

**BUSINESS FRANCHISE LICENCES (TOBACCO)
(APPLICATION AND ENFORCEMENT) AMENDMENT
ACT 1986 No. 180**

NEW SOUTH WALES



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**SCHEDULE 1—AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES
(TOBACCO) ACT 1975**

**BUSINESS FRANCHISE LICENCES (TOBACCO) (APPLICATION AND
ENFORCEMENT) AMENDMENT ACT 1986 No. 180**

NEW SOUTH WALES



Act No. 180, 1986

An Act to amend the Business Franchise Licences (Tobacco) Act 1975 so as not to discriminate, in the application of licence fees, between different forms of trade in tobacco, and to make further provision for the enforcement of the Act. [Assented to 18 December 1986]

See also Business Franchise Licences (Petroleum Products) (Application and Enforcement) Amendment Act 1986.

Business Franchise Licences (Tobacco) (Application and Enforcement) Amendment 1986

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Business Franchise Licences (Tobacco) (Application and Enforcement) Amendment Act 1986".

Commencement

2. (1) Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.

(2) Schedule 1, and section 3 in its application to that Schedule, shall commence or be deemed to have commenced, as the case requires, on 28 December 1986.

Amendment of Act No. 63, 1975

3. The Business Franchise Licences (Tobacco) Act 1975 is amended in the manner set forth in Schedule 1.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES
(TOBACCO) ACT 1975

(1) Section 3 (Interpretation)—

(a) Section 3 (1), definition of "road vehicle" —

After the definition of "retail tobacconist's licence", insert:

"road vehicle" means a vehicle designed solely or principally for transporting persons, goods or animals by road;

(b) Section 3 (1), definitions of "tobacco retailing", "tobacco wholesaling" —

Omit "in the course of intrastate trade" wherever occurring.

Business Franchise Licences (Tobacco) (Application and Enforcement) Amendment 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES (TOBACCO) ACT 1975—*continued*

(c) Section 3 (4A)—

After subsection (4), insert:

(4A) A reference in this Act to the sale of tobacco is a reference to the sale of tobacco in the course of intrastate trade.

(d) Section 3 (7)—

Omit “in the course of intrastate trade”.

(2) Section 3AA—

After section 3, insert:

Additional operation of Act

3AA. (1) Without prejudice to its effect apart from this section, this Act also has, by force of this section, the effect it would have if there were added at the end of section 3 (4A) the words “and otherwise than in the course of intrastate trade”.

(2) Nothing in this Act affects the operation of section 14A of the Interpretation Act 1897.

(3) Section 3G (**Retail sales by tobacco wholesaler**)—

Section 3G (1), (3)—

Omit “in the course of intrastate trade” wherever occurring.

Business Franchise Licences (Tobacco) (Application and Enforcement) Amendment 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES
(TOBACCO) ACT 1975—*continued*

(4) Section 7 (Inspectors)—

Section 7 (3) (c)—

Omit the paragraph, insert instead:

(c) to answer any question relating to—

(i) any records or documents in the custody or under the control of the bank manager or other person;

(ii) any statement produced in accordance with paragraph (b); or

(iii) the carrying on by any person of any business of processing, packaging, distributing, transporting, selling or purchasing tobacco or financial transactions in connection with or arising out of the carrying on of any such business.

(5) Section 7 (Inspectors), section 8 (Particulars of dealings with tobacco)—

Sections 7 (5), 8 (5)—

Omit “proceedings, civil or criminal” wherever occurring, insert instead “criminal proceedings”.

*Business Franchise Licences (Tobacco) (Application and Enforcement)
Amendment 1986*

SCHEDULE 1—continued

**AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES
(TOBACCO) ACT 1975—continued**

(6) Section 8AA—

After section 8, insert:

Transportation records

8AA. (1) A person shall not cause any tobacco to be consigned for transportation by road vehicle into or within New South Wales unless, at or before the time when the transporter takes possession of the tobacco, a record of consignment is delivered to the transporter.

(2) A person shall not take possession of any tobacco for transportation by the person by road vehicle into or within New South Wales unless, on or before taking possession of the tobacco, a record of consignment is delivered to the person.

(3) For the purposes of this section, a record of consignment is a document which accurately shows—

- (a) the date of consignment;
- (b) the type and quantity of tobacco consigned;
- (c) the name and address of the consignor;
- (d) the name and address of the consignee;
- (e) the address to which the tobacco is to be delivered; and
- (f) such other particulars as may be prescribed.

(4) An inspector may at any time require a road vehicle in which the inspector reasonably suspects tobacco is being transported to stop and may require the person in charge of the vehicle to produce the record of consignment for inspection.

(5) The person in charge of the road vehicle shall stop the vehicle and shall produce the record of consignment as required by an inspector.

Penalty: \$1,000 or imprisonment for 3 months, or both.

