

1995—No. 374

**BUSINESS FRANCHISE LICENCES (TOBACCO) ACT 1987—
REGULATION**

(Business Franchise Licences (Tobacco) Regulation 1995)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Business Franchise Licences (Tobacco) Act 1987, has been pleased to make the Regulation set forth hereunder.

Michael Egan
Treasurer.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Business Franchise Licences (Tobacco) Regulation 1995.

Commencement

2 This Regulation commences on 31 August 1995.

Definitions

3. In this Regulation:

“**fee assessment**” means a fee assessment under Part 5 of the Act;

“**section 54B review**” means a review under section 54B of the Act of the Chief Commissioner’s decision on an objection to a fee assessment;

“**the Act**” means the Business Franchise Licences (Tobacco) Act 1987.

PART 2—TRIBUNAL**Application for extension of time for lodging an objection**

4. (1) An application to the Tribunal for an extension of time for lodging an objection to a fee assessment must be in writing.

(2) The hearing of the application by the Tribunal is limited to the grounds specified in the application to the Chief Commissioner for the extension.

(3) The Tribunal determines the application by recording its decision in writing and giving copies of the decision to the applicant and to the Chief Commissioner.

Review of decision on objection to a fee assessment

5. (1) The hearing of a section 54B review:

- (a) is to take place at a time and place determined by the Tribunal; and
- (b) is not open to the public unless the Tribunal, on the application of the objector, otherwise directs; and
- (c) may be from time to time adjourned by the Tribunal.

(2) The objector and the Chief Commissioner must each be given at least 21 days notice, or such shorter notice as the Tribunal on the application of the objector or the Chief Commissioner directs, of the time and place at which the hearing is to take place.

(3) A section 54B review:

- (a) may be heard in the absence of the Chief Commissioner, if the Chief Commissioner fails to appear in person or by a representative; or
- (b) may be struck out for want of prosecution by the objector.

Evidence at a review

6. In hearing a section 54B review, the Tribunal is not bound by the rules of evidence and may inform itself in such manner as it thinks fit.

Representation at a review

7. (1) The parties at the hearing of a section 54B review may each be represented by a person who is not a barrister or solicitor.

(2) A party at the hearing of a section 54B review may, with the consent of the Tribunal and the other party, be represented by a barrister or solicitor.

(3) The Chief Commissioner may, at a hearing of a section 54B review, be represented by a permanent employee of the Crown who is a barrister or solicitor.

(4) If the Crown is represented by a permanent employee of the Crown who is a barrister or solicitor, the objector at that hearing may be represented by a barrister or solicitor without obtaining the consent of the Tribunal or the Chief Commissioner.

Parties to be heard at a review

8. A section 54B review is to be determined by the Tribunal after hearing the objector or the objector's representative and, if the Chief Commissioner or the Chief Commissioner's representative appears, the Chief Commissioner or the Chief Commissioner's representative.

Determination of a review

9. The Tribunal determines a section 54B review by recording its decision in writing and giving copies of the decision to the objector and to the Chief Commissioner.

Prescribed rate of interest: sec. 54F

10. (1) For the purposes of section 54F (1) (b) of the Act, the prescribed rate of interest is the rate for the time being prescribed under section 95 (1) of the Supreme Court Act 1970 for payment of interest on a judgment debt.

(2) If an amount of interest calculated in accordance with subclause (1) is not a multiple of 1 cent, the following applies:

- (a) in a case where the amount of interest is a multiple of 0.5 cent, the amount of interest is to be increased by 0.5 cent;
- (b) in any other case, the amount of interest is to be increased or decreased, as the case requires, to the nearest multiple of 1 cent.

PART 3—EXEMPTIONS

Exemptions in respect of sales in certain areas

11. (1) The Chief Commissioner may from time to time, by order published in the Gazette:

- (a) determine the boundaries of one or more areas within the State (referred to in this clause as "designated zones") for the purposes of exemptions under this clause; and

- (b) state the extent to which a person having the benefit of such an exemption is exempt from the operation of the relevant provisions of the Act.

(2) A person who sells tobacco at a place within any designated zone is exempt, to the extent specified in the order referred to in subclause (1), from the provisions of the Act that require a fee to be paid before the Chief Commissioner may grant a licence to that person.

Other general exemptions

12. (1) The holder of a retailer's licence or a group retailer's licence is exempt from the provisions of the Act that require a fee to be paid before the Chief Commissioner may grant a subsequent licence if the fee that would otherwise be payable for the subsequent licence is only \$ 10.

