



AUSTRALIAN CAPITAL TERRITORY

Tobacco Licensing (Amendment) Act 1998

No. 18 of 1998

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AMENDMENTS OF
BUSINESS FRANCHISE (TOBACCO AND PETROLEUM
PRODUCTS) REGULATIONS



AUSTRALIAN CAPITAL TERRITORY

Tobacco Licensing (Amendment) Act 1998

No. 18 of 1998

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

[Notified in ACT Gazette S190: 10 July 1998]

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

1. Short title

This Act may be cited as the *Tobacco Licensing (Amendment) Act 1998*.

2. Commencement

This Act commences on the day on which the *Subsidies (Liquor and Diesel) Act 1998* commences.

3. Principal Act

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

4. Long title

The title of the Principal Act is amended by omitting “and petroleum products”.

5. Substitution

Section 1 of the Principal Act is repealed and the following section substituted:

1. Short title

This Act may be cited as the *Tobacco Licensing Act 1984*.”.

6. Interpretation

Section 3 of the Principal Act is amended—

- (a) by omitting from subsection (1) the following definitions:

“diesel fuel”, “exemption certificate”, “group petroleum retailer’s licence”, “group petroleum wholesaler’s licence”, “motor spirit”, “petroleum products”, “petroleum products licence”, “petroleum retailer’s licence”, “petroleum retailing”, “petroleum wholesaler’s licence”, “petroleum wholesaling”, “road vehicle”, “standard grade motor spirit”, “super grade motor spirit” and “unleaded motor spirit”; and

- (b) by omitting subsections (2), (3), (6), (9), (10), (11) and (12).

7. Repeal

Section 3A of the Principal Act is repealed.

8. Selling tobacco without a licence

Section 23 of the Principal Act is amended—

- (a) by omitting subsection (3); and

- (b) by omitting from the penalty provision “or (3)”.

9. Repeal

Sections 25 and 27 of the Principal Act are repealed.

10. Refusal to grant licence

Section 27A of the Principal Act is amended—

- (a) by omitting subsection (2) and substituting the following subsection:

“(2) The Commissioner may refuse to grant a group retail tobacconist’s licence or a group wholesale tobacconist’s licence if, in the opinion of the Commissioner, a member of the group by or on behalf of whom application for the licence is made would not be a fit and proper person to hold a retail tobacconist’s licence or a wholesale tobacconist’s licence (as the case may be).”;

- (b) by omitting from subsection (3) all the words after “hold” and substituting “such a licence”; and
- (c) by omitting from subsection (4) “or 27 (1) (c)”.

11. Substitution

Section 28 of the Principal Act is repealed and the following section substituted:

“28. Fees

“(1) The fees to be paid for the grant or renewal of tobacco licences are as follows:

- (a) for a wholesale tobacco merchant’s licence—the determined amount in respect of each premises at which tobacco wholesaling is carried on in accordance with the licence;
- (b) for a group wholesale tobacco merchant’s licence—the determined amount in respect of each premises at which tobacco wholesaling is carried on in accordance with the licence by a member of the group;
- (c) for a retail tobacconist’s licence—the determined amount in respect of each premises at which tobacco retailing is carried on in accordance with the licence;
- (d) for a group retail tobacconist’s licence—the determined amount in respect of each premises at which tobacco retailing is carried on in accordance with the licence by a member of the group.”.

“(2) In this section—

‘determined amount’ means an amount determined by the Minister under section 44A.”.

12. Repeal

Sections 31 and 32 of the Principal Act are repealed.

13. Surrender and termination of licences

Section 34 of the Principal Act is amended by omitting subsections (2) and (3) and substituting the following subsections:

“(2) A licence shall cease to be in force if the amount of a fee for the grant or renewal of the licence that is due and payable remains unpaid.

“(3) A licensee shall, not later than 7 days after ceasing to carry on the business of processing, packaging, distributing, selling or purchasing tobacco, give the Commissioner written notice accordingly.”.

14. Term of licences

Section 35 of the Principal Act is amended—

- (a) by omitting from subsection (1) “and a group retail tobacconist’s licence remain” and substituting “or a group retail tobacconist’s licence remains”;
- (b) by omitting subsection (2); and
- (c) by omitting from subsection (3) “, a petroleum wholesaler’s licence, a group wholesale tobacco merchant’s licence and a group petroleum wholesaler’s licence” and substituting “or a group wholesale tobacco merchant’s licence”.

15. Renewal of licences

Section 35A of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:

“(1) On application by a licensee in accordance with this section, the Commissioner shall renew the licence unless the applicant fails to give the Commissioner any information required under section 18 of the Administration Act in connection with the application.

“(1A) An application shall be made—

- (a) in the case of a retail tobacconist’s licence or a group retail tobacconist’s licence—within 1 month before the date on which the licence is due to expire; or
- (b) in the case of a wholesale tobacco merchant’s licence or a group wholesale tobacco merchant’s licence—at least 7 days before the date on which the licence is due to expire.

“(1B) An application shall be in the form approved by the Commissioner, accompanied by the renewal fee assessed by the Commissioner under section 28.

