

Western Australia

Tobacco Sellers Licensing Act 1975

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Tobacco Sellers Licensing Act 1975

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NOTES

Tobacco Sellers Licensing 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.

1. Short title

This Act may be cited as the *Tobacco Sellers Licensing Act 1975*.

[Section 1 amended by No. 56 of 1997 s.4.]

2. Interpretation

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

“**associate**” means —

- (a) in relation to a corporation, any of the following —
 - (i) a director of the corporation;
 - (ii) an individual who participates in the direction or management of the corporation;
 - (iii) an individual whose directions any director ordinarily follows in his capacity as director; and
 - (iv) an employee of the corporation;
- (b) in relation to an applicant or licensee who is an individual referred to in section 7B (1) (b) (ii), any of the following —

- (i) a business associate or other individual who participates in the direction or management of the tobacco retailing or tobacco wholesaling carried on by the individual;
 - (ii) an individual whose directions the individual ordinarily follows in his business; and
 - (iii) an employee of the individual;
- (c) in relation to an applicant or licensee who is a member of a firm referred to in section 7B (1) (b) (iii), any of the following —
- (i) an individual member of the firm;
 - (ii) an associate of a corporation which is a member of the firm;
 - (iii) an individual who participates in the direction or management of the firm;
 - (iv) an individual whose directions a member of the firm ordinarily follows in his business; and
 - (v) an employee of the firm; and
- (d) in relation to a licensee or an applicant for a licence who is acting as trustee of a trust which will receive any benefits or proceeds from the business of tobacco retailing or tobacco wholesaling conducted under the licence, any of the following individuals in addition to those referred to in paragraph (a), (b) or (c) —
- (i) a trustee of the trust, where the trustee is an individual; and
 - (ii) an employee of the trustee;

“Commissioner” means the chief executive officer of the department of the Public Service principally assisting the Minister in the administration of this Act;

“corporation” has the same meaning as in the Corporations Law;

- “firm”** means an unincorporated body of persons registered under the *Business Names Act 1962*;
- “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;
- “record”** means any thing or process —
- (a) upon or by which information is recorded or stored; or
 - (b) by means of which a meaning can be conveyed by any means in a visible or recoverable form,
- whether or not the use or assistance of some electronic, electrical, mechanical, chemical or other device or process is required to recover or convey the information or meaning;
- “sell”** includes —
- (a) attempting to sell;
 - (b) offering, displaying or exposing for sale; and
 - (c) with a view to sale, supplying or transporting or holding;
- “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.

- (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).
- (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 6 (1) or (2).
- (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 or a retail tobacconist's 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) repealed]*

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- (9) A reference in this Act to the issue of a licence includes a reference to the renewal of a licence.
- (10) A reference in this Act to a member of a firm is a reference —
 - (a) in the case of a partnership, to a partner; or
 - (b) in any other case, to a member of the unincorporated body constituting the firm.

[Section 2 amended by No. 22 of 1981 s.2; No. 10 of 1982 s.28; No. 39 of 1987 s.4; No. 18 of 1993 s.4; No. 48 of 1996 s.4; No. 56 of 1997 ss.5 and 13 (2) and (3).]

[2A, 2B, 2C, 2D, 2E and 2F. Repealed by No. 56 of 1997 s.6.]

3. Functions of Commissioner, etc.

- (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.]

4. Investigations

- (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;

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- (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 records 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 records that will, or are reasonably believed to, afford evidence of the commission of an offence against this Act;
 - (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 use contrary to section 8;
 - (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

s. 4A

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 record 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; No. 18 of 1993 s.5; No. 48 of 1996 s.5; No. 56 of 1997 ss.7 and 13(4).]

4A. Disposal of tobacco seized under section 4

- (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) 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) 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; amended by No. 56 of 1997 s.13(5).]

5. Secrecy provisions

[(1) Repealed]

- (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 the *Taxation (Reciprocal Powers) Act 1989*, 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 record 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.

