



New South Wales

# **Business Franchise Licences (Tobacco) Amendment Act 1996 No 119**

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New South Wales

# **Business Franchise Licences (Tobacco) Amendment Act 1996 No 119**

Act No 119, 1996

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An Act to amend the *Business Franchise Licences (Tobacco) Act 1987* to make further provision with respect to the regulation and control of the distribution, sale and purchase of tobacco; to amend the *Revenue Laws (Reciprocal Powers) Act 1987* with respect to exchange of information with the Australian Customs Service; and for other purposes. [Assented to 3 December 1996]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Business Franchise Licences (Tobacco) Amendment Act 1996*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Business Franchise Licences (Tobacco) Act 1987 No 93**

The *Business Franchise Licences (Tobacco) Act 1987* is amended as set out in Schedule 1.

**4 Amendment of Revenue Laws (Reciprocal Powers) Act 1987 No 86**

The *Revenue Laws (Reciprocal Powers) Act 1987* is amended as set out in Schedule 2.

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## Schedule 1 Amendment of Business Franchise Licences (Tobacco) Act 1987

(Section 3)

### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

*licence period* means the period during which a licence remains in force.

*officer*, in relation to a body corporate, has the same meaning as in the *Corporations Law*.

*tobacco regulation legislation* means:

- (a) this Act and the regulations, and
- (b) Part 6 of the *Public Health Act 1991* and any regulations ancillary to that Part, and
- (c) the *Tobacco Advertising Prohibition Act 1991* and the regulations under that Act, and
- (d) the *Tobacco Advertising Prohibition Act 1992* of the Commonwealth and any statutory instruments made under that Act.

### [2] Section 3 (2)

Omit the subsection. Insert instead:

- (2) A reference in this Act to a person who sells tobacco, or to a person who carries on a business of selling tobacco, does not include a reference to:
  - (a) a person who sells tobacco or carries on such a business as an employee of another person, or
  - (b) a person who sells tobacco or carries on such a business as agent for another, where the agency is evidenced in writing duly executed by the principal.

**[3] Section 3A**

Insert after section 3:

**3A Regulatory objects of this Act**

- (1) Parliament endorses the following guiding principles as the rationale for regulating the use, supply, availability, storage, control and promotion of tobacco products:
  - (a) Tobacco use is recognised as the largest single preventable cause of death in Australia, and warrants restrictive legislation.
  - (b) There is no known safe level of tobacco use.
  - (c) The extent of the adverse health effects of smoking requires strong action to deter people from starting smoking, particularly young people, and to encourage existing smokers to stop smoking.
  - (d) The availability of tobacco is a major determinant of the level of consumption and therefore influences the level of tobacco-related illness and death.
  - (e) It is desirable to discourage the use of tobacco in all its forms and to recover from consumers of tobacco products an appropriate contribution to State revenues on account of the costs incurred by the public health system in treating persons with tobacco-related illnesses.
  - (f) As tobacco is a legal product that has been available for much longer than its detrimental health effects have been known, it is inappropriate to ban the product completely.
- (2) The regulatory objects of this Act in the imposition of tobacco licensing fees therefore include:
  - (a) encouragement of non-smokers, particularly young people, not to start smoking, and

- (b) encouragement of and assistance to smokers to give up smoking, using the economic disincentive of substantially increasing the cost of smoking, and
- (c) prevention of smoking-related illnesses and promotion of good health, and
- (d) recovery from licensees of an appropriate contribution to State revenues on account of the costs incurred by the public health system in treating persons suffering tobacco-related illness.

**[4] Section 21 Chief Commissioner**

Omit “Secretary of the Department of Finance” from section 21 (3).  
Insert instead “Executive Director, Office of State Revenue”.

**[5] Section 22 Deputy Chief Commissioner**

Omit “Deputy Secretary of the Department of Finance” from section 22 (2).  
Insert instead “Director, Revenue Advisory Services, Office of State Revenue”.

**[6] Sections 23 (1) and 24 and Schedule 3, clause 2 (2)**

Omit “*Public Service Act 1979*” wherever occurring.  
Insert instead “*Public Sector Management Act 1988*”.

**[7] Sections 30A, 30B**

Insert after section 30:

**30A Limitation on sales to unlicensed persons**

- (1) A licensee must not:
  - (a) sell tobacco to an unlicensed person on any single occasion in an amount that exceeds the prescribed quantity, or

- (b) sell tobacco to an unlicensed person on two or more occasions during any licence period in amounts that, in the aggregate, exceed the prescribed quantity.

