35 per centum of the value of tobacco sold by all members of the group during the relevant period (other than tobacco sold to the holder of a wholesale tobacco merchant's licence or a group tobacco licence); and

- (k) for a retail tobacconist's licence which is in force for any period after 31 October 1983, a fee of \$20 for each retailer together with an amount equal to 35 per centum of the value of tobacco sold by the applicant in the course of tobacco retailing during the relevant period (other than tobacco purchased from the holder of a wholesale tobacco merchant's licence, a group tobacco licence or another tobacco retailer for the purposes of resale)

(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.

(2a) In any case where a licence is transferred under section 13, tobacco sold by the transferor of the licence during the relevant period shall for the purposes of assessing the fee payable under this section for the renewal of the licence be deemed to have been sold by the transferee of the licence.

[(3) repealed]

(3a) Where an application is made for a licence and tobacco wholesaling or tobacco retailing was not carried on by the applicant during the relevant period or was carried on by him for only part of that period, 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 in the opinion of the Commissioner 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 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 2 months, the period that the licence will be in force.

(3b) Subsection (3a) applies for the purpose of ascertaining the fee to be used as a basis for the assessment of a fee under section 12A, as if the person referred to in that section had applied for a licence for a period to which the assessment relates.

(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.

[Section 10 amended by No. 32 of 1980 s. 7; No. 22 of 1981 s. 9; No. 82 of 1981 s. 2; No. 4 of 1983 s. 5; No. 39 of 1987 ss. 10, 18 and 19.]

[11. Section 11 repealed by No. 39 of 1987 s. 18.]

Adjustment of fee

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.

(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 2 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 subsection (3) (a) or (b) 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 subsection (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 14 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 2 or more persons, the additional amount shall be due and payable, within 14 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 14 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.

[Section 12 amended by No. 22 of 1981 s. 11.]

Recovery of fees from unlicensed persons

12A. (1) Where a person was required by this Act to hold a licence in respect of any period but did not do so, that person is liable to pay to the Commissioner a fee equal to twice² the fee that would have been payable if he had applied for and been issued a licence in accordance with this Act.

(2) The Commissioner may assess the fee referred to in subsection (1) as if the person had applied for a licence and an assessment shall be for the period in respect of which the person was required by this Act to hold a licence or for 5 years, whichever is the lesser.

(3) As soon as practicable after an assessment is made under subsection (2), notice of the assessment shall be served by the Commissioner on the person assessed.

[Section 12A inserted by No. 22 of 1981 s. 12; amended by No. 39 of 1987 s. 11.]

Recovery of fees

12B. (1) Fees payable under this Act for licences are debts due to Her Majesty and payable to the Commissioner.

(2) Any licence fees unpaid may be sued for and recovered in any court of competent jurisdiction by the Commissioner suing in his official name.

(3) A fee payable under this Act for a group tobacco licence is a debt due jointly and severally by every person who is a member of the group during the period for which the licence is issued.

(4) This section applies to a fee under section 12A in the same way as it applies to licence fees.

[Section 12B inserted by No. 22 of 1981 s. 12; amended by No. 39 of 1987 s. 12.]

Amendment of group tobacco licence

12C. (1) If during any period when a group tobacco licence is in force the composition of the group alters, every member of the group as so altered shall without delay furnish to the Commissioner full information to the satisfaction of the Commissioner concerning the alteration and shall produce his licence to the Commissioner for amendment.

Penalty: \$2 000.

(2) On receipt of information and upon production of a licence in accordance with subsection (1), the Commissioner may amend the licence and return it to the holder.

[Section 12C inserted by No. 22 of 1981 s. 12; amended by No. 4 of 1983 s. 6.]

Liability of directors, etc., where offence committed by corporation

12D. (1) Where an offence is committed against section 6 (1), 6 (2) or 8 (1) by a body corporate, every director of the body corporate is jointly and severally liable with the body corporate and every other director for the payment of—

- (a) any fine imposed on the body corporate for the offence; and
- (b) a fee that is payable under section 12A.

(2) In subsection (1) “director” includes any other officer concerned in the management of the body corporate.

(3) Nothing in this section affects the operation of section 556 of the *Companies (Western Australia) Code*.

[Section 12D inserted by No. 39 of 1987 s. 14.]

Transfers

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 request the Commissioner to transfer the licence as on and from such day as is specified in the application.

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

[Section 13 amended by No. 32 of 1980 s. 8.]