- (3) Subsection (2) does not prevent the disclosure of any record or information to —
- (a) the Treasury Department;
 - (b) an officer of Customs for a purpose connected with the administration or enforcement of the *Customs Act 1901*, *Customs Tariff Act 1995*, *Excise Act 1901*, or *Excise Tariff Act 1921* of the Commonwealth, as amended from time to time.

[Section 5 amended by No. 39 of 1987 s.20; No. 18 of 1989 s.16; No. 48 of 1996 s.6; No. 56 of 1997 s.8.]

6. Sellers of tobacco to be licensed

- (1) A person shall not carry on tobacco wholesaling except under the authority of a wholesale tobacco merchant's licence.

Penalty:\$40 000.

- (2) A person shall not carry on tobacco retailing except under the authority of a retail tobacconist's licence or a wholesale tobacco merchant's licence.

Penalty:\$40 000.

- (3) For the purposes of subsections (1) and (2) a person does not carry on tobacco wholesaling or tobacco retailing if all of the tobacco that the person sells has been purchased from the holder of a wholesale tobacco merchant's licence or a retail tobacconist's licence.

[Section 6 inserted by No. 56 of 1997 s.9.]

7. Applications for licences

- (1) An application for the issue of a wholesale tobacco merchant's licence or a retail tobacconist's licence under this Act shall be made to the Commissioner in a form approved by him.
- (1a) The application shall be accompanied —
- (a) if it is for a wholesale tobacco merchant's licence — by a fee of \$1 200;
 - (b) if it is for a retail tobacconist's licence — by a fee of \$600.
- (2) On the receipt of the application and the appropriate fee the Commissioner may, subject to sections 7B and 7C, issue the licence.

[(2a) repealed]

[(2b) repealed]

- (3) An issued licence shall be in force for a year commencing on the date of issue, unless it sooner ceases to have effect or is sooner cancelled.
- (4) The licence shall specify the premises which are to be used for or in connection with the business carried on under the licence.

s. 7B

- (5) The holder of 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) repealed]

[Section 7 amended by No. 32 of 1980 s.5; No. 22 of 1981 s.5; No. 18 of 1993 s.6; No. 48 of 1996 s.8; No. 56 of 1997 s.10.]

[7A. Repealed by No. 56 of 1997 s.11.]

7B. Conditions for the issue of a licence

- (1) The Commissioner may refuse to issue a licence applied for under section 7 (1) if he is not satisfied that —
- (a) the issuing of the licence would not be contrary to the public interest;
 - (b) the applicant is —
 - (i) the corporation;
 - (ii) the individual; or
 - (iii) a member of the firm,
that will carry on tobacco retailing or tobacco wholesaling under the licence;
 - (c) the applicant, if the applicant is an individual, is a fit and proper person to sell tobacco;
 - (d) the associates of the applicant are fit and proper persons to occupy their positions in relation to the applicant in the applicant's selling of tobacco;
 - (e) the applicant has the necessary financial resources and business skills to conduct a viable business in accordance with the licence;

- (f) the applicant has suitable premises for the safe storage and distribution of tobacco; and
 - (g) the persons required to provide information or authorizations under this section have done so in accordance with the requirement.
- (2) Subject to subsection (3), the applicant shall furnish the Commissioner with such particulars as the Commissioner requires about —
- (a) if the applicant is a corporation other than a public company, each director and shareholder; and
 - (b) if the applicant is a trustee of a trust which will receive any benefits or proceeds from tobacco retailing or tobacco wholesaling conducted under the licence —
 - (i) each trustee;
 - (ii) in the case of a unit trust, each unit and
 - (iii) in the case of a discretionary trust, each guardian, appointor and beneficiary.
- (3) Where information required under subsection (2) has previously been furnished to the Commissioner under this section and under section 12E, it is sufficient for the applicant to certify that the information has been so furnished.
- (4) The Commissioner may —
- (a) require the applicant or any associate of the applicant to furnish the Commissioner with any further information which he requires for the purposes of subsection (1);
 - (b) require the applicant or any associate of the applicant to authorize any other person holding information about that applicant or associate which the Commissioner requires for the purposes of subsection (1) to furnish the Commissioner with the information; and
 - (c) require a person authorized under paragraph (b) to furnish him with the information.

