

BUSINESS FRANCHISE LICENCES (TOBACCO) ACT 1987
No. 93

NEW SOUTH WALES



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BUSINESS FRANCHISE LICENCES (TOBACCO) ACT 1987 No. 93

NEW SOUTH WALES



Act No. 93, 1987

An Act to provide for the licensing of persons carrying on the business of selling tobacco; to repeal the Business Franchise Licences (Tobacco) Act 1975; and for other purposes. [Assented to 12 June 1987]

See also Business Franchise Licences (Petroleum Products) Act 1987.

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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:

PART 1
PRELIMINARY

Short title

1. This Act may be cited as the "Business Franchise Licences (Tobacco) Act 1987".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Interpretation

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Chief Commissioner" means the Chief Commissioner for Business Franchise Licences (Tobacco) referred to in section 21;

"group" means a group constituted by Division 1 of Part 2;

"group licence" means a group wholesaler's licence or a group retailer's licence;

"group retailer's licence" means a group tobacco retailer's licence referred to in section 34;

"group wholesaler's licence" means a group tobacco wholesaler's licence referred to in section 34;

"inspector" means a person appointed to be an inspector for the purposes of this Act;

"licence" means a licence in force under this Act;

"licensee" means the holder for the time being of a licence;

"premises" includes any place, vehicle, vessel or aircraft;

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“prescribed quantity”, in relation to any tobacco, means—

(a) in the case of tobacco in the form of cigarettes—

3,500 cigarettes; or

(b) in the case of tobacco in any other form—5 kilograms;

“record” includes any book, account, deed, writing or document and any other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means;

“regulations” means regulations under this Act;

“relevant period”, in relation to a licence, means the month commencing 2 months before the commencement of the month in which the licence expires;

“retailer’s licence” means a tobacco retailer’s licence referred to in section 34;

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

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

“tobacco retailing” means the business (whether or not carried on as part of or in conjunction with any other business) of selling tobacco (either alone or in conjunction with other merchandise) otherwise than for resale;

“tobacco wholesaling” means the business (whether or not carried on as part of or in conjunction with any other business) of selling tobacco (either alone or in conjunction with other merchandise) for resale;

“Tribunal” means the Business Franchise Licence Fees (Tobacco) Appeals Tribunal referred to in section 26;

“vending machine” means a machine, device or contrivance containing articles that may be obtained from it by an operation that involves the insertion in it of money, credit cards or tokens;

“wholesaler’s licence” means a tobacco wholesaler’s licence referred to in section 34.

(2) A reference in this Act to—

(a) a person who sells tobacco; or

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

(3) A reference in this Act to the sale of tobacco is a reference to the sale of tobacco in New South Wales.

(4) If, pursuant to a sale made outside New South Wales, tobacco is delivered within New South Wales, the sale shall, for the purposes of this Act, be treated as having been made in New South Wales.

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

(6) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, in relation to a duty, a reference to the performance of the duty.

Retail sales by wholesalers

4. (1) A person who carries on both tobacco wholesaling and tobacco retailing shall, for the purposes of this Act, be deemed—

- (a) not to be carrying on tobacco retailing; and
- (b) to have sold in the course of tobacco wholesaling any tobacco which the person has sold otherwise than for resale.

(2) A person—

- (a) who carries on tobacco retailing; and
- (b) who is a member of a group which includes a person carrying on tobacco wholesaling,

shall be deemed, for the purposes of this Act, to be carrying on tobacco wholesaling and to have sold in the course of tobacco wholesaling any tobacco which the person has sold otherwise than for resale.

Act binds Crown

5. This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Application of Act to intrastate trade

6. (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 (3) the words "otherwise than in the course of or for the purposes of trade or commerce among the States within the meaning of section 92 of the Constitution of the Commonwealth".

(2) Nothing in this section affects the operation of section 14A of the Interpretation Act 1897 or of a corresponding provision of any Act replacing that Act.

PART 2
MERCANTILE GROUPS
DIVISION 1—*Constitution of groups*

Membership of a group

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

- (a) the person is one of the persons who, according to this Division, constitute a group; and
- (b) no determination under this section is in force by virtue of which the person is not a member of the group.

(2) The Chief Commissioner may determine in writing that a person—

- (a) who, but for the determination, would be a member of a group according to this Division; and
- (b) who the Chief Commissioner is satisfied—
 - (i) has continuously carried on, and will continue to carry on, the business of selling tobacco independently of the group; and
 - (ii) is not subject to control by any member of the group,

is not a member of the group.

(3) The Chief Commissioner may determine in writing that a person—

- (a) who, but for the determination, would be a member of a group; and

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(b) who the Chief Commissioner is satisfied is not carrying on and has no intention of carrying on the business of selling tobacco,
is not a member of the group.

(4) A determination—

- (a) takes effect when signed by the Chief Commissioner and continues in force until revoked; and
- (b) may be revoked at any time by notice in writing signed by the Chief Commissioner.

Notice of determination or revocation of determination

8. (1) Notice of a determination made in accordance with section 7 (2) shall be given by the Chief Commissioner to—

- (a) the person the subject of the determination; and
- (b) all the members of the group concerned who the Chief Commissioner considers are carrying on the business of selling tobacco.

(2) Notice of a determination under section 7 (3) shall be published in the Gazette.

(3) Notice of the revocation of a determination—

- (a) shall be given by the Chief Commissioner to all members of the group concerned who the Chief Commissioner considers are carrying on the business of selling tobacco; and
- (b) shall, in the case of a determination under section 7 (3), be published in the Gazette.

Grouping of related corporations

9. Corporations constitute a group if each is a related corporation (within the meaning of the Companies (New South Wales) Code) with respect to the other.

Grouping by virtue of employees

10. (1) If the employees of an employer, or any of them, perform duties solely or mainly for or in connection with a business carried on by—

- (a) the employer and any other persons; or
- (b) any other persons,

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the employer and any person carrying on that business constitute a group.

(2) If an employer and another person are parties (whether or not together with other parties) to an agreement, arrangement or undertaking—

- (a) concerning the employer's employees or any of them; and
- (b) relating to a business carried on by the other person (whether alone or with any others),

the employer and any person carrying on that business constitute a group.

(3) For the purposes of subsection (2), it does not matter whether the agreement, arrangement or undertaking is formal or informal, whether it is express or implied or whether or not it makes provision for the supply of goods or services, or both.

Grouping by virtue of common controlling interest

11. (1) If the same person has (or the same persons have together) a controlling interest in each of two businesses, the persons carrying on those businesses constitute a group.

(2) For the purposes of this section, the same person has (or the same persons have together) a controlling interest in each of two businesses if the same person has (or the same persons have together)—

- (a) a controlling interest, by virtue of any of the provisions of Division 2, in one of the businesses; and
- (b) a controlling interest, by virtue of the same or any of the other provisions of that Division, in the other business.

(3) In so far as this section refers to two businesses, the reference does not include a reference to businesses both of which are owned—

- (a) by the same person, not being a trustee; or
- (b) by the trustee or trustees of a trust.

Smaller groups displaced by larger ones

12. (1) If a person is a member of two or more groups, all of the members of those groups constitute one group.

(2) If by the operation of this section a larger group is constituted from the members of smaller groups, the smaller groups cease to exist for the purposes of this Act while the larger group so constituted is in being.

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(3) A reference in this section to a group includes a reference to a group constituted by the operation of this section.

DIVISION 2—*Controlling interests***Corporate business**

13. (1) A person has (or persons have together) a controlling interest in a business carried on by a corporation if—

- (a) the directors; or
- (b) any of the directors entitled to exercise a majority in voting powers 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 the person (or those persons acting together).

(2) A person has (or persons have together) a controlling interest in a business carried on by a corporation that has a share capital if the person (or those persons acting together) could, whether directly or indirectly—

- (a) exercise or control the exercise of; or
- (b) substantially influence the exercise of,

half or more than half of the voting power attached to voting shares (within the meaning of the Companies (New South Wales) Code) issued by the corporation.