(2) The holder of a retailer's licence' or a group retailer's licence, being a person who:

- (a) purchases tobacco from a vendor who is not the holder of a licence, believing the vendor to be the holder of a licence; and
- (b) obtains from the vendor an invoice specifying:
 - (i) the name and address of the vendor; and
 - (ii) the vendor's licence number,

is exempt from the provisions of the Act that require a fee to be paid before the Chief Commissioner may grant a subsequent licence, to the extent to which those provisions require the value of that tobacco to be taken into account when calculating the fee.

PART 4—MISCELLANEOUS

Expenses for witnesses before Chief Commissioner: sec. 57

13. (1) The scales of expenses allowable to witnesses in civil proceedings in the District Court are prescribed as the scales of expenses allowable to persons whose attendance is required under section 57 of the Act.

(2) Those scales of expenses do not apply to the person, or to an employee or representative of the person, whose business or liability (as referred to in section 57 (1) (c) or (d) of the Act) is being investigated.

Records to be kept: sec. 66

14. (1) For the purposes of section 66 of the Act, the prescribed records to be kept by a person who carries on the business of selling tobacco are as set out in this clause.

(2) For each purchase of tobacco, the records must include:

- (a) separate records showing:
 - (i) the name, address and licence number, if any, of the vendor; and
 - (ii) the date of the purchase; and
 - (iii) the quantity and value of each brand of tobacco purchased; and
- (b) in the case of tobacco delivered by road vehicle, a copy of the transportation record for the tobacco so delivered.

(3) In the case of a person who sells tobacco by wholesale, the records must include separate records showing:

- (a) the value of tobacco sold each day (otherwise than by means of vending machines) which is not sold for the purpose of resale; and
- (b) the tobacco held in stock at the end of each month; and
- (c) for each invoice issued under section 66 (2) (a) of the Act:
 - (i) the name and address of the purchaser; and
 - (ii) the date of the sale; and
 - (iii) the quantity and value of each brand of tobacco sold; and
- (d) the total value of tobacco sold each month by wholesale:
 - (i) to licensed wholesalers; and
 - (ii) to persons other than licensed wholesalers.

(4) In the case of a person who sells tobacco by retail, the records must include separate records showing, for each invoice issued under section 66 (3) (a) of the Act:

- (a) the name and address of the purchaser; and
- (b) the date of the sale; and
- (c) the quantity and value of each brand of tobacco sold.

(5) In the case of a person who sells tobacco through vending machines, the records must include separate records showing:

- (a) the address, and the name of the occupier, of any premises on which the person operates a tobacco vending machine; and
- (b) the number of tobacco vending machines operated by the person on the premises; and
- (c) the number of packets of each brand of tobacco sold by means of each tobacco vending machine operated by the person in each month; and

- (d) the total value of sales of tobacco made by means of each tobacco vending machine operated by the person in each month.
- (6) For each sale of tobacco in excess of the prescribed quantity in which the tobacco is delivered by road vehicle, the records must include a copy of the transportation record for the tobacco so delivered.
- (7) For the purposes of subclauses (2) (a), (3) (c) and (4), the records may be in the form of invoices or copies of invoices containing the required particulars.
- (8) All records required to be kept under this clause must be made in the English language, and the entries in each record must be arranged in chronological order according to the time of each purchase, sale or other matter to which the record relates.
- (9) In this clause, “**transportation record**” means a record that is required by section 63 of the Act to be carried on a road vehicle by which tobacco is being transported.

Amendment of the Business Franchise Licences (Tobacco) Regulation 1987

15. The Business Franchise Licences (Tobacco) Regulation 1987 is amended:

- (a) by inserting in clause 1 after the word “(Tobacco)” the words “(Transitional Provisions)”;
- (b) by omitting Parts 2 and 3, clauses 11–13 and Schedule 1.

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EXPLANATORY NOTE

The object of this Regulation is to repeal and remake, without any changes in substance, most of the provisions of the Business Franchise Licences (Tobacco) Regulation 1987. The new Regulation:

- (a) deals with applications to, and procedure before, the Business Franchise Licence Fees (Tobacco) Appeals Tribunal and other matters relating to the business of the Tribunal (Part 2); and
- (b) provides for exemptions from provisions of the Business Franchise Licences (Tobacco) Act 1987 relating to the payment of certain fees (Part 3); and
- (c) prescribes a scale of expenses to be allowed to persons required to appear before the Chief Commissioner for Business Franchise Licences (Tobacco) (clause 13); and
- (d) specifies the records to be kept by persons carrying on the business of selling tobacco (clause 14); and
- (e) amends the Business Franchise Licences (Tobacco) Regulation 1987 to rename it and to remove all the provisions other than the definitions and transitional provisions (clause 15); and
- (f) contains formal provisions (Part 1).

This Regulation is made under the Business Franchise Licences (Tobacco) Act 1987, including section 83 (the general regulation making power) and various other sections specified in the Regulation.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