s. 7C

- (5) A person required by the Commissioner to provide an authorization or furnish information under subsection (4) may refuse to provide the authorization or furnish the information, but a person who does so has not fulfilled the requirement for the purposes of subsection (1) (g).
- (6) In order to satisfy himself as to the matters referred to in subsection (1) (e), the Commissioner may require the applicant to submit a plan for the operation of the business.
- (7) A person who furnishes false or misleading information to the Commissioner for the purposes of this section shall be guilty of an offence.
Penalty: \$40 000.
- (8) A person is not guilty of an offence against subsection (7) if he proves to the satisfaction of the court that he believed that the information was true and complete, and could not with reasonable diligence have ascertained that it was not.
- (9) Where the Commissioner refuses to issue a licence, or issues a licence with restrictions under section 7C, the Commissioner shall notify the applicant in writing of the reasons for the refusal or the restrictions.

[Section 7B inserted by No. 48 of 1996 s.9.]

7C. Conditions on licences

A licence may specify restrictions on the tobacco products which may be sold under the licence.

[Section 7C inserted by No. 48 of 1996 s.9.]

7D. Cancellation of a licence

- (1) The Commissioner may cancel a licence at any time if he ceases to be satisfied as to the matters referred to in section 7B (1).
- (2) The Commissioner may cancel a licence if the licensee fails to provide a notice required under section 12E.

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- (2a) The Commissioner may cancel a licence if the licensee does not comply with a requirement of a notice under section 14A within the time specified in the notice (or any further time the Commissioner may allow).
- (3) The Commissioner may cancel a licence if the licensee or an associate of the licensee is convicted of —
- (a) an offence against this Act, the *Tobacco Control Act 1990* or any law of the Commonwealth or any other State or Territory dealing with the regulation of tobacco; or
 - (b) an offence against any law of Western Australia, the Commonwealth or any other State or Territory for which the maximum penalty on conviction is a fine of \$5 000 or more, or a term of imprisonment of 3 months or more.
- (4) Where the licensee is convicted of an offence referred to in subsection (3), he shall forthwith notify the Commissioner of the conviction.

Penalty: \$20 000.

[Section 7D inserted by No. 48 of 1996 s.9; amended by No.56 of 1997 s.12.]

8. Offences

- (1) A holder of a licence who carries on tobacco wholesaling or tobacco retailing on premises that are not specified in the licence as premises to be used for or in connection with the business carried on under the licence commits an offence.
- Penalty:\$20 000.
- (2) A person convicted of an offence under subsection (1) may be punished for the offence even if the premises are subsequently specified in the licence, despite section 11 of *The Criminal Code*.

[Section 8 inserted by No. 56 of 1997 s.13.]

s. 8A

8A. Liability of employees

A person is not guilty of an offence against section 6 (1) or (2) 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 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; amended by No. 56 of 1997 s.13(6).]

[9. Repealed by No. 18 of 1993 s.7.]

[9A. Repealed by No. 18 of 1993 s.8.]

10. Unlicensed persons to pay amount equal to double fee

- (1) If a person carries on tobacco wholesaling or tobacco retailing when not the holder of the necessary licence, the person is liable to pay an amount that is double the fee or fees that would have been payable had the person applied for and been issued the licence for the period during which the person carried on the wholesaling or retailing.
- (2) For the purposes of determining whether a person has carried on or is carrying on tobacco wholesaling or tobacco retailing, the Commissioner may presume any or all of the following matters unless the contrary is proved:
 - (a) that any tobacco acquired by the person was not purchased from the holder of a wholesale tobacco merchant's licence or a retail tobacconist's licence;
 - (b) that any tobacco acquired by the person was sold by the person;
 - (c) that any tobacco acquired by the person in a year was sold by the person in that year.
- (3) If the Commissioner is satisfied that a person is liable under subsection (1), the Commissioner may give the person a written notice that sets out —

- (a) details of why the person is liable; and
 - (b) the amount to be paid by the person.
- (4) The amount to be paid is due and payable by the person within 14 days after the notice is given to the person.
- (5) If the amount is not paid —
- (a) a court convicting the person of an offence under section 6 in relation to the wholesaling or retailing for which the person is liable under subsection (1) may order the person to pay it; or
 - (b) the Commissioner may recover it in a court of competent jurisdiction as a debt due to the Crown.