Corporate relationship

14. A corporation which, by virtue of this Part, has a controlling interest in a business has a controlling interest in any other business in which another corporation which is related to it (within the meaning of the Companies (New South Wales) Code) has a controlling interest.

Partnership business

15. A person has (or persons have together) a controlling interest in a business carried on by a partnership if the person (or those persons together)—

- (a) owns or own, whether beneficially or not, half or more than half of the capital of the partnership; or

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(b) is or are entitled, whether beneficially or not, to half or more than half of the profits of the partnership.

Sole ownership

16. A person has a controlling interest in a business if, whether or not the person is a trustee of a trust, the person is the sole owner of the business.

Ownership by trustees

17. Persons together have a controlling interest in a business if, being two or more trustees of a trust, they are the owners of the business.

Business carried on under trust

18. A person has (or persons have together) a controlling interest in a business carried on under a trust if the person is the beneficiary (or those persons are together the beneficiaries), whether or not as the trustee or trustees of another trust, in respect of half or more than half of the value of the interests in the trust first mentioned in this section.

Interest in business whose managers control another business

19. If—

- (a) by virtue of this section, a person has (or persons have together) a controlling interest in a business; and
- (b) the person or persons carrying on that business has (or have together) a controlling interest in another business,

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

Beneficiaries under trust

20. (1) If—

- (a) a person is a beneficiary (or persons together are the beneficiaries) under a trust, in respect of half or more than half of the value of the interests in the trust; and
- (b) by virtue of this section, the trustee or trustees of the trust has (or have together) a controlling interest in a business,

the beneficiary has or the beneficiaries have a controlling interest in that business.

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(2) A person who, as the result of the exercise of a power or discretion by—

- (a) the trustee of a discretionary trust, acting alone or with another person; or
- (b) any other person,

may benefit under the trust shall, for the purposes of this Division, be taken to be a beneficiary in respect of half or more than half of the value of the interests in the trust.

PART 3

ADMINISTRATION

Chief Commissioner

21. (1) There shall be a Chief Commissioner for Business Franchise Licences (Tobacco) who shall be responsible for the due administration of this Act.

(2) In addition, the Chief Commissioner is authorised to perform the functions of a State taxation officer under Part IIIA of the Taxation Administration Act 1953 of the Commonwealth.

(3) The person for the time being holding office or acting as Secretary of the Department of Finance shall also hold office as Chief Commissioner.

Deputy Chief Commissioner

22. (1) There shall be a Deputy Chief Commissioner for Business Franchise Licences (Tobacco) who shall assist the Chief Commissioner in the administration of this Act.

(2) The person for the time being holding office or acting as Deputy Secretary of the Department of Finance shall also hold office as Deputy Chief Commissioner.

(3) A person may, while holding office as Deputy Chief Commissioner, also hold office, if appointed as such, as Deputy Chief Commissioner under any other enactment administered by the Minister for Finance.

(4) The functions of the Chief Commissioner under this or any other Act may, subject to any directions given by the Chief Commissioner, be exercised by the Deputy Chief Commissioner.

(5) A function of the Chief Commissioner that purports to have been exercised by the Deputy Chief Commissioner shall, until the contrary is proved, be taken to have been duly exercised by the Deputy Chief Commissioner.

(6) A function of the Chief Commissioner that is duly exercised by the Deputy Chief Commissioner shall be taken to have been exercised by the Chief Commissioner.

Commissioner

23. (1) There shall be a Commissioner for Business Franchise Licences (Tobacco) who shall be employed under the Public Service Act 1979.

(2) A person may, while holding office as Commissioner, also hold office, if appointed as such, as Commissioner under any other enactment administered by the Minister for Finance.

Other staff

24. Such staff, including inspectors, as may be necessary for the administration of this Act shall be employed under the Public Service Act 1979.

Delegation

25. (1) The Chief Commissioner may delegate any of the functions of the Chief Commissioner under this Act or the regulations (other than the power of delegation conferred by this section) to any person.

(2) A delegation—

(a) may be general or limited;

(b) shall be in, or be evidenced by, writing signed by the Chief Commissioner; and

(c) may be revoked, wholly or partly, by the Chief Commissioner.

(3) A delegated function may be exercised only in accordance with any conditions to which the delegation is subject.

(4) A delegate may, in the exercise of a delegated function, exercise any other function that is incidental to the delegated function.

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(5) A delegated function that purports to have been exercised by a delegate shall, until the contrary is proved, be taken to have been duly exercised by the delegate.

(6) A delegated function that is duly exercised by a delegate shall be taken to have been exercised by the Chief Commissioner.

(7) If a function is delegated to a particular officer or the holder of a particular office—

(a) the delegation does not cease to have effect merely because the person who was the particular officer or the holder of the particular office when the function was delegated ceases to be that officer or the holder of that office; and

(b) the function may be exercised (or, in the case of a duty, shall be performed) by the person for the time being occupying or acting in the office concerned.

(8) A function that has been delegated may, notwithstanding the delegation, be exercised by the Chief Commissioner.

(9) Except in so far as the original delegation otherwise provides, a function that has been delegated (otherwise than under the authority of this subsection) may be sub-delegated.

(10) This section applies to a sub-delegation of a function in the same way as it applies to a delegation of the function.

Business Franchise Licence Fees (Tobacco) Appeals Tribunal

26. (1) There shall be a Business Franchise Licence Fees (Tobacco) Appeals Tribunal consisting of a person appointed by the Governor on the recommendation of the Minister.

(2) Schedule 1 has effect with respect to the person so appointed.

(3) The Tribunal shall have and may exercise the functions conferred or imposed upon the Tribunal by or under this Act.

(4) The procedure to be followed before any sittings of the Tribunal shall, subject to the regulations, be as the Tribunal may determine.

Immunity of officers and others

27. No matter or thing done by the Chief Commissioner or any other officer or person shall, if the matter or thing was done in good faith for the purpose of executing this Act, subject the Chief Commissioner or any such other officer or person to any action, liability, claim or demand.

PART 4**OFFENCES RELATING TO THE SALE OF TOBACCO****Selling without licence**

28. A person shall not sell tobacco unless the person is the holder of a licence.

Penalty: \$2,000.

Wholesaling without licence

29. (1) A person shall not carry on tobacco wholesaling unless the person is the holder of a wholesaler's licence or a group wholesaler's licence.

Penalty: \$5,000.

(2) This section does not prohibit the sale by wholesale, by a person who is the holder of a retailer's licence or a group retailer's licence, of tobacco sold by wholesale to that person by the holder of a wholesaler's licence or a group wholesaler's licence.

Retailing without licence

30. (1) A person shall not carry on tobacco retailing unless the person is the holder of a retailer's licence or a group retailer's licence.

Penalty: \$5,000.

(2) The presence on any premises of a vending machine from which tobacco may be obtained shall be taken to constitute the carrying on of tobacco retailing by the occupier of the premises, unless the machine is operated by a licensee in accordance with a licence.

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Selling on unlicensed premises

31. (1) A licensee shall not carry on any business of selling tobacco on premises that are not specified in the licence as premises to be used for that business.

Penalty: \$2,000.

(2) This section does not prohibit a licensee from selling tobacco by means of vending machines on any premises.

(3) In any proceedings for an offence under this section, tobacco sold on any premises otherwise than by a licensee shall be deemed to have been sold by the occupier of the premises, unless the court is satisfied—

- (a) that the sale took place without the knowledge or connivance of the occupier; and
- (b) that the occupier took all such steps as were reasonable in the circumstances to prevent such a sale from taking place.

Vending machine to display licence particulars

32. (1) A person who sells tobacco by means of a vending machine shall display on the machine—

- (a) in legible characters; and
- (b) in such a manner as to be clearly visible to any person operating the machine,

the person's name and licence number.

Penalty: \$1,000.

(2) The occupier of premises on which a vending machine is installed, being a vending machine by means of which tobacco is to be sold on behalf of another person, shall, on the installation of the machine, notify the Chief Commissioner of the name and address of that other person.

