



AUSTRALIAN CAPITAL TERRITORY

Business Franchise (Tobacco and Petroleum Products) (Amendment) Act 1995

No. 22 of 1995

An Act to amend the *Business Franchise (Tobacco and Petroleum Products) Act 1984*

[Notified in ACT Gazette S215: 30 August 1995]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Business Franchise (Tobacco and Petroleum Products) (Amendment) Act 1995*.

Commencement

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Principal Act

3. In this Act, “Principal Act” means the *Business Franchise (Tobacco and Petroleum Products) Act 1984*.¹

Interpretation

4. Section 3 of the Principal Act is amended by adding at the end the following subsections:

“(9) In this Act—

- (a) a reference to tobacco sold in the course of tobacco wholesaling or tobacco retailing shall be read as including—
 - (i) tobacco supplied for sale; and
 - (ii) tobacco supplied by way of exchange or gift; and
- (b) a reference to tobacco purchased in the course of tobacco wholesaling or tobacco retailing shall be read as including—
 - (i) tobacco received for sale; and
 - (ii) tobacco received by way of exchange or gift.

“(10) In this Act—

- (a) a reference to a petroleum product sold in the course of petroleum wholesaling or petroleum retailing shall be read as including—
 - (i) a petroleum product supplied for sale; and
 - (ii) a petroleum product supplied by way of exchange or gift; and
- (b) a reference to a petroleum product purchased in the course of petroleum wholesaling or petroleum retailing shall be read as including—
 - (i) a petroleum product received for sale; and
 - (ii) a petroleum product received by way of exchange or gift.

“(11) For the purposes of this Act—

- (a) a sale of tobacco made outside the Territory in the course of tobacco wholesaling or tobacco retailing; or
- (b) a sale of a petroleum product made outside the Territory in the course of petroleum wholesaling or petroleum retailing;

shall be taken to have been made in the Territory if the terms (whether expressed or implied) of the sale or of any contract for the sale—

- (c) require either party to deliver the tobacco or petroleum product, or arrange its delivery, into or within the Territory; or

- (d) contemplate delivery of the tobacco or petroleum product into or within the Territory.

“(12) Subsection (11) ceases to have effect on the expiration of the period of 2 years commencing on the day on which section 4 of the *Business Franchise (Tobacco and Petroleum Products) (Amendment) Act 1995* commences.”.

Insertion

5. Before section 24 of the Principal Act the following section is inserted in Division 1 of Part III:

Selling tobacco or petroleum products without licence

“23. (1) In this section—

‘sell’ includes exchange, expose for sale or exchange and have in possession or control for sale or exchange.

“(2) A person shall not sell tobacco unless the person is the holder of a tobacco licence.

“(3) A person shall not sell a petroleum product unless the person is the holder of a petroleum products licence.

Penalty for contravention of subsection (2) or (3):

- (a) in the case of a body corporate—250 penalty units;
- (b) in the case of a natural person—50 penalty units.”.

Tobacco wholesaling or retailing—offences

6. Section 24 of the Principal Act is amended—

- (a) by inserting after subsection (1) the following subsection:

“(1A) In proceedings for an offence against subsection (1), a person who has possession or control of a quantity of tobacco that exceeds a quantity determined by the Minister by notice in the *Gazette* shall be presumed to be carrying on tobacco wholesaling but the presumption is rebuttable.”; and

- (b) by adding at the end the following subsection:

“(5) A determination referred to in subsection (1A) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”.

Fees—tobacco licences

7. Section 28 of the Principal Act is amended—

- (a) by omitting paragraphs (1) (a), (b), (c) and (d) and substituting the following paragraphs:

- “(a) for a wholesale tobacco merchant’s licence—the sum of—
- (i) the specified amount in respect of each premises at which tobacco wholesaling is to be carried on in accordance with the licence; and
 - (ii) an amount equal to the specified percentage of the value of tobacco sold by the applicant in the course of tobacco wholesaling during the relevant period;
- (b) for a group wholesale tobacco merchant’s licence—the sum of—
- (i) the specified amount in respect of each premises at which tobacco wholesaling is to be carried on in accordance with the licence by a member of the group of wholesaler tobacco merchants; and
 - (ii) an amount equal to the specified percentage of the value of tobacco sold in the course of tobacco wholesaling during the relevant period by all members of the group of wholesale tobacco merchants of which the applicant is a member (whether the application was made by them or on their behalf and whether they were members of that group during the whole or any part of the relevant period);
- (c) for a retail tobacconist’s licence—the sum of—
- (i) the specified amount in respect of each premises at which tobacco retailing is to be carried on in accordance with the licence; and
 - (ii) an amount equal to the specified percentage of the value of tobacco purchased by the applicant in the course of tobacco retailing during the relevant period;
- (d) for a group retail tobacconist’s licence—the sum of—
- (i) a fee of the specified amount in respect of each premises at which tobacco retailing is to be carried on in accordance with the licence by a member of the group of tobacco retailers; and

- (ii) an amount equal to the specified percentage of the value of tobacco purchased in the course of tobacco retailing during the relevant period by all members of the group of retail tobacco merchants of which the applicant is a member (whether the application was made by them or on their behalf and whether they were members of that group during the whole or any part of the relevant period).”; and
- (b) by omitting subsection (1A) and substituting the following subsections:
 - “(1A) A reference in paragraph (1) (a) or (b) to the value of tobacco sold shall be read as not including the value of tobacco sold to the holder of a wholesale tobacco merchant’s licence or a group wholesale tobacco merchant’s licence.
 - “(1B) A reference in paragraph (1) (c) or (d) to the value of tobacco purchased shall be read as not including the value of tobacco—
 - (a) purchased by the applicant from the holder of a tobacco licence; and
 - (b) in respect of which a licence fee has been paid or is payable by the holder of that licence.”.

Fees—petroleum products licences

8. Section 31 of the Principal Act is amended—

- (a) by inserting in paragraph (1) (a) “in respect of each premises at which petroleum wholesaling or petroleum retailing is to be carried on in accordance with the licence” after “specified amount”;
- (b) by omitting paragraph (1) (b) and substituting the following paragraph:
 - “(b) for the renewal of a licence—the sum of—
 - (i) the specified amount in respect of each premises at which petroleum wholesaling or petroleum retailing is to be carried on in accordance with the licence; and
 - (ii) the prescribed amount calculated in accordance with subsection (2) by reference to the volume of motor spirit or diesel fuel sold in the relevant period.”;

- (c) by omitting from subparagraph (2) (ca) (i) “(other than motor spirit sold to the applicant by the holder of a petroleum wholesaler’s licence or a group petroleum wholesaler’s licence)”;
- (d) by omitting from subparagraph (2) (ca) (ii) “(other than diesel fuel sold to the applicant by the holder of a petroleum wholesaler’s licence or a group petroleum wholesaler’s licence)”;
- (e) by omitting from subparagraph (2) (ca) (ii) “or” (last occurring); and
- (f) by adding at the end of paragraph (2) (ca) “other than motor spirit or diesel fuel sold to the applicant by the holder of a petroleum wholesaler’s licence or a group petroleum wholesaler’s licence, in respect of which a licence fee has been paid or is payable by the holder of that licence; or”.

Insertion

9. After section 32 of the Principal Act the following sections are inserted:

Licence particulars to be displayed

“33. (1) A licensee shall keep a notice specifying the licensee’s name and licence number displayed in a prominent place at each premises at which he or she carries on business as a licensee.

“(2) Subsection (1) does not apply to premises at which the licensee is to be taken, by virtue of section 3B, to be carrying on tobacco wholesaling or tobacco retailing only in respect of a vending machine.

“(3) A licensee who offers tobacco for sale from a vending machine shall keep a notice specifying the licensee’s name and licence number displayed in a prominent position on the machine.

Penalty for contravention of subsection (1) or (3):

- (a) in the case of a natural person—5 penalty units;
- (b) in the case of a body corporate—25 penalty units.

Register of licences

“33A. (1) The Commissioner shall keep a register containing particulars of—

- (a) the name of each licensee;
- (b) the number allotted to each licence; and
- (c) the prescribed particulars (if any).

“(2) The Commissioner shall make the register available for public inspection at the office of the Commissioner during ordinary office hours.”.