Business Franchise Licences (Tobacco) (Application and Enforcement) Amendment 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES (TOBACCO) ACT 1975—*continued*

(7) Section 8A (**Seizure of tobacco**)—

(a) Section 8A (2A)–(2C)—

After subsection (2), insert:

(2A) If—

- (a) the driver of a road vehicle transporting tobacco does not produce, on demand made by an inspector, a record of consignment referred to in section 8AA; or
- (b) an inspector reasonably suspects that an offence has been committed by any person in relation to tobacco transported by road vehicle,

the inspector may require the driver of the vehicle to convey the inspector in the vehicle to the address for delivery by the driver of the tobacco.

(2B) If—

- (a) a person does not convey an inspector in accordance with a requirement made by the inspector; or
- (b) it appears to the inspector that the driver is not complying in a reasonable manner with a requirement made by the inspector,

the inspector may direct the driver to drive the vehicle to the nearest practicable place, determined by the inspector, at which the tobacco may be kept in custody by a person authorised in that behalf by the Chief Commissioner.

(2C) If the person does not comply with the inspector's direction, the inspector may take charge of the vehicle for the purpose of conveying the tobacco to the place where it is to be kept in custody.

(b) Section 8A (3), (4)—

Omit “subsection (1)” wherever occurring, insert instead “this section”.

Business Franchise Licences (Tobacco) (Application and Enforcement) Amendment 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES (TOBACCO) ACT 1975—*continued*

(8) Section 10 (Offences relating to sale of tobacco)—

Section 10 (3)—

Omit “in the course of intrastate trade”.

(9) Section 11 (Issue of licence)—

Section 11 (4)—

After section 11 (3A), insert:

(4) The Chief Commissioner may refuse to grant a licence to an applicant who complies with the requirements of subsection (1) only if the Chief Commissioner believes on reasonable grounds that the applicant—

- (a) has not paid an amount due and payable by the applicant under this Act; or
- (b) will not comply with the requirements of this Act if the licence is granted.

(10) Section 12 (Fees)—

(a) Section 12 (1) (a)—

Omit “period;”, insert instead:

period, other than tobacco purchased on or after 1 January 1987—

- (i) from the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence; or
- (ii) from the holder of a retail tobacconist's licence or a group retail tobacconist's licence who does not, in the relevant period, purchase tobacco from any person other than a licensed tobacco wholesaler or a licensed group tobacco wholesaler;

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SCHEDULE 1—*continued*

AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES
(TOBACCO) ACT 1975—*continued*

(b) Section 12 (1) (a)—

Omit “period;”, insert instead:

period, other than tobacco purchased on or after 1 January 1987—

- (i) from the holder of a wholesale tobacco merchant’s licence or a group wholesale tobacco merchant’s licence; or
- (ii) from the holder of a retail tobacconist’s licence or a group retail tobacconist’s licence who does not, in the relevant period, purchase tobacco from any person other than a licensed tobacco wholesaler or a licensed group tobacco wholesaler;

(c) Section 12 (1) (b), (c)—

Omit “in the course of intrastate trade” wherever occurring.

(d) Section 12 (1c)—

After “sold” where secondly occurring, insert “, prior to 1 January 1987.”.

(e) Section 12 (7)—

Omit the subsection.

(11) Section 15A—

After section 15, insert:

Refund, etc., of fees

15A. The Chief Commissioner may, in relation to the value of tobacco sold by retail at a place outside New South Wales in the relevant period, refund the whole or part of any fee paid, or waive payment of the whole or part of any fee payable, under this Act by a person if the person satisfies the Chief Commissioner that the person has, in relation to the value of that tobacco, paid a fee to another person under a law of another State or a Territory of the Commonwealth which corresponds to this Act.

*Business Franchise Licences (Tobacco) (Application and Enforcement)
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SCHEDULE 1—*continued*

AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES
(TOBACCO) ACT 1975—*continued*

(12) Section 21 (**Objection to and appeal against assessment**), section 28A
(**Recovery of unpaid fees from unlicensed persons**)—

Sections 21 (7A), 28A (8A)—

After “made” wherever occurring, insert “and, without limiting the generality of the foregoing, that person shall bear the onus of proving that the assessment of the fee is incorrect”.

(13) Section 26A—

After section 26, insert:

Notice of assessment

26A. (1) In any proceedings under this Act or the regulations or for the recovery of any amount due and payable under this Act or the regulations, the production of a notice of assessment of a fee, or of a document certified by the Chief Commissioner to be a copy of such a notice, shall be conclusive evidence of the due making of the assessment and that the amount and all the particulars of the assessment are correct, except in proceedings by way of appeal against the assessment, when it shall be *prima facie* evidence only.

(2) In this section, “assessment” includes reassessment.

(14) Section 31 (**Regulations**)—

(a) Section 31 (2) (a)—

Omit “and” where lastly occurring.

(b) Section 31 (2) (b), (c)—

After section 31 (2) (b), insert:

; and

*Business Franchise Licences (Tobacco) (Application and Enforcement)
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SCHEDULE 1—*continued*

**AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES
(TOBACCO) ACT 1975—*continued***

(c) the stopping, detaining and taking charge of road vehicles,
the taking and keeping in custody of tobacco and the
release of tobacco taken in custody.