Penalty: \$1,000.

Possession of commercial quantities

33. In any proceedings for an offence under this Part, a quantity of tobacco in a person's possession shall, if the quantity exceeds the prescribed quantity, be presumed, unless the court is satisfied to the contrary, to be in the person's possession for sale.

PART 5
LICENCES

Kinds of licences

34. Licences are of the following kinds:

- (a) a tobacco wholesaler's licence or a group tobacco wholesaler's licence, which authorises the licensee to carry on tobacco wholesaling at premises specified in the licence;
- (b) a tobacco retailer's licence or a group tobacco retailer's licence, which authorises the licensee to carry on tobacco retailing—
 - (i) otherwise than by means of vending machines, at premises specified in the licence; or
 - (ii) by means of vending machines, at any premises.

Applicants for licences

35. (1) Application may be made for a wholesaler's licence by any person other than a member of a group.

(2) Application may be made for a group wholesaler's licence by any member of a group on behalf of all or any of the members of the group.

(3) Application may be made for a retailer's licence by any person other than a member of a group.

(4) Application may be made for a group retailer's licence by any member of a group on behalf of all or any of the members of the group.

Grant of licences

36. (1) Except as provided by subsection (2), the Chief Commissioner shall—

- (a) on application made in a form approved by the Chief Commissioner;
- (b) on receipt of the particulars mentioned in section 37; and
- (c) on payment of the fee assessed under this Part,

grant the applicant a licence.

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(2) The Chief Commissioner may refuse to grant a licence to an applicant if—

- (a) in the case of an application for a licence other than a group licence—the applicant; or
- (b) in the case of an application for a group licence—any member of the group on behalf of which the application is made,

has been convicted of an offence under section 751 (1) of the Public Health Act 1902.

(3) A group licence shall be issued in the name of all members of the group on whose behalf application was made for the licence.

Particulars to be furnished by applicants for licences

37. The following particulars shall be furnished by each applicant for a licence:

- (a) the name, trading name, principal business address and telephone number of the applicant;
- (b) the date on which it is intended to commence carrying on business under the authority of the licence;
- (c) the addresses of all premises at which it is intended to carry on the business;
- (d) the names and addresses of the persons from whom tobacco will be purchased for the purposes of the business;
- (e) such particulars as are necessary for the purpose of assessing the licence fee;
- (f) if the applicant is a member of a group, the names of any other members of the group on whose behalf the application is made and the addresses of all premises at which it is intended to carry on their business;
- (g) the addresses of premises at which tobacco will be stored for the purposes of the business;
- (h) whether tobacco is intended to be sold by vehicle deliveries or from premises or through vending machines;
- (i) in the case of sale by vehicle deliveries, the registration numbers of the vehicles to be used for delivery;

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- (j) in the case of sale through vending machines, the number of machines to be operated;
- (k) whether tobacco that is purchased is intended to be delivered to the applicant's premises or collected by vehicle;
- (l) in the case of collection by vehicle of purchased tobacco, the registration numbers of the vehicles to be used for collection;
- (m) the bank and account number to be used for transactions relating to the purchase and sale of tobacco.

Licensed premises

38. (1) The Chief Commissioner shall, on the grant of a licence, cause all premises which are to be used for the business in respect of which the licence is granted (except in so far as that business may consist of the sale of tobacco by means of vending machines) to be specified in the licence.

(2) The Chief Commissioner shall—

- (a) on receipt at any time of a request made by or on behalf of a licensee; and
- (b) on payment of the prescribed fee,

in accordance with the request, add to, substitute for or delete from the premises specified in the licence such premises as are specified in the request.

Duration of licences

39. A licence takes effect on and from the day specified in the licence as the day on which it takes effect and remains in force—

- (a) until the end of the 27th day of the month in which it was granted; or
- (b) if it was granted on the 28th, 29th, 30th or 31st day of a month— until the end of the 27th day of the following month.

Renewal of licences

40. (1) A person who holds a licence shall—

- (a) subject to compliance with subsection (2) (to the extent, if any, to which that subsection applies to the person's circumstances); and
- (b) provided the licence is not cancelled or surrendered,

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be taken to have applied for a further such licence and to have been granted one, with effect from the expiration of the person's current licence.

(2) A person who holds a licence—

- (a) shall, unless the person does not wish the licence to be renewed beyond its expiry date, pay to the Chief Commissioner on or before that date the fee payable for a further licence; and
- (b) shall, in the event of any change in the particulars last furnished to the Chief Commissioner in accordance with section 37, forthwith notify the Chief Commissioner of the relevant changes.

(3) A reference in this section to the licence held by a person includes a reference to a licence which, by the operation of subsection (1), may be taken to have been granted to the person.

Fees

41. (1) The fees to be paid for licences are as follows:

- (a) for a wholesaler's licence—a fee of \$10 together with an amount equal to 30 per cent of the value of tobacco sold by the applicant in the course of tobacco wholesaling during the relevant period, other than tobacco sold to the holder of a wholesaler's licence or a group wholesaler's licence;
- (b) for a group wholesaler's licence—a fee of \$10 together with an amount equal to 30 per cent of the value of tobacco sold by all members of the group of which the applicant is a member in the course of tobacco wholesaling during the relevant period, other than tobacco sold to the holder of a wholesaler's licence or a group wholesaler's licence;
- (c) for a retailer's licence—a fee of \$10 together with an amount equal to 30 per cent of the value of tobacco sold by the applicant in the course of tobacco retailing during the relevant period, other than tobacco purchased from a licensee;
- (d) for a group retailer's licence—a fee of \$10 together with an amount equal to 30 per cent of the value of tobacco sold by all members of the group of which the applicant is a member in the course of tobacco retailing during the relevant period, other than tobacco purchased from a licensee.

(2) For the purposes of subsection (1) (b) and (1) (d), it does not matter whether application for the licence was made by or on behalf of all or any of the members of the group or whether any member was or was not a member of the group during the whole or any part of the relevant period.

Changes in circumstances of group membership

42. (1) If the applicant for a licence (not being a group licence) was, at any time during the relevant period, a member of a group—

- (a) in the case of an applicant for a wholesaler's licence—the reference in section 41 (1) (a) to tobacco sold by the applicant shall be deemed to include a reference to tobacco sold by all members of the group; and
- (b) in the case of an applicant for a retailer's licence—the reference in section 41 (1) (c) to tobacco sold by the applicant shall be deemed to include a reference to tobacco sold by all members of the group,

unless a fee for a licence has been paid to the Chief Commissioner, being a fee assessed in respect of sales of tobacco by the group during the relevant period.

(2) If—

- (a) an application is made by or on behalf of the members of a group for a group wholesaler's licence or a group retailer's licence; and
- (b) any member of the group was, at any time during the relevant period for the licence applied for, a member of another group which held a licence of the same kind as the licence applied for,

then—

- (c) in the case of an application for a group wholesaler's licence—the reference in section 41 (1) (b) to tobacco sold by all members of the group of which the applicant is a member shall be deemed to include a reference to tobacco sold by all members of the other group; and
- (d) in the case of an application for a group retailer's licence—the reference in section 41 (1) (d) to tobacco sold by all members of the group of which the applicant is a member shall be deemed to include a reference to tobacco sold by all members of the other group,

unless a fee for a licence has been paid to the Chief Commissioner, being a fee assessed in respect of sales of tobacco by the other group during the relevant period.

*Business Franchise Licences (Tobacco) 1987***Estimation of fee**

43. (1) If, during the relevant period or part of the relevant period, an applicant for a licence did not carry on the business in respect of which the licence is sought, the fee payable for the licence shall be an amount assessed by the Chief Commissioner as being reasonable in the circumstances of the case, having regard to—

- (a) the tobacco that, in the opinion of the Chief Commissioner, would have been sold by the applicant if the applicant had been carrying on the business during the whole of that period; and
- (b) the principles by which fees are determined under this Part.