Maximum penalty: 100 penalty units.

- (2) In any proceedings for an offence under this section, it is a defence for the person charged to satisfy the court that the person believed on reasonable grounds that the buyer of the tobacco was licensed.

### **30B Limitation on purchases from unlicensed persons**

- (1) A licensee must not:
  - (a) buy tobacco from an unlicensed person on any single occasion in an amount that exceeds the prescribed quantity, or
  - (b) buy tobacco from an unlicensed person on two or more occasions during any licence period in amounts that, in the aggregate, exceed the prescribed quantity.

Maximum penalty: 100 penalty units.

- (2) In any proceedings for an offence under this section, it is a defence for the person charged to satisfy the court that the person believed on reasonable grounds that the seller of the tobacco was licensed.

[8] Section 33A

Insert after section 33:

33A Sale of tobacco by retiring trader

- (1) A person who:
  - (a) declares under section 50A an intention to cease carrying on a business of buying or selling tobacco, or

- (b) does not make a declaration as and when required by that section,

must not, during either of the licence periods in respect of which the declaration was made or ought to have been made, sell tobacco at a price less than 195 per cent of its wholesale value as determined for the time being under section 45.

- (2) A person who sells tobacco in contravention of this section is guilty of an offence and liable to a penalty not exceeding four times the wholesale value of the tobacco concerned, as for the time being determined under section 45.

**[9] Section 36**

Omit the section. Insert instead:

**36 Grant or refusal of licences**

- (1) When application has been duly made to the Director of Business Licences, and:
- (a) particulars required under section 37, and
  - (b) a completed form of declaration under section 50A, and
  - (c) the fee assessed under this Part,
- have been received by the Chief Commissioner, the Chief Commissioner may authorise the Director to grant the applicant a licence or may, on any of the grounds mentioned in this section, refuse to do so.
- (2) A group licence, if granted, is to be issued in the name of all members of the group on whose behalf application was made.
- (3) The Chief Commissioner may refuse to authorise the granting of a licence if:
- (a) the applicant for the licence, or
  - (b) in the case of a group licence, any member of the group, or



- (c) in the case of an applicant that is a body corporate, any director or officer of the applicant, or any shareholder who owns or controls more than 15 per cent of the share capital or voting rights of the applicant, or
  - (d) in the case of an applicant who proposes to hold the licence as trustee for another, any manager or proposed manager of the relevant trust,
- has at any time been convicted of an offence under any tobacco regulation legislation or any similar offence under the law of the Commonwealth or of another State or Territory, or has during the previous 5 years been convicted of an offence involving dishonesty or an offence punishable by imprisonment for 6 months or more (or, in the case of an offence committed outside the State, that would have been an offence so punishable if committed in New South Wales).
- (4) The Chief Commissioner may refuse to authorise the granting of a licence to a natural person who is an undischarged bankrupt or to a body corporate that is in liquidation.
- (5) If the Chief Commissioner, for the purposes of this Act, requires particulars to be furnished under section 37 (2) or 37B by any person concerning an applicant for a licence, and that person will not, without authorisation from the applicant, furnish those particulars, the Chief Commissioner may refuse to authorise the granting of a licence to the applicant unless the applicant provides the requisite authorisation.
- (6) The Chief Commissioner may refuse to authorise the granting of a licence if the Chief Commissioner is satisfied that:
  - (a) the applicant, having held a licence previously, has contravened one or more of the conditions of that licence, or

- (b) the applicant, in order to obtain the licence or any previous licence, furnished information to the Chief Commissioner that the licensee knew to be false or misleading in a material particular, or
  - (c) the issue of the licence would be contrary to the public interest, having regard to the regulatory objects of this Act.
- (7) The Chief Commissioner may refuse to authorise the granting of a licence to an applicant whose licence in respect of the current or any previous licence period has been suspended or cancelled.
- (8) A person whose application for a licence is refused is to be informed, by notice in writing, of the refusal and of the grounds on which the refusal is based.
- (9) A person whose application for a licence is refused must not sell any tobacco on hand except to the holder of a wholesaler's licence.

**[10] Section 36A Conditions of licences**

Omit section 36A (1). Insert instead:

- (1) It is a condition of every licence that the licensee must comply with this Act and the regulations and with other tobacco regulation legislation. A licence is, in addition, subject to such conditions as the Chief Commissioner thinks fit to impose.

**[11] Section 37 (2) and (3)**

Omit the subsections. Insert instead:

- (2) The Chief Commissioner may require the applicant to furnish such other particulars as may reasonably be required for proper consideration by the Chief Commissioner of the manner in which any of the powers of the Chief Commissioner under section 36 should be exercised in relation to the applicant, including:

- (a) in the case of an applicant that is a body corporate:
  - (i) particulars concerning shareholders and their ownership and control of the applicant's capital and voting rights, and
  - (ii) particulars concerning directors and officers of the applicant, and
- (b) in the case of an applicant proposing to hold the licence as trustee for another, particulars of the proposed managers of the relevant trust.

**[12] Section 378 Particulars to be notified by licensees**

Omit section 37B (1). Insert instead:

- (1) The Chief Commissioner may require any licensee to furnish such particulars as may reasonably be required for proper consideration by the Chief Commissioner of whether any of the powers of the Chief Commissioner under section 50 should be exercised in relation to the licensee, including:
  - (a) in the case of a licensee that is a body corporate:
    - (i) particulars concerning shareholders and their ownership and control of the licensee's capital and voting rights, and
    - (ii) particulars concerning directors and officers of the licensee, and
  - (b) in the case of a licensee that holds the licence as trustee for another, particulars of the managers of the relevant trust.

**[13] Section 40 Grant of further licence**

Omit "section 36 (2A)" from section 40 (1) (b).  
Insert instead "section 36 (8)".

**[14] Section 41 Fees**

Omit "\$10" wherever occurring in section 41(1).  
Insert instead "\$100".

**[15] Section 49**

Omit the section. Insert instead:

**49 Cessation of trade**

- (1) A licensee who has ceased to carry on any business of buying or selling tobacco must surrender any licence held by the licensee to the Chief Commissioner within 30 days after cessation of business.  
Maximum penalty: 10 penalty units.
- (2) If a licensee has not carried on a business of buying or selling tobacco for 58 consecutive days, any licence held by the licensee is taken to be cancelled.

**[16] Section 50 Suspension and cancellation of licences**

Omit section 50 (1) and (2). Insert instead:

- (1) The Chief Commissioner may, by notice served on a licensee, cancel the licence with effect from a specified date:
  - (a) if:
    - (i) the licensee, or
    - (ii) in the case of a group licence, any member of the group, or
    - (iii) in the case of a licensee that is a body corporate, any director or officer of the licensee, or any shareholder who owns or controls more than 15 per cent of the share capital or voting rights of the licensee, or
    - (iv) in the case of a licensee who holds the licence as trustee for another, any manager of the relevant trust,has at any time been convicted of an offence under any tobacco regulation legislation or any similar offence under the law of the Commonwealth or of another State or Territory, or has during the previous 5 years been convicted of an offence involving dishonesty or an offence punishable by imprisonment for 6 months or more (or, in the case

- of an offence committed outside the State, that would have been an offence so punishable if committed in New South Wales), or
- (b) if the licensee:
    - (i) being a natural person, is declared bankrupt, or
    - (ii) being a body corporate, goes into liquidation or ceases to exist, or
  - (c) if the Chief Commissioner, for the purposes of this Act, requires particulars to be furnished under section 37B by any person concerning the licensee and:
    - (i) that person will not, without authorisation from the licensee, furnish those particulars, and
    - (ii) the licensee will not provide the requisite authorisation, or
  - (d) if the Chief Commissioner is satisfied that to cancel the licence would be in the public interest, having regard to the regulatory objects of this Act.
- (2) The Chief Commissioner may, by notice served on a licensee, suspend the licence with effect from a specified date if the Chief Commissioner is satisfied that:
- (a) the licensee (or, in the case of a group licence, any member of the group) has contravened a condition to which the licence is subject, or
  - (b) the licensee, in order to obtain the licence or any previous licence, furnished information to the Chief Commissioner that the licensee knew to be false or misleading in a material particular.

**[17] Section 50 (6)**

Insert after section 50 (5):

- (6) A person whose licence has been cancelled or suspended must not sell any tobacco on hand except to the holder of a wholesaler's licence.

Maximum penalty: 100 penalty units.

**[18] Section 50A**

Insert after section 50:

**50A Applicant for licence to declare future trading intentions**

- (1) An applicant for a wholesaler's licence must declare, at the time of applying for a licence (or, in the case of an applicant who already holds a licence, at the time the fee referred to in section 40 (1) is payable), whether or not the applicant intends to carry on a business of buying or selling tobacco during either or both of the two licence periods next following the expiry of the licence for which application is then being made.
- (2) The declaration is to be made in a form approved by the Chief Commissioner and is to specify, in the case of a declared intention to cease to carry on business, the anticipated date of cessation.
- (3) Any licence held by an applicant who, by a declaration under this section, indicates an intention to cease to carry on business is taken to be cancelled on the date specified in the declaration as the anticipated date of cessation, unless the declaration is sooner withdrawn by notice in writing to the Chief Commissioner.
- (4) In the case of an application for a group wholesaler's licence:
  - (a) a reference in subsection (1) to the intentions of the applicant is a reference to the intentions of each member of the group on whose behalf the application is being made, and
  - (b) each such member is taken, for the purposes of section 33A, to have made the declaration on its own behalf, and
  - (c) subsection (3) applies as though a reference to the cancellation of a licence were a reference to its ceasing to be in force as regards any member of the group in respect of whom an anticipated date of cessation of business has been declared.

**[19] Section 55 Access to premises, records etc**

Insert after section 55 (9):

- (10) In order to ascertain, for any of the purposes of this Act or the regulations, whether an offence referred to in section 36 (3) or section 50 (1) has been committed by any person, the Chief Commissioner may obtain reports from and make enquiries of
- (a) the New South Wales Police Service or the police force of the Commonwealth or of another State or Territory, and
  - (b) the Director-General of the Department of Health, and
  - (c) the Chief Executive Officer of the Australian Customs Service, and
  - (d) any person or body prescribed by the regulations,
- and all officers and authorities of the State are authorised to produce any report requested and answer any enquiry made by the Chief Commissioner and certified in writing by the Chief Commissioner to be a request or enquiry under this subsection.

**[20] Section 57 Power to require attendance and evidence**

Insert “(including interstate transactions or activities, if any, in connection with any such business)” after “tobacco” in section 57 (1) (c).

**[21] Section 57 (1) (f)**

Omit “section 36”. Insert instead “Part 5”.

**[22] Section 60 Forfeiture of tobacco**

Omit “Minister” wherever occurring in section 60 (2).  
Insert instead “Chief Commissioner”.

**[23] Section 62A**

Insert before section 63:

**62A Meaning of “vehicle” in this Part**

In this Part, vehicle includes any road or rail vehicle, any aircraft and any vessel.

**[24] Section 63 Transportation records**

Omit section 63 (1). Insert instead:

- (1) While any tobacco in a quantity that exceeds the prescribed quantity:
  - (a) is being transported by vehicle in New South Wales, or
  - (b) is, at a place in New South Wales, being transferred from one vehicle to another or being unloaded from and reloaded on to the same vehicle, for further transportation, or
  - (c) is being temporarily stored, in the course of transportation, in premises in New South Wales that are not licensed premises,

a record complying with subsection (2) must be carried at all times by the person having custody or control of the tobacco during such transportation, transfer, loading, unloading or storage.

**[25] Section 63 (2) (d) and (e)**

Omit “the driver is transporting the tobacco” wherever occurring. Insert instead “the tobacco is being transported”.

**[26] Section 63 (4)**

Omit the subsection. Insert instead:

- (4) The Chief Commissioner or an inspector may at any time require a person reasonably suspected of having the custody or control of any tobacco to which subsection (1) applies to produce the record for inspection.



**[27] Section 63 (6)**

Omit “driver of a road vehicle”.

Insert instead “person having the custody or control of tobacco to which subsection (1) applies”.

**[28] Section 63 (6)**

Omit “the driver knows”. Insert instead “the person knows”.

**[29] Section 63 (7)**

Insert “in relation to a road vehicle” after “section”.

**[30] Section 63 (7)**

Omit “a vehicle”. Insert instead “the vehicle”.

**[31] Section 63 (9)**

Insert after section 63 (8):

- (9) If a record is not carried as required by subsection (1) in relation to any tobacco, the owner of the tobacco is guilty of an offence and liable to a penalty not exceeding 100 penalty units.

**[32] Section 64**

Omit the section. Insert instead:

**64 Temporary custody**

- (1) If a record referred to in section 63 is not produced as required by that section, or if in purported compliance with a requirement under that section a record is produced that the Chief Commissioner or an inspector reasonably believes to be false or misleading in a material particular, the Chief Commissioner or the inspector may take the tobacco into custody.

- (2) In the case of tobacco being transported in a road vehicle, the Chief Commissioner or the inspector may, for the purpose of taking the tobacco into custody, 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.
- (3) When tobacco is taken into custody in accordance with this section, a notice to that effect is to be given by the Chief Commissioner or the inspector to the person from whose custody it is taken. The notice is to state the reason why the tobacco is taken into custody.

**[33] Sections 68A, 68B**

Insert after section 68:

**68A Register of licensees**

- (1) The Chief Commissioner is to maintain a register of licensees, containing the following particulars in respect of each licensee:
  - (a) the name (and any trading name, if different) of the licensee,
  - (b) the address of any licensed premises at which tobacco is sold to the public,
  - (c) the type of licence held,
  - (d) the conditions in force for the time being in relation to the licence,
  - (e) in the case of a licensee that is a body corporate, the names of the directors and officers of the licensee, and of any shareholder who owns or controls more than 15 per cent of the share capital or voting rights of the licensee,
  - (f) in the case of a licensee that holds the licence as trustee for another, the names of the managers of the relevant trust,

- (g) in the case of a licensee who sells tobacco by means of a vending machine, the number of vending machines,
  - (h) such other particulars as the regulations may prescribe.
- (2) On payment of a fee determined by the Chief Commissioner, information extracted from the register may be provided to members of the public.

**68B Licence to be displayed in licensed premises**

A licensee must display, in some prominent place at each of the licensed premises where tobacco is sold to the public, a copy of the licence.

Maximum penalty: 10 penalty units.

**[34] Section 69 Disclosure of information**

Omit section 69 (2A). Insert instead:

- (2A) The Chief Commissioner may, if of the opinion that it is necessary to do so for the purpose of the administration or execution of any of the provisions of the tobacco regulation legislation, disclose information or publish a record to the Director-General of the Department of Health, the Chief Executive Officer of the Australian Customs Service or any prescribed officer or authority of the State, the Commonwealth or another State or Territory.

**[35] Schedule 1 The Tribunal**

Omit “*The Public Service Act 1979*” from clause 7.  
Insert instead “*Part 2 of the Public Sector Management Act 1988*”.

**[36] Schedule 1, clause 7**

Omit “that Act”. Insert instead “that Part”.

**[37] Schedule 3 Savings and transitional provisions**

Insert at the end of clause 1A (1):

*Business Franchise Licences (Tobacco) Amendment Act 1996*

**[38] Schedule 3, Part 5**

Insert after Part 4:

**Part 5 Provisions consequent on the Business Franchise Licences (Tobacco) Amendment Act 1996**

**12 Saving of rights of licence applicants in relation to previous convictions**

- (1) Section 36, as in force immediately before the date of commencement of Schedule 1 [9] to the *Business Franchise Licences (Tobacco) Amendment Act 1996*, continues to apply to applications for licences made before that date.
- (2) Section 36, as re-enacted by the *Business Franchise Licences (Tobacco) Amendment Act 1996*, does not apply to convictions for offences referred to in section 36 (3) that were committed before that date, other than:
  - (a) offences under section 59 of the *Public Health Act 1991*, or
  - (b) offences under this Act or the regulations, of which the applicant for the licence was convicted after 26 April 1992 (being the date of commencement of Schedule 2 [17] to the *State Revenue Legislation (Further Amendment) Act 1992*).

**13 Particulars of shareholders**

Section 37 (2), as inserted by the *Business Franchise Licences (Tobacco) Amendment Act 1996*, applies to an application whether made before or after the commencement of Schedule 1 [11] to that Act.

**14 Saving of rights of licensees in relation to previous convictions**

Section 50, as amended by the *Business Franchise Licences (Tobacco) Amendment Act 1996*, does not apply to convictions for offences referred to in section 50 (1) that were committed before the commencement of Schedule 1 [16] to that Act, other than:

- (a) offences under section 59 of the *Public Health Act 1991*, or
- (b) offences under this Act or the regulations.

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## **Schedule 2    Amendment of Revenue Laws (Reciprocal Powers) Act 1987**

(Section 4)

### **Section 12 Provision of information to certain Commonwealth and State officers**

Insert after section 12 (1) (e):

- (f)    the Chief Executive Officer of the Australian  
       Customs Service for the purposes of the *Customs  
       Act 1901* of the Commonwealth.

[Minister's second reading speech made in—  
Legislative Assembly on 13 November 1996  
Legislative Council on 27 November 1996]