[Section 10 inserted by No. 56 of 1997 s.14.]

[11. Repealed by No. 39 of 1987 s.18.]

12. Liability of directors etc. if offence by corporation

- (1) If an offence is committed by a body corporate against section 6 (1), 6 (2), 7B (7), 7D (4), 8, 12E (1), 12E (2), 14 (1), 14 (3), 14 (4) or 14A (3), any person who at the time was a director or who took part in the management of the body corporate is jointly and severally liable with the body corporate and other such persons for the payment of —
- (a) any fine imposed on the body corporate for the offence; and
 - (b) any amount payable under section 10.
- (2) This section does not affect the operation of section 592 of the Corporations Law.

[Section 12 inserted No. 56 of 1997 s.15.]

[12A, 12B, 12C and 12D. Repealed by No. 56 of 1997 s.16.]

s. 12E

12E. Information required from licensee corporations and trustees

- (1) If a licensee is a corporation other than a public company, the corporation shall notify the Commissioner within 7 days of —
- (a) the appointment of any director;
 - (b) the transfer of any share;
 - (c) the issue, redemption or cancellation of any share; and
 - (d) a variation of the rights under any share.

Penalty: \$40 000.

- (2) If a licensee is a trustee of a trust which will receive any benefits or proceeds from tobacco retailing or tobacco wholesaling conducted under the licence, the trustee shall notify the Commissioner within 7 days of —
- (a) the appointment of a trustee;
 - (b) in the case of a unit trust —
 - (i) the transfer of any unit;
 - (ii) the issue, redemption or cancellation of any unit; and
 - (iii) a variation in the rights under any unit; and
 - (c) in the case of a discretionary trust —
 - (i) the appointment of a guardian or appointor; and
 - (ii) the addition of a new beneficiary of the trust.

Penalty: \$40 000.

- (3) A notice under this section shall include such particulars as the Commissioner requires for the purposes of section 7D (1).

[Section 12E inserted by No. 48 of 1996 s.14.]

13. Transfers

- (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.
- (3) Section 7B applies to the transfer of a licence under this section as if the application for a transfer were an application by the transferee for a new licence.

[Section 13 amended by No. 32 of 1980 s.8; No. 48 of 1996 s.15.]

13A. Appeal against refusal of licence or transfer of licence

- (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), 7B (1), 7C, 7D, 10 (3) or 13 (2) may, within 60 days after being informed of the decision or within such further time as the Minister may allow, post to or lodge with the Minister an appeal in writing stating fully and in detail the grounds on which he relies.
- (2) The Minister 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 Minister 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; amended by No. 48 of 1996 s.16; No. 56 of 1997 s.17.]

14. Account to be kept by licensees

- (1) A person who carries on tobacco retailing or tobacco wholesaling shall keep such records as may be prescribed containing such particulars as may be prescribed and shall preserve each of those records 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 records —
 - (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.
- (3) Any records required to be kept under this section shall be kept in English.
Penalty: \$40 000.
- (4) Subject to this section, any records required to be kept under this section shall be kept within Western Australia.
Penalty: \$40 000.
- (5) The Commissioner may, by instrument in writing made on the application of a person required to keep records under this section, authorize the records to be kept outside Western Australia.
- (6) An authorization under subsection (5) may be limited as to the type of record, or as to the places at which they may be kept.

[Section 14 amended by No. 4 of 1983 s.7; No. 39 of 1987 s.20; No. 48 of 1996 s.17.]

