

[Act 1996 No 119]



New South Wales

Business Franchise Licences (Tobacco) Amendment Bill 1996

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Business Franchise Licences (Tobacco) Act* ██████████
 - (i) to declare the regulatory objects of that Act and indicate its place in the scheme of regulation and control of tobacco products, and
 - (ii) to add to the grounds on which the Chief Commissioner for Business Franchise Licences (Tobacco) may refuse to authorise the issue of a licence under that Act or may suspend or cancel a licence, and
 - (iii) to implement other measures for the regulation and control of the distribution, sale and purchase of tobacco, and
 - (b) to amend the *Revenue Laws (Reciprocal Powers) Act 1987* to empower the Chief Commissioner to engage in reciprocal exchange of information with the Australian Customs Service.
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Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Business Franchise Licences (Tobacco) Act 1987* set out in Schedule 1.

Clause 4 is a formal provision giving effect to an amendment to the *Revenue Laws (Reciprocal Powers) Act 1987* set out in Schedule 2.

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

“Tobacco regulation legislation” and other terms

Schedule 1 [1] inserts a definition of tobacco regulation *legislation* into section 3 of the Act. The definition sets out current legislative measures, State and Federal, by which the use, supply, availability, storage, control and promotion of tobacco products are regulated. The definition also has significance in relation to other amendments proposed by the Bill. Schedule 1 [1] also inserts definitions of *licence period* and of *officer* (in relation to a body corporate).

Tobacco sales agents

Schedule 1 [2] amends section 3 of the Act so that in future a person who claims to be selling tobacco, or carrying on a business for that purpose, as agent for another will be liable under the Act to the same extent as his or her principal unless the agency is duly evidenced in writing.

Regulatory objects of the Business Franchise Licences (Tobacco) Act 1987

Schedule 1 [3] inserts a new section 3A into the Act, stating its regulatory objects and explaining the place of the Act in the legislative scheme of tobacco control.

Transactions with unlicensed persons

Schedule 1 [7] inserts new sections 30A and 30B into the Act, which prohibit the sale to, or purchase from, an unlicensed person of more than the prescribed amount of tobacco (currently 3,500 cigarettes or the approximate equivalent in other forms).

Licensing

Schedule 1 [9] repeals and re-enacts section 36 of the Act, which deals with the grant or refusal of licences. The effect is to add to the available grounds on which a licence application may be refused at the discretion of the Chief Commissioner. The additional grounds include:

- (a) that the applicant has been convicted of an offence under the tobacco regulation legislation, or any similar offence in another State or Territory, and
- (b) that the applicant is a bankrupt individual or a body corporate in liquidation.

Schedule 1 [10] amends section 36A of the Act so as to provide that it is a condition of every licence that the licensee must comply with the tobacco regulation legislation.

Schedule 1 [16] amends section 50 of the Act so as to enlarge the available grounds on which a licence under the Act may be cancelled. The effect of the amendments is to make the grounds of cancellation parallel to the grounds on which a licence application may be refused under the re-enacted section 36.

Schedule 1 [11]–[13] and [21] make consequential amendments.

Licence fees

Schedule 1 [14] amends section 41 of the Act so as to raise the “flat fee” component of a licence fee from \$10 to \$100.

Cessation of business

Schedule 1 [15] repeals and replaces section 49 of the Act, which currently requires a licensee who ceases to carry on the business authorised by the licence to notify the Director of Business Licences within 30 days. The new section will effectively cancel a licence at the end of a period of 58 days after trading has ceased.

Sale of stock held by licensee whose licence is cancelled

Schedule 1 [17] amends section 50 of the Act so as to provide that a licensee whose licence has been cancelled or suspended may only sell tobacco to a licensed wholesaler.

Outgoing licensees

The Bill proposes amendments directed at reducing the availability of discount-price tobacco on the market.

Schedule 1 [18] inserts a new section 50A into the Act, which requires an applicant for a tobacco wholesaler's licence or for a further such licence to declare, at the time an application for it is made, whether it is the applicant's intention to carry on a business of buying or selling tobacco during either or both of the two licence periods following the expiry of the licence then being applied for.

A trader who declares that trading will cease (so that a further licence will not be sought) is prohibited from selling tobacco at a price below a determined amount (**Schedule 1 [8]**, proposed section 33A).

Enforcement of the tobacco regulation legislation

Schedule 1 [19] amends section 55 of the Act so as to provide that the Chief Commissioner may obtain reports from other government agencies such as the Department of Health, or from interstate government agencies, so as to ascertain, for licensing purposes, whether a licensee or applicant for a licence has committed any offence under the tobacco regulation legislation or similar interstate legislation.

Schedule 1 [34] amends section 69 of the Act so as to allow the Chief Commissioner to disclose to State or Federal authorities, without contravention of the Act, records or information held by the Chief Commissioner.

Other amendments

Schedule 1 [4]–[6], [35] and **[36]** update references to certain office holders and to a repealed Act. (The *Administrative Changes (State Revenue) Order 1994* provides for the construction of references to the Secretary and Deputy Secretary of the former Department of Finance.)

Schedule 1 [20] amends section 57 of the Act so as to make it clear that the powers of the Chief Commissioner to investigate the activities of any person in relation to a business of tobacco sales, transport or distribution include power to investigate interstate activities in connection with such a business.

Schedule 1 [22] amends section 60 of the Act so as to allow the Chief Commissioner to dispose of tobacco that has been forfeited under the Act. The power of disposal is currently vested in the Minister.

Schedule 1 [24]–[31] amend section 63 of the Act so as to require records relating to transportation of tobacco to be carried in a vehicle, of whatever kind (ie road vehicle, aircraft or vessel), in which tobacco is transported. At present the requirement relates only to road vehicles. **Schedule 1 [23]** makes a consequential amendment.

Schedule 1 [32] repeals and replaces section 64 of the Act as a consequence of the amendments made to section 63.

Schedule 1 [33] inserts new sections 68A and 68B into the Act. The new section 68A requires the Chief Commissioner to maintain a register of licensees. Members of the public will have access to the information recorded in the register. The new section 68B requires a licensee to display a copy of the licence at premises where tobacco is sold to the public.

Schedule 1 [37] and **[38]** enact certain savings, and provide for any further savings or transitional provisions that may be necessary, in relation to the amendments proposed by the Bill.

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

Schedule 2 amends section 12 of the *Revenue Laws (Reciprocal Powers) Act 1987* empower the Commissioner to exchange information with the Australian Customs Service.