

1995

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**BUSINESS FRANCHISE (TOBACCO AND PETROLEUM PRODUCTS)
(AMENDMENT) BILL 1995**

EXPLANATORY MEMORANDUM

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Kate Carnell MLA

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

Summary

The Business Franchise (Tobacco and Petroleum Products) Act 1984 provides for the regulation and the imposition of franchise fees on tobacco and petroleum products in the ACT

This Bill will amend the Act to

- (a) expand the definition of selling,
- (b) deem unlicensed persons holding more than a determined amount of tobacco to be a tobacco wholesaler,
- (c) require that ACT franchise fees are paid on all wholesale sales which are intended for resale or delivery in the ACT,
- (d) allow Totally and Permanently Incapacitated Pensioners to receive a diesel fuel exemption certificate for home heating purposes,
- (e) remove the penalty for failure to return a lapsed diesel fuel exemption certificate,
- (f) provide an exemption for retail licence holders in respect of purchases only where ACT fees have been paid or are payable by a wholesaler,
- (g) require payment for the renewal of a licence to be made no later than seven days prior to the expiration of the licence,
- (h) require the initial franchise fee to be paid for each premises (including vending machines) where tobacco or petroleum is sold,
- (i) require licensees to display licence particulars at each licensed premise and upon each vending machine, and
- (j) require the Commissioner to maintain a public register of ACT licensed wholesalers and retailers of tobacco or petroleum products

Financial Implications

The proposed amendments are essentially anti avoidance measures and their revenue impact, while positive, cannot be quantified. Other amendments have minor financial implications.

Details of the Bill are attached

**Details of the Business Franchise (Tobacco and Petroleum Products)
(Amendment) Bill 1995**

Title

Clause 1 - provides for the short title for this Act to be the Business Franchise (Tobacco and Petroleum Products) (Amendment) Act 1995

Commencement

Clause 2 - provides for Sections 1,2 and 3 of this Act to commence on the date of gazettal. The remaining provisions commence on a date fixed by the Minister by notice in the Gazette, or if notice is not given, six months after the Act is notified in the Gazette

Principal Act

Clause 3 - refers to the Principal Act being amended as the Business Franchise (Tobacco and Petroleum Products) Act 1984

Interpretation

Clause 4 - amends Section 3 of the principal Act to

- a) include tobacco supplied or received for sale or by way of exchange or gift to the meaning of tobacco sold or purchased in the course of tobacco wholesaling or tobacco retailing,
- b) include petroleum supplied or received for sale or by way of exchange or gift to the meaning of petroleum product sold or purchased in the course of petroleum wholesaling or petroleum retailing,
- c) deem a sale of tobacco or petroleum products made outside the Territory in the course of retailing or wholesaling to be made in the Territory if the terms of the sale or contract of sale require the delivery, arrangement of delivery or contemplates delivery of the products into the Territory

Insertion

Clause 5 - inserts section 23 into the principal Act which

- a) imposes a penalty for selling tobacco or petroleum products without a licence,
- b) provides an expansive definition of "sell" which includes exchange, expose for sale or exchange and have in possession or control for sale or exchange, for the purposes of section 23

Tobacco wholesaling and retailing - offences

Clause 6 - amends section 24 of the principal Act to presume in proceedings against a person for carrying on tobacco wholesaling without a licence that if they have in their possession or control more than an amount of tobacco determined by the Minister that the person is carrying on tobacco wholesaling, and the presumption is rebuttable

Fees - tobacco licences

Clause 7 - amends section 28 of the principal Act to

- a) require that the specified amount be paid for each premises where tobacco retailing or wholesaling was carried on during the relevant period,
- b) omit from the calculation of wholesale fees the value of tobacco sold to the holder of a wholesale tobacco merchants licence or a group wholesale tobacco merchants licence under the Act
- c) omit from the calculation of retail fees the value of tobacco purchased from the holder of a wholesale tobacco licence or a group wholesale tobacco licence who has paid a fee or is liable under the Act to pay a fee for a licence in respect of the sale

Fees - petroleum products licences

Clause 8 - amends section 31 of the principal Act to

- a) require that the specified amount be paid for each premises where petroleum retailing or wholesaling was carried on during the relevant period,
- b) omit from the calculation of retail fees the value of motor spirit or diesel fuel purchased from the holder of a petroleum wholesaler's licence or a group petroleum wholesaler's licence who has paid a fee or is liable to pay a fee under the Act for a licence in respect of the sale

Insertion

Clause 9 - inserts section 33 into the principal Act which provides

Licence particulars to be displayed

- a) that a tobacco or petroleum products licensee shall display a notice specifying the licensee's name and licence number in a prominent place at each premises at which they carry on business as a licensee, other than a premises where a tobacco licensee is carrying on business only in respect of a vending machine,
- b) that the licensee's name and licence number must be displayed prominently on a tobacco vending machine

Register of licences

- c) requires the Commissioner to keep and make available for public inspection, a register containing the name of each licensee, the licence number and any prescribed particulars

Renewal of licences

Clause 10 - amends section 35A of the principal Act to

- a) require the renewal fee to accompany the application for renewal of a licence,
- b) require the payment of the renewal fee at least 7 days before the date on which the licence is due to expire

Interpretation

Clause 11 - amends section 36A of the principal Act to update the title of the "Pensioner Concession Card" and to include TPI Pensioners in the definition of "beneficiaries"

Diesel fuel exemption certificate

Clause 12 - amends section 36B of the principal Act to allow for the documentation to validate the status of a TPI Pensioner

Issue of exemption certificate

Clause 13 - amends section 36C to match the amended definitions in section 36A

Loss of entitlement

Clause 14 - amends section 36DA to match the amended definitions in section 36A

Return of exemption certificate

Clause 15 - amends section 36L of the principal Act to omit the penalty for non return of a lapsed diesel fuel exemption certificate. The Act is also amended for consistency to include penalty units rather than a dollar amount

Regulations

Clause 16 - amends section 45 of the principal Act to permit the Regulations to prescribe a penalty for an offence against the Regulations not exceeding 10 penalty units in the case of a natural person, and 50 penalty units in the case of a body corporate

Transitional

Clause 17 - specifies the intended transitional arrangements for the commencement of the amendments to the principal Act. These provisions provide that in calculating the licence fees for the September and October 1995 licences the amendments proposed in this Bill are to apply despite the fact that these fees may be calculated by reference to sales made before the commencement of the relevant amendments. As a transitional arrangement, the Commissioner may renew or grant a licence where the fees paid are calculated according to the provisions existing prior to these amendments, however this is not to be taken to fully discharge the applicant's liability for the fees payable under the amended provisions, and the Commissioner's power under the Administration Act to amend the assessment of the renewal fee is not affected.