14A. Provision of information to Commissioner

- (1) The Commissioner may require a licensee to furnish particulars of sales, or of specified sales, of tobacco by the licensee in any specified period after 1 July 1997.
- (2) The requirement shall be made by a written notice given to the licensee concerned.
- (3) A person who does not comply with a requirement of a notice under this section within the time specified in the notice (or any further time the Commissioner may allow) commits an offence.
Penalty:\$20 000.

[Section 14A inserted by No. 56 of 1997 s.18.]

15. Power to Commissioner to require information

- (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 records 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.

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- (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 record if required to do so under subsection (1) on the ground that the information, or any information in the record, 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 an amount payable under section 10.

[Section 15 amended by No. 4 of 1983 s.8; No. 39 of 1987 ss.14 and 20; No. 4 of 1992 s.6; No. 48 of 1996 s.19; No. 56 of 1997 s.19.]

[16, 17. Repealed by No. 56 of 1997 s.20.]

18. Offences

- (1) Any person who makes or delivers an application or record 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 particulars or other 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; No. 48 of 1996 s.20; No. 56 of 1997 s.21.]

19. Proceedings

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 inserted by No. 39 of 1987 s.16.]

20. Regulations

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.]

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[Schedule 1 repealed by No. 56 of 1997 s.22.]

Notes

- ^{1.} This is a compilation of the *Tobacco Sellers Licensing Act 1975* and includes all amendments effected by the other Acts referred to in the following Table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Business Franchise (Tobacco) Act 1975</i>	84 of 1975	17 Nov 1975	17 Nov 1975
<i>Business Franchise (Tobacco) Amendment Act 1980</i>	32 of 1980	28 Oct 1980	25 Nov 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 Nov 1981	9 Nov 1981
<i>Companies (Consequential Amendments) Act 1982, section 28</i>	10 of 1982	14 May 1982	1 Jul 1982 (see section 2 (1) and <i>Gazette</i> 25 Jun 1982 p.2079)
<i>Business Franchise (Tobacco) Amendment Act 1983</i>	4 of 1983	11 Aug 1983	11 Aug 1983
<i>Business Franchise (Tobacco) Amendment Act 1987²</i>	39 of 1987	3 Jul 1987	Section 7, 8, 11 and 13: 2 Dec 1986. Balance on Assent (see section 2)
<i>Taxation (Reciprocal Powers) Act 1989</i>	18 of 1989	1 Dec 1989	5 Oct 1990 (see <i>Gazette</i> 5 Oct 1990 p.5122)
<i>Business Franchise (Tobacco) Amendment Act 1989</i>	29 of 1989	12 Dec 1989	Deemed operative 1 Nov 1989 (see section 2)
<i>Business Franchise (Tobacco) Amendment Act 1992</i>	4 of 1992	8 May 1992	8 May 1992
<i>Business Franchise (Tobacco) Amendment Act 1993</i>	12 of 1993	9 Nov 1993	Deemed operative 1 Aug 1993

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Short title	Number and year	Assent	Commencement
<i>Act 1993</i> ⁴			
<i>Business Franchise (Tobacco) Amendment Act (No. 2) 1993</i> ⁵	18 of 1993	1 Dec 1993	1 Dec 1993
<i>Business Franchise (Tobacco) Amendment Act (No. 3) 1993</i> ^{6,7}	19 of 1993	1 Dec 1993	Deemed operative 1 Dec 1993 (see section 2)
<i>Business Franchise (Tobacco) Amendment Act 1994</i> ⁸	10 of 1994	15 Apr 1994	15 Apr 1994
<i>Revenue Laws Amendment (Assessment) Act (No. 2) 1996, Part 2</i>	48 of 1996	25 Oct 1996	25 Oct 1996 (see section 2 (1))
<i>Acts Amendment (Franchise Fees) Act 1997 Pt. 2</i> ⁰	56 of 1997	12 Dec 1997	1 Mar 1998 (see section 2 and <i>Gazette</i> 27 Feb 1998 p.1033)

² Section 11 (2) of the *Business Franchise (Tobacco) Amendment Act 1987* (Act No. 39 of 1987) 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.