(2) If an applicant for a licence did carry on the business in respect of which the licence is sought during the whole of the relevant period but the Chief Commissioner for any reason considers that the quantity or the value of tobacco sold during the period cannot be accurately assessed, the fee payable for the licence shall be an amount assessed by the Chief Commissioner as being reasonable in the circumstances of the case, having regard to—

- (a) the tobacco that, in the opinion of the Chief Commissioner, was sold by the applicant during that period; and
- (b) the principles by which fees are determined under this Part.

(3) In this section, “applicant”, in relation to a licence, includes any person whose tobacco sales during the relevant period for the licence would (if the Chief Commissioner were not obliged to make an assessment under this section) be required to be taken into account according to this Part.

Sales to interstate purchasers

44. If—

- (a) tobacco sold in New South Wales is subsequently resold in another State or Territory of the Commonwealth; and
- (b) by virtue of the resale of the tobacco in that State or Territory, a person has paid a fee under a law of that State or Territory that corresponds to this Act,

the Chief Commissioner shall refund, to the person who paid it, any fee paid to the Chief Commissioner under this Act in respect of the sale of the tobacco in New South Wales.

Value of tobacco

45. (1) The Minister may from time to time determine the basis upon which and the means by which a value is to be attributed to tobacco sold during any period.

(2) The value so attributed to any tobacco is, for the purposes of this Part, the value of the tobacco.

Adjustment of fee

46. (1) If, in the opinion of the Chief Commissioner, the fee assessed in respect of a licence was assessed incorrectly, the Chief Commissioner may at any time reassess the fee in accordance with the principles by which fees are assessed under this Part.

(2) If on a reassessment the fee is reduced, the amount overpaid shall be refunded by the Chief Commissioner.

(3) If on a reassessment the fee is increased, the additional amount payable by virtue of the reassessment, together with an amount by way of penalty equal to twice the amount so payable, is payable.

(4) An amount payable under this section—

(a) is payable within 14 days after notice of the reassessment is served on—

(i) the person who is or was the holder of the licence (if the licence is not or was not a group licence); or

(ii) any one or more of the persons who are or were the holders of the licence (if the licence is or was a group licence),

or within such further time as the Chief Commissioner, on application made by the party or any of the parties liable to make the payment, may allow; and

(b) is payable by the person, or by each of the persons, on whom notice of the reassessment was served.

(5) The Chief Commissioner may, in a particular case, for reasons which the Chief Commissioner considers sufficient, remit the whole or part of any penalty payable under this section.

*Business Franchise Licences (Tobacco) 1987***Assessment and payment of unpaid licence fee**

47. (1) If a person was required by this Act to hold a licence in respect of any period but did not do so, the person shall pay to the Chief Commissioner—

- (a) an amount equal to the fee that would have been payable for the licence, if the person had held one; and
- (b) a further amount, by way of penalty, equal to twice the amount referred to in paragraph (a).

(2) The Chief Commissioner may assess the amount payable under subsection (1) (a), and the provisions of this Part applying to assessment of fees apply to an assessment of the amount so payable.

(3) The amount so assessed, together with the penalty referred to in subsection (1) (b)—

- (a) is payable within 14 days of service on the person concerned of a notice of demand for payment, or within such further time as the Chief Commissioner, on application made by that person, may allow; and
- (b) shall be regarded, for the purposes of Part 6, as an assessed fee.

(4) The Chief Commissioner may, in a particular case, for reasons which the Chief Commissioner considers sufficient, remit the whole or part of any penalty payable under this section.

Interest in respect of late payment of reassessed fee

48. (1) If an amount payable to the Chief Commissioner under section 46 or 47 is not paid before the expiration of the time allowed under the relevant section, interest at the rate of 20 per cent per annum is payable to the Chief Commissioner on the outstanding balance until the amount is paid.

(2) The Chief Commissioner may, in a particular case, for reasons which the Chief Commissioner considers sufficient, remit the whole or part of any interest payable under this section.

Surrender of licences

49. The holder of a licence who has ceased to carry on the business authorised by the licence shall, within 30 days of ceasing to carry on the business, by notice in writing to the Chief Commissioner—

- (a) surrender the licence; and

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(b) notify the address of premises where records relating to that business will in future be kept.

Penalty: \$200.

Cancellation of licence

50. If—

(a) a licensee; or

(b) any member of the group in respect of which a group licence is held, is convicted of an offence under section 751 (1) of the Public Health Act 1902, the Chief Commissioner may, by notice served on the licensee, cancel the licence as from a date specified in the notice.

PART 6
APPEALS AND OBJECTIONS**Appeal against failure or refusal to grant licence**

51. (1) If the Chief Commissioner fails or refuses to grant a licence to a person, the person may appeal to the District Court.

(2) If the Court is satisfied that a licence ought to have been granted, it may order the Chief Commissioner, on receipt of the licence fee, to grant one.

(3) An appeal shall be instituted, heard and determined in accordance with rules of court.

(4) The Court's determination of an appeal is final.

Objection to assessment

52. (1) A person who has paid a fee assessed under this Act may, within one month after receiving notice of the assessment, object to the Chief Commissioner against the assessment of the fee on the ground that the fee was incorrectly assessed by the Chief Commissioner.

(2) The Chief Commissioner shall, as soon as practicable, determine the objection and serve on the objector notice of the determination.

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(3) To the extent that an objection is determined in favour of the objector, the Chief Commissioner shall refund the amount of any overpayment of the licence fee.

(4) In this section, "assessment" includes reassessment.

Appeal against assessment

53. (1) If—

- (a) a person is not satisfied with the determination of the Chief Commissioner on an objection; or
- (b) within one month after the objection was lodged, the Chief Commissioner has not given a determination with respect to an objection lodged by a person,

the person may appeal to the Tribunal against the assessment of the fee on the ground that the fee was incorrectly assessed by the Chief Commissioner.

(2) An appeal may be lodged—

- (a) against the determination of the Chief Commissioner on an objection—within one month after being notified by the Chief Commissioner of that determination; or
- (b) against the failure of the Chief Commissioner, within one month after the objection was lodged, to give a determination with respect to the objection—within 2 months after the objection was lodged.

(3) The Tribunal shall hear and determine the appeal and assess the fee payable.

(4) The provisions of Part 5 apply to the Tribunal's assessment of a fee in the same way as they apply to the assessment of a fee by the Chief Commissioner.

(5) The decision of the Tribunal on an appeal shall be final.

(6) An appeal shall be instituted, heard and determined in the prescribed manner.

(7) To the extent that an objection or appeal is determined in favour of the objector or appellant, the Chief Commissioner shall refund the amount of any overpayment of the licence fee.

(8) In this section, "assessment" includes reassessment.

Onus of proof on objection to or appeal against assessment

54. A person making an objection or instituting an appeal under this Part bears the onus of proving that the licence fee in question was incorrectly assessed.

PART 7
ENFORCEMENT POWERS

Access to premises, records etc.

55. (1) The Chief Commissioner or any inspector shall at all reasonable times have full and free access to all premises, records and documents for any of the purposes of this Act or the regulations.

(2) In particular, the Chief Commissioner or an inspector may require any person to do any one or more of the following:

- (a) to produce for inspection any records and documents in the custody or under the control of the person, being records and documents—
 - (i) relating to, or which the Chief Commissioner or the inspector reasonably believes relate to, the carrying on by a specified person of any business of distributing, transporting, selling or purchasing tobacco; or
 - (ii) relating to financial transactions of a specified person who carries on or has carried on, or who the Chief Commissioner or the inspector reasonably believes carries on or has carried on, any such business;
- (b) to produce a statement in writing in the English language setting out particulars of any records in the custody or under the control of the person, being records that are not written, or that are not written in English—
 - (i) relating to, or which the Chief Commissioner or the inspector reasonably believes relate to, the carrying on by any specified person of any business referred to in paragraph (a) (i); or
 - (ii) relating to financial transactions of a person referred to in paragraph (a) (ii);

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(c) to answer any question relating to—

- (i) any records or documents in the custody or under the control of the person;
- (ii) any statement produced in accordance with paragraph (b); or
- (iii) the carrying on by any person of any business referred to in paragraph (a) (i) or financial transactions of a person referred to in paragraph (a) (ii).