“(1C) A renewed licence remains in force—

- (a) in the case of a retail tobacconist’s licence or a group retail tobacconist’s licence—until the expiration of 31 August next following the date of renewal; or
- (b) in the case of a wholesale tobacco merchant’s licence or a group wholesale tobacco merchant’s licence—until the expiration of the last day of the month next following the month in which it is renewed.”.

16. Substitution

Section 36 of the Principal Act is repealed and the following section substituted:

“36. Revival of expired licences

“(1) This section applies where—

- (a) a retail tobacconist’s licence or a group retail tobacconist’s licence has expired;
- (b) the former licensee gives the Commissioner any particulars that the Commissioner would have required under section 18 of the Administration Act had the former licensee applied for a further licence of the same kind; and
- (c) the former licensee pays the fee that would have been required if the licensee had applied for a further licence of the same kind.

“(2) Where this section applies—

- (a) the former licensee is to be taken to have applied under section 26 for a licence of the kind formerly held by the licensee;
- (b) subject to section 27A, the Commissioner may grant such a licence to the former licensee; and
- (c) a licence so granted shall be taken to have effect on and from the day on which the former licence expired.”.

17. Repeal

Division 2 of Part III of the Principal Act is repealed.

18. Notice of decisions

Section 37 of the Principal Act is amended—

- (a) by adding at the end of paragraph (1) (c) “or”;
- (b) by omitting paragraphs (1) (da) and (db);
- (c) by adding at the end of paragraph (1) (e) “or”; and
- (d) by omitting paragraphs (1) (g) and (h).

19. Review of decisions

Section 38 of the Principal Act is amended—

- (a) by adding at the end of paragraph (c) “or”; and
- (b) by omitting paragraphs (e) and (f).

20. Repeal

Section 38A of the Principal Act is repealed.

21. Invoices

Section 40 of the Principal Act is amended—

- (a) by omitting from subsection (1) “him” and substituting “the licensee”;
- (b) by omitting from subsection (2) “he” and substituting “the person”;
and
- (c) by omitting subsections (3) and (4).

22. Substitution

Section 44A of the Principal Act is repealed and the following section substituted:

“44A. Determination of fees

The Minister may, by notice in the *Gazette*, determine amounts for the purposes of the calculation of fees payable under section 28.”

23. Regulations

Section 45 of the Principal Act is amended by omitting from paragraph (1) (a) “tobacco, or petroleum products,” and substituting “, tobacco”.

24. Repeal

The Schedule to the Principal Act is repealed.

25. Other legislation

- (1) The Acts specified in Schedule 1 are amended as set out in that Schedule.
- (2) The *Business Franchise (Tobacco and Petroleum Products) Regulations* are amended as set out in Schedule 2.

SCHEDULE 1

Subsection 25 (1)

AMENDMENTS OF OTHER ACTS

Administrative Decisions (Judicial Review) Act 1989

Schedule 1—

Omit “*Business Franchise (Tobacco and Petroleum Products) Act 1984*”, substitute “*Tobacco Licensing Act 1984*”.

Fair Trading (Fuel Prices) Act 1993

Subsection 2 (1) (definition of “base wholesale price”, paragraph (b))—

Omit the paragraph, substitute the following paragraph:

“(b) the amount per litre included in that price on account of any duty payable by the wholesaler under a law of the Commonwealth;”.

Subsection 2 (1) (definition of “retail margin”)—

Omit all the words after “price of that fuel,”, substitute “excluding the amount per litre included in the retail price on account of the freight charges in connection with the supply of that fuel”.

Health Promotion Act 1995

Section 3 (definition of “tobacco franchise fees”)—

Omit “*Business Franchise (Tobacco and Petroleum Products) Act 1984*”, substitute “*Tobacco Licensing Act 1984*”.

Taxation (Administration) Act 1987

Paragraph 3 (e)—

Omit the paragraph, substitute the following paragraph:

“(e) the *Tobacco Licensing Act 1984*;”.

Subsection 4 (1) (definition of “licence fee, paragraph (a))—

Omit the paragraph, substitute the following paragraph:

“(a) the *Tobacco Licensing Act 1984*; or”.

Paragraph 12 (1) (b)—

Omit the paragraph, substitute the following paragraph:

“(b) any tobacco to which the *Tobacco Licensing Act 1984* applies.”.

SCHEDULE 1—continued

Paragraph 12 (2) (f)—

Omit “*Business Franchise (Tobacco and Petroleum Products) Act 1984*”, substitute “*Tobacco Licensing Act 1984*”.

SCHEDULE 2

Subsection 25 (2)

**AMENDMENTS OF BUSINESS FRANCHISE (TOBACCO AND
PETROLEUM PRODUCTS) REGULATIONS**

Regulation 1—

Omit “*Business Franchise (Tobacco and Petroleum Products) Regulations*”, substitute “*Tobacco Licensing Regulations*”.

Regulation 2—

Omit “*Business Franchise (Tobacco and Petroleum Products) Act 1984*”, substitute “*Tobacco Licensing Act 1984*”.

Regulation 6—

Repeal the regulation.

NOTE

Principal Act

1. Reprinted as at 31 January 1995. See also Act No. 22, 1995; No. 93, 1997.

[Presentation speech made in Assembly on 28 May 1998]

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