”.

³ Section 4 (2) of the *Business Franchise (Tobacco) Amendment Act 1992* (Act No. 4 of 1992) reads as follows —

“

- (2) Subsection (5a) of section 12 of the principal Act (as inserted by subsection (1) of this section) does not apply to a reassessment under that section that has been made before the commencement of this Act.

”
4 Section 4 of the *Business Franchise (Tobacco) Amendment Act 1993* (Act No. 12 of 1993) reads as follows —

“

4. Recovery of certain fees

- (1) In this section “licence” has the same meaning as it has in the principal Act.
- (2) This section applies where, before this Act received the Royal Assent, a licence was issued or renewed to be in force for any period after 31 October 1993.
- (3) Where the licence was issued or renewed on payment of a fee (“the fee paid”) that is less than the fee that would have been payable if this Act had received the Royal Assent before the licence was issued or renewed (“the fee payable”), the amount by which the fee payable exceeds the fee paid is to be regarded as an unpaid licence fee and section 12B of the principal Act applies accordingly.

”

5 Part 3 of the *Business Franchise (Tobacco) Amendment Act (No. 2) 1993* (Act No. 18 of 1993) reads as follows —

“

11. Interpretation

In this Part words and expressions have the same meanings as in the principal Act.

12. Relevant period for January 1994

Despite section 10 (1) of the principal Act as amended by this Act, the relevant period for the purposes of calculating the fee for a licence for the month of January 1994 is October and November 1993.

13. Reduction of January and February 1994 licence period

- (1) If before this Act commences a licence has been issued under section 7 (but not renewed) for —
- (a) the period of January and February 1994; or
 - (b) a period which is part of January and all of February 1994,

then on the commencement of this Act, and by operation of this section, that licence shall be in force for the month of January 1994 only, or that part of January 1994 only, as the case may be.

- (2) If before this Act commences a licence has been renewed under section 9A of the principal Act (or is deemed by that section to have been renewed) for the period of January and February 1994, then on the commencement of this Act, and by operation of this section, that licence shall be in force for the month of January 1994 only.

”.

⁶ Section 5 (2) of the *Business Franchise (Tobacco) Amendment Act (No. 3) 1993* (Act No. 19 of 1993) 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.

”.

⁷ Part 3 of the *Business Franchise (Tobacco) Amendment Act 1994* (Act No. 19 of 1993) reads as follows —

“

6. If commencement is 7-31 December 1993

If this Act commences in the period beginning on 7 December 1993 and ending on 31 December 1993, then section 7A of the

principal Act does not apply in the case of an application for the issue of a licence for January 1994.

7. If commencement is 7-31 January 1994

If this Act commences in the period beginning on 7 January 1994 and ending on 31 January 1994, then section 7A of the principal Act does not apply in the case of an application for the issue of a licence for February 1994.

”.

⁸ Section 5 (2) of the *Business Franchise (Tobacco) Amendment Act 1994* (Act No. 10 of 1994) reads as follows —

“

- (2) Section 12A of the principal Act as amended by subsection (1) applies to any period in the period beginning on 1 December 1993 and ending immediately before the commencement of this section for which a licence was required to be, but was not, held.

”.

⁹ Section 23 of the *Acts Amendment (Franchise Fees) Act 1997* (Act No. 56 of 1997) reads as follows —

“

23. Transitional

- (1) If immediately before the commencement of this Part a person is the holder of a wholesale tobacco merchant's licence or a retail tobacconist's licence issued or renewed under the principal Act in respect of a period beginning on or after that commencement, then on that commencement the person is to be taken to be the holder of a licence of the corresponding kind issued under the principal Act as amended by this Part for that period.
- (2) If immediately before the commencement of this Part a person is the holder of a group tobacco licence issued or renewed under the principal Act in respect of a period beginning on or after that commencement, then on that commencement the person is to be

taken to be the holder of a wholesale tobacco merchant's licence issued under the principal Act as amended by this Part for that period.

”.