(3) The Chief Commissioner or an inspector may make extracts from or copies of—

- (a) any records or documents to which the Chief Commissioner or the inspector is entitled to have access by virtue of this section; and
- (b) any statement produced in accordance with subsection (2) (b).

(4) The Chief Commissioner or an inspector may—

- (a) for the purpose of making extracts from or copies of—
 - (i) any records or documents to which the Chief Commissioner or the inspector is entitled to have access; or
 - (ii) any statements which are produced to the Chief Commissioner or the inspector,

take away and retain (for such time as may for that purpose be reasonably necessary) any such records, documents or statements; or

- (b) if the Chief Commissioner or the inspector reasonably believes that any such records, documents or statements are evidence of an offence against this Act or the regulations, take away and retain those records, documents or statements until proceedings for any such offence have been heard and dealt with.

(5) The Chief Commissioner or an inspector shall, when taking away any records, documents or statements, tender a receipt to the person from whose possession they are taken.

(6) A person shall not fail to comply with a requirement made under this section.

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

(7) A person is not guilty of an offence under this section if the court hearing the charge is satisfied—

- (a) that the defendant could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates; or
- (b) that the defendant complied with the requirement to the extent of his or her ability to do so.

(8) A person is not guilty of an offence under this section unless it is established that, at the material time, the Chief Commissioner or the inspector—

- (a) identified himself or herself as the Chief Commissioner or an inspector; and
- (b) warned the person that a failure or refusal to comply with the requirement constituted an offence.

(9) Nothing in this section authorises the Chief Commissioner or an inspector to enter that part of any premises being used for residential purposes without the consent of the occupier of that part of the premises.

Search warrant

56. (1) In this section, “authorised justice” means—

- (a) a Magistrate; or
- (b) a justice of the peace employed in the Local Courts Administration, Attorney General’s Department.

(2) The Chief Commissioner or an inspector may apply to an authorised justice for a warrant to search any premises if the Chief Commissioner or the inspector has reasonable grounds to believe that—

- (a) any records are to be found there, being records to which the Chief Commissioner or the inspector would have access if they were kept on premises to which the Chief Commissioner or the inspector has access; or
- (b) any tobacco in excess of the prescribed quantity is to be found there.

(3) An authorised justice to whom an application is made under subsection (2) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the Chief Commissioner or the inspector to enter and search the premises.

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(4) Nothing in this section limits or restricts any power conferred on the Chief Commissioner or an inspector by section 55.

Particulars of dealings with tobacco

57. **(1)** The Chief Commissioner may by notice in writing require any person—

- (a) to furnish to the Chief Commissioner such information, in such form, as the Chief Commissioner requires; or
- (b) to attend and give evidence before the Chief Commissioner or before any officer of the Public Service employed in the administration or execution of this Act and authorised by the Chief Commissioner for the purposes of this section,

for the purpose of—

- (c) inquiring into any business of distributing, transporting, selling, purchasing or otherwise dealing with tobacco;
- (d) inquiring into or ascertaining that person's (or any other person's) liability or entitlement under any of the provisions of this Act; or
- (e) ascertaining for the purposes of this Act the identity of any person who—
 - (i) may have a liability or entitlement under any of the provisions of this Act; or
 - (ii) may, by reason of being related to or associated or connected with another person, affect the liability of that other person,

and may by the same or a subsequent notice require that person to produce to the Chief Commissioner, at a specified place and at or within a specified time, any records or documents of any specified kind relating to any such information.

(2) The Chief 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, for which purpose either the Chief Commissioner or the authorised officer may administer an oath.

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

(4) A person shall not fail to comply with any requirement made under this section.

Penalty: \$20,000.

(5) A person is not guilty of an offence under this section if the court hearing the charge is satisfied—

- (a) that the defendant could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates; or
- (b) that the defendant complied with the requirement to the extent of his or her ability to do so.

Seizure of tobacco

58. (1) Any tobacco—

- (a) in a quantity that exceeds the prescribed quantity; and
- (b) which the Chief Commissioner reasonably believes is evidence of an offence by any person,

may be taken and kept in custody by the Chief Commissioner until proceedings for any such offence have been heard and dealt with.

(2) When taking the tobacco, the Chief Commissioner shall tender a receipt to the person from whom it is taken.

(3) This section does not apply to tobacco in the possession of the driver of a road vehicle.

(4) This section does not confer on the Chief Commissioner any right of access to premises in addition to the right conferred by section 55 or by a warrant under section 56.

Realisation of value of seized tobacco

59. (1) The Chief Commissioner may apply to the Supreme Court for an order under this section in respect of any tobacco taken and kept in custody under section 58.

(2) The application may be heard and dealt with by the Supreme Court in its summary jurisdiction.

(3) The Supreme Court may, if it thinks fit, require the Chief Commissioner to give notice of the application to a person who the Court has reason to believe has an interest in the tobacco.

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(4) A person having an interest in any tobacco the subject of an application for an order under this section is entitled to appear and to adduce evidence at the hearing of the application.

(5) If, at the hearing of the application, evidence is given that the tobacco was in the possession of a person for sale in the course of carrying on a business of tobacco wholesaling or retailing, the Court—

- (a) may, by order, empower the Chief Commissioner to sell the tobacco in such manner and subject to such directions, if any, as the Court may specify, and to pay the proceeds of sale into Court; or
- (b) at the request of any person appearing to the Court to have an interest in the tobacco, may—
 - (i) fix the value of the person's interest in the tobacco for the purposes of an order under subparagraph (ii); and
 - (ii) order the Chief Commissioner, on payment into Court by that person of an amount equal to the value of the interest so fixed, to deliver tobacco, having a value equal to that amount, to that person.

Forfeiture of tobacco

60. (1) If—

- (a) in proceedings brought before it for an offence under Part 4, the court—
 - (i) finds the offence proven; and
 - (ii) finds that any tobacco taken and kept in custody under section 58 was in any person's possession for sale in the course of committing, or for the purposes of committing, the offence; or
- (b) on application subsequently made by the Chief Commissioner to the court before which proceedings referred to in paragraph (a) were brought, the court finds as referred to in paragraph (a) (ii),

the court may, by order, declare that tobacco (or, as the case may be, its liquidated value paid into the Supreme Court under section 59) to be forfeit to the Crown.

(2) Any tobacco so forfeited may be disposed of by the Minister on behalf of the Crown in such manner as the Minister thinks fit.

Order for return of tobacco

61. On the application of a person claiming to be entitled to any tobacco taken, or any money paid into Court, under section 58 or 59, the Supreme Court—

- (a) if it is of the opinion that proceedings whereby the tobacco or money might be declared forfeit to the Crown are not likely to be taken; or
- (b) in any case with the consent of the Chief Commissioner, may order that the tobacco or money be delivered or paid to a person appearing to the Court to be entitled to it.

Return of tobacco by Chief Commissioner

62. Nothing in this Part prevents the Chief Commissioner from at any time causing any tobacco taken and kept in custody under section 58 to be delivered to a person who the Chief Commissioner considers is entitled to it.

PART 8
TRANSPORTATION OF TOBACCO**Transportation records**

63. (1) While any tobacco is being transported (either with or without any other goods) in New South Wales by road vehicle, being tobacco in a quantity that exceeds the prescribed quantity, there shall be carried in the vehicle at all times a record complying with subsection (2).

- (2)** The record shall contain the following particulars:
 - (a) the date the transportation commenced;
 - (b) the type and quantity of tobacco being transported;
 - (c) the name and address of the person on whose behalf the tobacco is being transported;
 - (d) the name of the person, if any, to whom the driver is transporting the tobacco;
 - (e) the address to which the driver is transporting the tobacco; and
 - (f) the name and address of the purchaser, if any, of the tobacco.

