

1993
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

**Business Franchise ("X" Videos)
(Amendment) Bill 1993**

**A BILL
FOR
An Act to amend the *Business Franchise ("X" Videos)
Act 1990***

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

Short title

- 5 1. This Act may be cited as the *Business Franchise ("X" Videos)
(Amendment) Act 1993*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on 1 April 1993.

B3004 1993/15 (T4/93)

Principal Act

3. In this Act, "Principal Act" means the *Business Franchise ("X" Videos) Act 1990*.¹

Interpretation

5 4. Section 4 of the Principal Act is amended—

(a) by inserting in the definition of "wholesale value" in subsection (1) "
", inclusive of any tax or duty imposed under a law of the
Commonwealth," after "price";

10 (b) by omitting from subsection (1) the definition of "franchise fee"
and substituting the following definition:

" 'franchise fee' means a fee referred to in section 20 or
20A;";

(c) by omitting from subsection (1) the definition of "advance fee";
and

15 (d) by inserting in subsection (1) the following definitions:

" 'defined influential person', in relation to a body corporate,
means—

(a) a director or secretary of the body; or

(b) a person who is—

20 (i) substantially concerned in the management
of the body; or

(ii) able to control, or to substantially
influence, the body's activities or internal
affairs;

25 'initial fee' means a fee referred to in section 19;".

Grant

5. Section 5 of the Principal Act is amended—

(a) by omitting from subsection (1) all the words after "writing" and
substituting "accompanied by the basic fee";

30 (b) by omitting from subsection (2) "On application in accordance
with subsection (1)," and substituting the following word and
paragraphs:

"On—

(a) application in accordance with subsection (1); and

- (b) payment of the initial fee;"; and
- (c) by omitting from subsection (4) all the words after "reference" (last occurring) and substituting "to any defined influential person in relation to the body".

5 Initial term

6. Section 6 of the Principal Act is amended—

- (a) by inserting ", subject to this Act," after "force"; and
- (b) by adding at the end the following subsection:

10 “(2) Where a licence is granted within the last 7 days before the end of a month, the licence remains in force, subject to this Act, until the expiration of the next month, and may be renewed in accordance with section 9.”.

Renewal

7. Section 9 of the Principal Act is amended—

- 15 (a) by omitting paragraphs (2) (c) and (d) and substituting the following paragraphs:

20 “(c) except in the case of an application for the renewal of a licence for the month following the month in which the licence was granted—accompanied by the franchise fee or, where subsection (2A) applies, the estimated amount of that fee; and

25 (d) the information relied on by the applicant in calculating or estimating the franchise fee (as the case may be) where that fee or estimated amount accompanies the application”;

- (b) by inserting after subsection (2) the following subsection:

30 “(2A) An application for the renewal of a licence for the second month following the month in which it is granted shall be accompanied by an amount equal, in the estimation of the applicant, to the franchise fee likely to be assessed under subsection 20A (1).”; and

- (c) by omitting subsections (4) and (6).

Insertion

- 35 8. After section 9 of the Principal Act, the following section is inserted:

Duration of renewal

"9A. Where the Commissioner renews a licence, it remains in force, subject to this Act, until the expiration of the last day of the month for which it is renewed."

5 Cancellation

9. Section 10 of the Principal Act is amended by omitting from subsection (2) all the words after "reference" (last occurring) and substituting "to any defined influential person in relation to the body".

Substitution

- 10 10. Section 14 of the Principal Act is repealed and the following section substituted:

Corporate licensees—change of influential personnel

- 15 "14. (1) Within 7 days after a person becomes a defined influential person in relation to a body corporate which holds, or which has applied for, a licence, the body shall not, without reasonable excuse, fail to give written notice to the Commissioner of the person's name, residential address and relationship to the body.

- 20 "(2) Within 7 days after a substantial change in the relationship of a defined influential person to a body corporate which holds, or which has applied for, a licence, the body shall not, without reasonable excuse, fail to give written notice of the change to the Commissioner.

- 25 "(3) Within 7 days after a person ceases to be a defined influential person in relation to a body corporate which holds, or which has applied for, a licence, the body shall not, without reasonable excuse, fail to give written notice to the Commissioner specifying the person's former relationship to the body.

Penalty: \$2,000."

Substitution

- 30 11. Section 19 of the Principal Act is repealed and the following section substituted:

Initial fees

- "19. (1) An initial fee in relation to an application for a licence shall be such an amount as is assessed by the Commissioner as being fair and reasonable in the circumstances.

- 35 "(2) The circumstances referred to in subsection (2) include the following:

(a) the wholesale value of the total stock of 'X' videos—

- (i) held by the applicant for the purpose of trading on the date of the application; and
- (ii) estimated as likely to be acquired by the applicant in the month in which the licence is to be granted and the following month for the purpose of trading;
- (b) the estimated value of that portion of the stock referred to in subparagraphs (a) (i) and (ii) in relation to which a franchise fee would become payable if the licence were to be renewed for the second and third month after the month in which it is granted;
- (c) the gross income from trading 'X' videos estimated as likely to be received by the applicant in the month in which the licence is to be granted and the following month;
- (d) initial fees assessed in relation to other applications.

"(3) The Commissioner shall notify the applicant in writing of the assessment of an initial fee."

Franchise fees—general

12. Section 20 of the Principal Act is amended by omitting from subsections (1) and (2) "The" and substituting "Subject to section 20A, the".

20 Insertion

13. After section 20 of the Principal Act, the following section is inserted:

Franchise fee—second month following grant of licence

25 "20A. (1) The franchise fee for the second month following the month in which a licence is issued is the amount of a franchise fee calculated under section 20 on the basis of the Commissioner's estimate of likely trading in 'X' videos under the licence for a typical month, having regard to—

- (a) in relation to trading in 'X' videos under the licence during the month in which the licence was granted—
 - (i) if the licence took effect from the first day of that month, and the trading was continuous during that month—the wholesale value of 'X' videos traded in that month, and the nature of such trading; or
 - (ii) if the trading was not continuous during the whole of that month—the Commissioner's estimate of the likely wholesale value of 'X' videos which would have been traded in that month if trading had been continuous, and the likely nature of such trading; and

(b) in relation to trading in 'X' videos under the licence in the month following the month in which the licence was granted—

- 5 (i) if the trading was continuous during the whole of that month—the Commissioner's estimate of the wholesale value of 'X' videos traded in that month, and the nature of such trading; or
- 10 (ii) if the trading was not continuous during the whole of that month—the Commissioner's estimate of the likely wholesale value of 'X' videos which would have been traded during that month if trading had been continuous, and the likely nature of such trading.

"(2) The Commissioner shall notify the relevant licensee in writing of the assessment of a franchise fee under subsection (1).

15 "(3) A franchise fee assessed under subsection (1) is due and payable within 14 days of the date of the notice under subsection (2).

"(4) For the purposes of this Act and the Tax Act, an amount paid to the Territory under subsection 9 (2A) is to be taken to be a payment on account of the franchise fee assessed under subsection (1)."

Application of franchise fee

20 **14. Section 21 of the Principal Act is amended—**

- (a) by omitting "advance fee or"; and
- (b) by omitting "either such" and substituting "such a".

NOTE

1. Act No. 16, 1990.