Renewal of licences

10. Section 35A of the Principal Act is amended by omitting all the words from and including “Where a licensee:” to and including “renew the licence:” and substituting—

“Where—

- (a) a licensee applies for the renewal of a licence—
 - (i) in the case of a retail tobacconist’s licence, a group retail tobacconist’s licence, a petroleum retailer’s licence or a group petroleum retailer’s licence—within 1 month before the date on which the licence is due to expire; or
 - (ii) in any other case—at least 7 days before the date on which the licence is due to expire;
- (b) the application is—
 - (i) in accordance with a form approved by the Commissioner; and
 - (ii) accompanied by an amount estimated by the licensee to be equal to the relevant fee referred to in paragraph (c);
- (c) the renewal fee assessed by the Commissioner under section 28 or 31, whichever is applicable, is paid at least 7 days before the date on which the licence is due to expire; and
- (d) the applicant has given the Commissioner any information required under section 18 of the Administration Act in connection with the application;

the Commissioner may renew the licence—”.

Interpretation

11. Section 36A of the Principal Act is amended—

- (a) by omitting paragraph (b) from the definition of “benefits card” and substituting the following paragraph:

“(b) Pensioner Concession Card;”; and

- (b) by inserting the following definitions:

“ ‘beneficiary’ means—

- (a) a person who holds a benefits card to which he or she is entitled; or
- (b) a TPI pensioner;

‘TPI pensioner’ means a person to whom a pension under Part II of the *Veterans’ Entitlements Act 1986* of the Commonwealth is being paid and to whom section 24 of that Act applies.”.

Diesel fuel exemption certificate

12. Section 36B of the Principal Act is amended by adding at the end of paragraph (2) (e) “or, if the applicant is a TPI pensioner, an official document issued to the person by the Commonwealth indicating that he or she is a TPI pensioner”.

Issue of exemption certificate

13. Section 36C of the Principal Act is amended by omitting subparagraph (1) (a) (i) and substituting the following subparagraph:

“(i) is not a beneficiary; or”.

Loss of entitlement

14. Section 36DA of the Principal Act is amended by omitting “entitled to hold a benefits card” and substituting “a beneficiary”.

Return of exemption certificate

15. Section 36L of the Principal Act is amended—

- (a) by adding at the end of paragraph (a) “or”;
- (b) by omitting from paragraph (b) “or”;
- (c) by omitting paragraph (c); and
- (d) by omitting from the penalty provision “\$500” and substituting “5 penalty units”.

Regulations

16. Section 45 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

“(3) The regulations may prescribe a penalty for an offence against the regulations not exceeding—

- (a) in the case of a natural person—10 penalty units; or
- (b) in the case of a body corporate—50 penalty units.”.

Transitional

17. (1) In this section—

- (a) a reference to a particular new section of the Principal Act shall be read as a reference to that section as amended by this Act; and
- (b) a reference to a particular former section of the Principal Act shall be read as a reference to that section as in force immediately before its amendment by this Act.

(2) To avoid doubt, it is declared that—

- (a) new section 28 of the Principal Act applies in respect of a tobacco licence granted or renewed on or after the commencement of the amendments of former section 28 made by this Act; and
- (b) new section 31 of the Principal Act applies in respect of a petroleum products licence granted or renewed on or after the commencement of the amendments of former section 31 made by this Act;

notwithstanding that part of the fee payable for the licence is to be calculated by reference to sales made before the commencement of the relevant amendments.

(3) Under new section 35A, the Commissioner may renew a licence which expires on 31 August 1995 if—

- (a) despite the fact that the application for renewal has not been made in accordance with that section—it has been made in accordance with former section 35A; or
- (b) despite the fact that the renewal fee assessed by the Commissioner under new section 28 or 31, whichever is applicable, has not been paid in full in accordance with new section 35A—the fee assessed by the Commissioner under former section 28 or 31, whichever is applicable, has been paid in accordance with former section 35A.

(4) Subsection (3) shall not be taken—

- (a) to fully discharge the applicant's liability for the fee payable under new section 28 or 31, whichever is applicable, in respect of the renewed licence; or
- (b) to affect the Commissioner's power under the Administration Act to amend the assessment of the renewal fee.

NOTES

Principal Act

1. Reprinted as at 31 January 1995.

Penalty units

See section 33AA of the *Interpretation Act 1967*.

[Presentation speech made in Assembly on 22 August 1995]