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(3) If the Chief Commissioner approves of a form of record for the purposes of this section, the record shall be in or to the effect of the approved form.

(4) The Chief Commissioner or an inspector may at any time require the driver of a road vehicle in New South Wales in which the Chief Commissioner or the inspector reasonably suspects tobacco is being transported to produce the record for inspection.

(5) If the driver of a road vehicle does not produce the record as required by the Chief Commissioner or an inspector, the Chief Commissioner or the inspector may require the driver of the vehicle to furnish the particulars referred to in subsection (2).

(6) The driver of a road vehicle who, on being required by the Chief Commissioner or an inspector to produce a record, produces a record which the driver knows is false or misleading in a material particular, is guilty of an offence and liable to a penalty not exceeding \$1,000.

(7) For the purpose of enabling or assisting the Chief Commissioner or an inspector to exercise the powers of the Chief Commissioner or an inspector under this section, a member of the police force may request or signal the driver of a vehicle to stop the vehicle.

(8) A driver who fails to comply with such a request or signal is guilty of an offence and liable to a penalty not exceeding \$1,000.

Temporary custody

64. (1) If the driver of a road vehicle—

(a) does not produce a record referred to in section 63 as required under that section and does not, as required under that section, furnish the particulars required to be contained in such a record; or

(b) in purported compliance with a requirement under that section, produces a record or furnishes particulars which the Chief Commissioner or an inspector reasonably believes to be false or misleading in a material particular,

the Chief Commissioner or an inspector may require the driver to drive the vehicle to a police station or other place within a reasonable distance, as determined by the Chief Commissioner or the inspector, at which the tobacco can be unloaded from the vehicle.

(2) If the driver does not comply with the requirement, the Chief Commissioner or the inspector may take charge of the road vehicle for the purpose of driving it or causing it to be driven to the police station or other place referred to in subsection (1).

(3) On arrival at the police station or other place, the tobacco shall be unloaded, as soon as may be practicable, from the vehicle.

(4) When the tobacco has been unloaded from the vehicle—

(a) the Chief Commissioner or the inspector shall tender a receipt to the driver of the vehicle from which the tobacco has been unloaded; and

(b) the tobacco—

(i) may be taken into custody by or on behalf of the Chief Commissioner; or

(ii) may be transferred to another vehicle in order to be taken to a place at which the tobacco may be taken into custody by or on behalf of the Chief Commissioner.

Tobacco in custody

65. (1) Tobacco taken into custody under section 64 may be retained in custody until a correct record containing the particulars specified in section 63 (2) is produced to the Chief Commissioner.

(2) On production of the record, the tobacco shall be released to a person who the Chief Commissioner reasonably believes is entitled to possession of it.

(3) If unsure as to whether a person is entitled to possession of any tobacco, the Chief Commissioner may seek an appropriate declaration from the Supreme Court.

(4) If, within 6 months after the tobacco has been taken into custody, the record has not been produced, the Chief Commissioner may cause the tobacco to be destroyed.

(5) No proceedings may be taken against the Chief Commissioner as a consequence of—

(a) the release of any tobacco to a person; or

(b) the destruction of any tobacco,

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in accordance with this section.

PART 9
MISCELLANEOUS

Records to be kept

66. (1) A person who carries on the business of selling tobacco shall—
(a) keep such records as may be prescribed, containing such particulars as may be prescribed, relating to tobacco; and
(b) preserve each such record for a period of not less than 6 years after the last entry was made in it.

Penalty: \$5,000.

(2) The holder of a wholesaler's licence or a group wholesaler's licence—
(a) shall issue an invoice in relation to any sale of tobacco by the holder of that licence for the purpose of resale;
(b) shall number each such invoice consecutively in order of issue; and
(c) shall make a copy of each such invoice and shall preserve it for a period of not less than 6 years after it was made.

Penalty: \$5,000.

(3) The holder of a retailer's licence or a group retailer's licence—
(a) shall issue an invoice in relation to any sale of tobacco by the holder of that licence in a quantity in excess of the prescribed quantity;
(b) shall number each such invoice consecutively in order of issue; and
(c) shall make a copy of each such invoice and shall preserve it for a period of not less than 6 years after it was made.

Penalty: \$5,000.

(4) A licensee shall retain, for a period of not less than 6 years after the purchase, any invoice supplied in relation to tobacco purchased by the licensee.

Penalty: \$5,000.

(5) This section does not apply so as to require the preservation of any records or copies of invoices—

- (a) in respect of which the Chief Commissioner has notified the person carrying on the business concerned that preservation is not required; or
- (b) of a company which has gone into liquidation and which has been finally dissolved.

Invoices to be endorsed

67. The holder of a wholesaler's licence or a group wholesaler's licence shall endorse on every invoice issued by the holder in relation to the sale of tobacco the words "Sold by licensed wholesaler—Licence No. " followed by the number of the licence.

Penalty: \$5,000.

False representations on invoices

68. A person shall not issue an invoice in relation to the sale of tobacco—

- (a) which bears the words "Sold by licensed wholesaler" (or words of like import), unless the person is the holder of a wholesaler's licence or a group wholesaler's licence; or
- (b) which, in a manner suggestive of compliance with section 67, bears an incorrect or fictitious licence number.

Penalty: \$5,000.

Disclosure of information

69. (1) Except as provided by subsections (2), (4) and (5), a person shall not disclose any information, or publish any record, obtained by that or another person in connection with the administration or execution of this Act or the regulations, unless the disclosure or publication is made—

- (a) with the consent of the person from whom the information or record was so obtained;
- (b) in connection with the administration or execution of this Act, the regulations, a New South Wales revenue law or the Revenue Laws (Reciprocal Powers) Act 1987; or

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(c) for the purpose of any legal proceedings arising out of this Act, the regulations, a New South Wales revenue law or the Revenue Laws (Reciprocal Powers) Act 1987 or of any report of any such proceedings.

Penalty: \$10,000.

(2) The Chief Commissioner may, if of the opinion that it is necessary to do so for the purpose of enforcing a law that creates an offence or provides for the imposition of a penalty, or for the purpose of protecting the public revenue, disclose information, or publish a record, referred to in subsection (1) to—

- (a) the Solicitor-General;
- (b) the Secretary of the Attorney General's Department;
- (c) the Director of Public Prosecutions;
- (d) the Crown Advocate;
- (e) a Crown Prosecutor;
- (f) a member of the Police Force of or above the rank of Inspector;
- (g) the council of a city, municipality or shire; or
- (h) a member, officer or employee of such a council,

so as to enable that person (including any such council) to exercise a function conferred or imposed on the person by law.

(3) A person shall not disclose information, or publish a record, communicated in accordance with subsection (2) unless the disclosure or publication is made—

- (a) with the consent of the Chief Commissioner; or
- (b) so as to enable a person to exercise for a purpose referred to in that subsection a function conferred or imposed on the person by law.

Penalty: \$10,000.

(4) If a record referred to in subsection (1) has been transferred to the Archives Authority of New South Wales in accordance with the Archives Act 1960, the Chief Commissioner may, when the record has been in existence for 30 years or more, give that Authority approval to disclose, divulge or otherwise publish the record.

(5) Subsection (1) does not—

- (a) prevent the disclosure of information, or the publication of a record, in accordance with a lawful requirement of the Commonwealth Statistician;
- (b) prevent a record from being made available to, or disposed of or otherwise dealt with by, the Archives Authority of New South Wales in accordance with the Archives Act 1960; or
- (c) apply to information, or a record, obtained for the purposes of this Act under a corresponding law within the meaning of section 3 (1) of the Revenue Laws (Reciprocal Powers) Act 1987.