Appeal against refusal of licence or transfer of licence

13A. (1) A person who is dissatisfied with a decision made by the Commissioner in the exercise of a discretion conferred on him by section 7 (2) or section 13 (2) may, within 42 days after being informed of the decision or within such further time as the Treasurer may allow, post to or lodge with the Treasurer an appeal in writing stating fully and in detail the grounds on which he relies.

(2) The Treasurer shall with all reasonable dispatch consider an appeal posted to or lodged with him under subsection (1) and may either disallow the appeal or, for reasonable cause shown by the appellant, allow the appeal.

(3) The Treasurer shall give to an appellant under this section notice in writing of his decision on that appeal and that decision shall be final.

[Section 13A inserted by No. 32 of 1980 s. 9.]

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 5 years after the last entry was made in it.

Penalty: \$40 000.

(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.

[Section 14 amended by No. 4 of 1983 s. 7; No. 39 of 1987 s. 20.]

Power to Commissioner 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: \$20 000.

(5) A person is not guilty of an offence against subsection (4) by reason of his failure to furnish information if he proves to the satisfaction of the court that he did not have knowledge of, and could not with reasonable diligence have ascertained or obtained, the information.

(6) A person is not excused from furnishing any information or producing any book, document or other paper if required to do so under subsection (1) on the ground that the information, or any information in the book, document or paper, might tend to incriminate him or make him liable to a penalty or forfeiture; but the information shall not be admissible in proceedings against that person under this Act, other than proceedings for the recovery of any fee under section 10, 12 or 12A or an appeal under section 17.

[Section 15 amended by No. 4 of 1983 s. 8; No. 39 of 1987 ss. 14 and 20.]

Objections

16. (1) A person who is dissatisfied with the assessment of any fee by the Commissioner, including a fee under section 12A, may within 42 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.

(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.

[Section 16 amended by No. 39 of 1987 s. 15.]

Appeals

17. (1) A person who is dissatisfied with a decision of the Commissioner on an objection made by him under section 16 may, within 30 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 Commissioner to treat his objection as an appeal and to forward it to the Supreme Court, and the Commissioner shall, within 30 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: \$20 000.

(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: \$20 000.

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

[Section 18 amended by No. 4 of 1983 s. 9; No. 39 of 1987 s. 20.]

Proceedings

19. Proceedings for an offence against this Act—

- (a) may, notwithstanding any other written law, be begun by the making of a complaint within 5 years after the offence was committed; and
- (b) may be brought by any person authorized in writing by the Commissioner to do so.

[Section 19 substituted by No. 39 of 1987 s. 16.]

Regulations

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

- (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 \$1 000 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.

[Section 20 amended by No. 39 of 1987 s. 17.]

SCHEDULE 1

(Section 2 (1))

RELEVANT PERIODS FOR WHOLESALE TOBACCO MERCHANT'S LICENCES,
RETAIL TOBACCONIST'S LICENCES AND GROUP TOBACCO LICENCES

Column 1 Licence period	Column 2 Sales period on which licence fee is based
March and April	December and January
May and June	February and March
July and August	April and May
September and October	June and July
November and December	August and September
January and February	October and November

[Schedule 1 added by No. 22 of 1981 s. 13.]

NOTES

¹. This reprint is a compilation as at 20 August 1987 of the *Business Franchise (Tobacco) Act 1975*, and includes all amendments effected by the other Acts referred to in the following Table.

Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Business Franchise (Tobacco) Act 1975</i>	84 of 1975	17 November 1975	17 November 1975	
<i>Business Franchise (Tobacco) Amendment Act 1980</i>	32 of 1980	28 October 1980	25 November 1980 (see section 2)	
<i>Business Franchise (Tobacco) Amendment Act 1981</i>	22 of 1981	26 May 1981	26 May 1981	
<i>Business Franchise (Tobacco) Amendment Act (No. 2) 1981</i>	82 of 1981	9 November 1981	9 November 1981	
<i>Companies (Consequential Amendments) Act 1982, section 28</i>	10 of 1982	14 May 1982	1 July 1982 (see section 2 (1) and <i>Gazette</i> 25 June 1982 p. 2079)	
<i>Business Franchise (Tobacco) Amendment Act 1983</i>	4 of 1983	11 August 1983	11 August 1983	
<i>Business Franchise (Tobacco) Amendment Act 1987</i>	39 of 1987	3 July 1987	Sections 7, 8, 11 and 13: 2 December 1986. Balance on Assent (see section 2)	See note 2 as to transitional provision

². Section 11 (1) of Act No. 39 of 1987 inserted the word "twice" and section 11 (2) reads as follows—

" (2) Section 12A of the principal Act as amended by subsection (1) does not apply in its amended form to any period before the commencement of this section for which a licence was required to be, but was not, held. "