(6) In this section—

- (a) “New South Wales revenue law” means any of the following:
 - (i) the Stamp Duties Act 1920;
 - (ii) the Gaming and Betting (Poker Machines) Taxation Act 1956;
 - (iii) the Land Tax Act 1956;
 - (iv) the Land Tax Management Act 1956;
 - (v) the Pay-roll Tax Act 1971;
 - (vi) the Registered Clubs Act 1976;
 - (vii) the Liquor Act 1982;
 - (viii) the Health Insurance Levies Act 1982;
 - (ix) the Business Franchise Licences (Petroleum Products) Act 1987;
 - (x) any other prescribed Act, being an Act by which a tax, fee, duty or other impost is levied and collected by the State; and
- (b) a reference to a record includes a reference to a part of a record and to a copy of a record.

False or misleading statements**70. (1) A person shall not—**

- (a) make an application under this Act; or
- (b) give an answer, whether orally or in writing, to a question put to the person pursuant to this Act by the Chief Commissioner or an inspector, or by or before the Tribunal,

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that is false or misleading in a material particular.

Penalty: \$5,000 or imprisonment for 12 months, or both.

(2) A person shall not—

- (a) in furnishing any information;
- (b) in giving any notification; or
- (c) in keeping any record,

pursuant to this Act, make any statement or representation that is false or misleading in a material particular.

Penalty: \$5,000 or imprisonment for 12 months, or both.

(3) It is a defence to a charge under subsection (1) or (2) if it is proved that, at the time the application, answer, statement or representation was made, the defendant believed on reasonable grounds that it was neither false nor misleading.

Self-incrimination

71. (1) A person is not excused from answering any question, if required to do so under this Act, on the ground that the answer might tend to incriminate the person or make the person liable to a penalty.

(2) Information given by a person in response to a question the person was required to answer under this Act is not admissible against the person in any criminal proceedings other than—

- (a) proceedings for an offence under section 70; or
- (b) proceedings for an offence in the nature of perjury in connection with any verification, on oath, of the information.

Information given by officers of corporations

72. (1) Information given by an officer of a corporation (within the meaning of the Companies (New South Wales) Code) with respect to the carrying on by the corporation of a business of selling tobacco—

- (a) is admissible in evidence against the corporation; and
- (b) is binding on the corporation unless it is established that the information was given in relation to a matter in respect of which the officer had no authority to bind the corporation.

(2) Subsection (1) is in addition to, and does not affect, any enactment or rule of law by which corporations may be bound by their officers.

Obstruction of Chief Commissioner or inspector

73. (1) A person shall not—

- (a) deny the Chief Commissioner or an inspector access to any premises or records to which the Chief Commissioner or the inspector is entitled to have access; or
- (b) hinder or obstruct the Chief Commissioner or an inspector in the exercise of any of the functions of the Chief Commissioner or the inspector.

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

(2) A person is not guilty of an offence under this section unless—

- (a) in the case of an offence under subsection (1) (a), it is established that the person was informed by the Chief Commissioner or the inspector, or otherwise knew, that the Chief Commissioner or the inspector, as the case may be, was entitled to access to the premises or records; and
- (b) in any case, it is established that the Chief Commissioner or the inspector identified himself or herself as the Chief Commissioner or an inspector, as the case requires.

Evidence of matters certified

74. A certificate signed by the Chief Commissioner certifying any one or more of the following matters, that is to say:

- (a) that a person specified in the certificate was or was not duly authorised to exercise a specified function of the Chief Commissioner at a time or during a period so specified;
- (b) that a person so specified was or was not the holder of a licence at any time or during a period so specified,

is admissible in any proceedings under this Act or the regulations and shall be *prima facie* evidence of the matters so certified.

Notices of assessment

75. (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—

- (a) a notice of assessment of a fee; or
- (b) a document certified by the Chief Commissioner to be a copy of such a notice,

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is evidence of the due making of the assessment and that the amount and all particulars of the assessment are correct.

(2) The notice or copy is conclusive as to the matters evidenced by it, except if the proceedings are by way of appeal against the assessment, in which case it is *prima facie* evidence only.

(3) In this section, "assessment" includes reassessment.

Proceedings for offences

76. (1) Proceedings for an offence against this Act or the regulations may be taken before a Local Court constituted by a Magistrate sitting alone or before the Supreme Court in its summary jurisdiction.

(2) If proceedings for an offence are taken before a Local Court, the maximum penalty which that Court may impose for the offence is, notwithstanding any provision of this Act—

(a) \$10,000; or

(b) the maximum penalty provided by this Act or the regulations for the offence,

whichever is the lesser.

(3) Proceedings for an offence, if taken before a Local Court, may be commenced at any time up to 2 years after the commission of the offence.

(4) If proceedings for an offence are taken before the Supreme Court, that Court may impose a penalty not exceeding the maximum penalty provided by this Act or the regulations for the offence.

Institution of prosecutions

77. (1) An information for an offence against this Act or the regulations may be laid in the name of the Chief Commissioner by any officer of the Public Service employed in the administration or execution of this Act and authorised to lay informations on behalf of the Chief Commissioner.

(2) A prosecution instituted in the name of the Chief Commissioner shall, in the absence of evidence to the contrary, be taken to have been instituted with the authority of the Chief Commissioner.

(3) An officer referred to in subsection (1) is entitled to appear on behalf of the Chief Commissioner in any proceedings for an offence.

Recovery of money payable

78. Any amount payable (whether by way of licence fees, interest or penalties or otherwise) to the Chief Commissioner under this Act or the regulations may be recovered by the Chief Commissioner as a debt in a court of competent jurisdiction.

Collection of debts from third parties

79. (1) If an amount is payable (whether by way of licence fees, interest, penalties, judgment debts or costs or otherwise) to the Chief Commissioner under or by virtue of this Act or the regulations by a person (in this section called the "debtor"), the Chief Commissioner may, by notice in writing, require—

- (a) any person by whom any money is due or accruing or may become due to the debtor;
- (b) any person who holds or may subsequently hold money for or on account of the debtor;
- (c) any person who holds or may subsequently hold money on account of some other person for payment to the debtor; or
- (d) any person having authority from some other person to pay money to the debtor,

to pay to the Chief Commissioner forthwith upon the money becoming due or being held, or within such further time as the Chief Commissioner allows—

- (e) if the amount of the money so due or held or authorised to be paid does not exceed the amount payable by the debtor to the Chief Commissioner—all the money; or
- (f) if the amount of the money exceeds the amount so payable—sufficient money to pay the amount so payable.

(2) A person shall comply with a notice under this section served on the person.

Penalty: \$1,000.

(3) A copy of a notice under this section shall be served on the debtor.

(4) A person making any payment in pursuance of this section shall be taken to have been acting under the authority of the debtor and of all other persons concerned, and is by this subsection indemnified in respect of the payment.

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(5) If the Chief Commissioner receives any payment in respect of the amount payable by the debtor before payment is made by a person required under this section to make any payment, the Chief Commissioner shall forthwith notify the person accordingly.

Assistance of police

80. To the extent to which a member of the police force is not so authorised by any other law, a member of the police force is by this section authorised to provide—

- (a) the Chief Commissioner or an inspector; or
- (b) any lawful delegate of the Chief Commissioner,

with such assistance as may in any particular case be required for or in connection with the exercise of any of the functions of the Chief Commissioner, inspector or delegate.

Offences by bodies corporate

81. If a body corporate is convicted of an offence against this Act or the regulations, every person—

- (a) who is a director of the corporation; or
- (b) who is concerned in the management of the corporation,

shall be deemed to have committed the same offence if the person knowingly authorised or permitted the act or omission constituting the offence.

Service of documents by Chief Commissioner

82. (1) Any notice or other document required or authorised by this Act or the regulations to be served or given by the Chief Commissioner is duly served or given—

- (a) if delivered personally to, or if left at the last known place of residence or business in or out of the State of, the person on or to whom the notice or document is to be served or given; or
- (b) if sent by letter addressed and posted to the person on or to whom the notice or document is to be served or given at the person's last known place of residence or business in or out of the State.

(2) The provisions of this section are in addition to, and do not affect the operation of, the provisions of sections 528, 529 and 530 of the Companies (New South Wales) Code.

Regulations

83. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the Governor may make regulations for or with respect to—

(a) requiring persons, or persons of any class, specified in the regulations to furnish returns, in such form and manner and containing such information as is indicated by the regulations, relating to—

- (i) sales, purchases or stocks of, or dealings with, tobacco; and
- (ii) the situation and operation of vending machines,

and to furnish the returns to the Chief Commissioner within such time as may be so specified;

(b) the exemption, absolutely or to a specified extent, and whether or not subject to conditions, of persons from the operation of all or any specified provisions of this Act;

(c) the remission, or waiver, in whole or to a specified extent, and whether or not subject to conditions, of any fee payable under this Act; and

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

(3) A provision of a regulation may—

(a) apply generally or be limited in its application by reference to specified exceptions or factors;

(b) apply differently according to different factors of a specified kind; or

(c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(4) The regulations may impose a penalty not exceeding \$2,000 for an offence against the regulations.

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Amendment of Search Warrants Act 1985, s. 10 (Interpretation)

84. The Search Warrants Act 1985 is amended by inserting in the definition of "search warrant" in section 10, in appropriate alphabetical order, the following matter:

section 56 of the Business Franchise Licences (Tobacco) Act 1987;

Repeals

85. Each Act specified in Schedule 2 is, to the extent indicated in that Schedule, repealed.

Savings and transitional provisions

86. Schedule 3 has effect.

SCHEDULE 1

(Sec. 26 (2))

THE TRIBUNAL**Interpretation**

1. In this Schedule, "the designated person" means the person appointed under section 26 (1).

Age

2. A person of or above the age of 70 years is not eligible to be appointed as the designated person or to act as the Tribunal.

Term of office

3. Subject to this Schedule, the designated person shall hold office for such period (not exceeding 3 years) as may be specified in the instrument of his or her appointment and is eligible for re-appointment.

Illness or absence

4. The Minister may appoint a person to act as the Tribunal during the illness or absence of the designated person, and the person so appointed, while so acting, shall have and may exercise the functions of the Tribunal.

Remuneration

5. The designated person is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may determine from time to time.

SCHEDULE 1—*continued*
 THE TRIBUNAL—*continued*

Vacation of office

6. (1) The designated person shall be deemed to have vacated office if the designated person—

- (a) dies;
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (c) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- (d) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
- (e) resigns the office by instrument in writing addressed to the Minister;
- (f) attains the age of 70 years;
- (g) is retired from office by the Governor under subclause (2); or
- (h) is removed from office by the Governor under subclause (3).

(2) The designated person may, after reaching the age of 60 years and before reaching the age of 65 years, be retired from office by the Governor and, if so retired, is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.

(3) The Governor may remove the designated person from office for any reason the Governor considers sufficient.

Public Service Act

7. The Public Service Act 1979 does not apply to or in respect of the appointment of the designated person and the designated person is not, as the Tribunal, subject to that Act.

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SCHEDULE 2

(Sec. 85)

REPEALS

Business Franchise Licences (Tobacco) Act 1975 No. 63—the whole Act.

Business Franchise Licences (Tobacco) Amendment Act 1978 No. 59—the whole Act.

Miscellaneous Acts (Companies) Amendment Act 1981 No. 123—so much of Schedule 8 as amends Act No. 63, 1975.

Business Franchise Licences (Tobacco) (Administration) Amendment Act 1983 No. 16—the whole Act.

Business Franchise Licences (Tobacco) Amendment Act 1983 No. 133—the whole Act.

Statute Law (Miscellaneous Amendments) Act 1984 No. 153—so much of Schedule 16 as amends Act No. 63, 1975.

Business Franchise Licences (Tobacco) Amendment Act 1985 No. 185—the whole Act.

Business Franchise Licences (Tobacco) (Administration) Amendment Act 1985 No. 221—the whole Act.

Statute Law (Miscellaneous Provisions) Act 1986 No. 16—so much of Schedule 23 as amends Act No. 63, 1975.

Business Franchise Licences (Tobacco) Further Amendment Act 1986 No. 165—the whole Act.

Business Franchise Licences (Tobacco) Amendment Act 1986 No. 179—the whole Act.

Business Franchise Licences (Tobacco) (Application and Enforcement) Amendment Act 1986 No. 180—the whole Act.

Statute Law (Miscellaneous Provisions) Act (No. 2) 1986 No. 218—so much of Schedule 47 as amends Act No. 63, 1975.

Business Franchise Licences (Tobacco) (Information Disclosure) Amendment Act 1987—the whole Act.

SCHEDULE 3

(Sec. 86)

SAVINGS AND TRANSITIONAL PROVISIONS

Interpretation

1. In this Schedule—

“appointed day” means the day appointed and notified under section 2 (2);

SCHEDULE 3—*continued*
SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

“the 1975 Act” means the Business Franchise Licences (Tobacco) Act 1975.

Holders of offices

2. (1) A person who, immediately before the appointed day, held office as—
 - (a) Commissioner for Business Franchise Licences (Tobacco); or
 - (b) the Business Franchise Licence Fees (Tobacco) Appeals Tribunal,

under the 1975 Act shall continue to hold office, subject to this Act, as the Commissioner or the Tribunal, respectively, under this Act for the remainder of the term for which the person was appointed under the 1975 Act.

(2) A public servant who, immediately before the appointed day, was employed in connection with the administration of the 1975 Act shall, subject to the Public Service Act 1979, be employed in connection with the administration of this Act.

Existing licences

3. (1) A Business Franchise Licence (Tobacco) of any kind which was in force, immediately before the appointed day, under the 1975 Act shall continue in force, subject to this Act, as a licence of the corresponding kind.

- (2) Such a licence ceases to be in force—
 - (a) at the end of the 27th day of the month that includes the appointed day; or
 - (b) if the appointed day is the 28th, 29th, 30th or 31st day of a month—at the end of the 27th day of the following month.
- (3) For the purposes of this clause—
 - (a) a wholesale tobacco merchant's licence under the 1975 Act corresponds to a wholesaler's licence;
 - (b) a group wholesale tobacco merchant's licence under the 1975 Act corresponds to a group wholesaler's licence;
 - (c) a retail tobacconist's licence under the 1975 Act corresponds to a retailer's licence; and
 - (d) a group retail tobacconist's licence under the 1975 Act corresponds to a group retailer's licence.

Retailers' fees

4. (1) No fee is payable for a retailer's licence or a group retailer's licence which a person holds by virtue of clause 3 or for a renewed licence of the same kind in force at any time between the appointed day and 27 August 1987.

*Business Franchise Licences (Tobacco) 1987***SCHEDULE 3—*continued*****SAVINGS AND TRANSITIONAL PROVISIONS—*continued***

(2) If an application is made, by or on behalf of a person holding a licence to which subclause (1) applies, for a retailer's licence or a group retailer's licence—

- (a) having effect on and from 28 August 1987; or
- (b) having effect on and from a later date, but being the first such licence held by the person after 27 August 1987,

Part 5 applies to the licence applied for as if the relevant period for the licence were the period commencing on 1 July 1986 and ending on 31 July 1987.

Validation

5. (1) The decision of the Chief Commissioner for Business Franchise Licences (Tobacco) under the 1975 Act not to treat tobacco, for the purposes of assessing a licence fee under that Act, as having been sold in the course of tobacco wholesaling by reason only of its having been sold, on or after 1 January 1987 and before the appointed day, to the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence, is validated.

(2) Every assessment of a licence fee based on the decision referred to in subclause (1), and every matter or thing done in consequence of such an assessment and purporting to accord with the 1975 Act, is validated.

Transportation records

6. Part 8 does not apply to tobacco which was consigned, before the appointed day, for transportation into or within New South Wales.

Other savings not affected

7. Nothing in this Schedule affects any provision of the Interpretation Act 1897 or any enactment amending or replacing that Act.

Regulations

8. (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the appointed day or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of publication.

SCHEDULE 3—*continued***SAVINGS AND TRANSITIONAL PROVISIONS—*continued***

(4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule.