

1993

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

BUSINESS FRANCHISE ("X" VIDEOS) (AMENDMENT) BILL 1993

EXPLANATORY MEMORANDUM

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AUSTRALIAN CAPITAL TERRITORY

LEGISLATIVE ASSEMBLY

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

Explanatory Memorandum

Corrigendum

- Clause 2** - is revised on advice from Parliamentary Counsel so that only clause 1 commences from the date of Gazettal.
- Subclause 5(b)** - is omitted.
- Subclause 5(c)** - should now be read as subclause 5(b).
- Subclause 5(d)** - should now be read as subclause 5(c).
- Clause 11** - new subsection 19(3). This has been a drafting amendment and will have the same effect as the omitted subclause 5(b).

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Outline

The Business Franchise ("X" Videos) Act 1990 (the Act) imposes a licensing regime on wholesalers and retailers of "X" classified videos in the ACT. This licensing regime requires licensees to pay in advance a licence fee consisting of a monthly basic fee and monthly franchise fee.

Currently the advance fee, which applies on the initial grant of a licence, is payable on the estimated value of "X"-videos manufactured or otherwise supplied for retail sale during the first two months and an adjustment of the fee made when actual figures are known.

The Bill proposes the replacement of the current advance fee with an initial fee which will be assessed by the Commissioner for ACT Revenue, having regard to criteria specified in the legislation. Such an assessment will not be subject to further adjustment.

The Commissioner's assessment would be subject to appeal by a licensee to the Administrative Appeals Tribunal.

The Bill also proposes to improve the administration of the "X"-video scheme by expanding the investigation into corporate applicants and tightening the definition of wholesale value to clarify the inclusion of Commonwealth taxes and duties.

Financial Implications

These amendments are unlikely to have any revenue impact as they affect new licensees and only to the extent that reconciliations will no longer be required.

Details of the Bill are attached

**DETAILS OF THE BUSINESS FRANCHISE ("X" VIDEOS) (AMENDMENT) BILL
1993**

Short title

Clause 1 - provides for the short title for this Act to be the Business Franchise ("X" Videos) (Amendment) Act 1993 (the Act).

Commencement

Subclause 2(1) - provides that sections 1,2 and 3 commence from the date of Gazettal.

Subclause 2(2) - provides that the remaining provisions of the Act commence from 1 April 1993.

Principal Act

Clause 3 - refers to the Principal Act to be amended, being the Business Franchise ("X" Videos) Act 1990.

Interpretation

Clause 4 - amends subsection 4(1) of the Principal Act by:

- (i) expanding the definition of "wholesale value" to specifically include any Commonwealth tax or duty;
- (ii) omitting the current definition and substituting a new definition of "franchise fee" to include the assessment of fees under a new section 20A;
- (iii) omitting the definition of "advance fee";
- (iv) inserting a definition for "defined influential person" to allow deeper investigation into the affairs of corporate licensees; and
- (v) inserting a definition of "initial fee".

Grant

Subclause 5(a) - amends subsection 5(1) of the Principal Act to remove the requirement that the licence application be

accompanied by the advance fee. The advance fee has been replaced by an initial fee introduced in clause 10.

Subclause 5(b) - requires the Commissioner to notify the applicant of an amount payable as an initial fee assessed in accordance with the provisions of an amended section 19 of the Principal Act.

Subclause 5(c) - amends subsection 5(2) of the Principal Act to include the payment of an initial fee assessed under section 19 of the Principal Act as a requirement for the grant of a licence.

Subclause 5(d) - amends subsection 5(4) of the Principal Act to omit reference to director, secretary or officer of a company and substitutes the newly defined category of influential person. This will allow a broader investigation into the affairs of corporate applicants and licensees.

Initial term

Clause 6 - amends section 6 of the Principal Act to provide that where a licence is granted in the last week of a month, its initial term will expire at the end of the following month. This is to avoid the necessity of applying to renew the licence at the same time as the licence is granted.

Renewal

Subclause 7(a) - amends subsection 9(2) of the Principal Act by removing the requirement for the lodgement of an advance fee in the month of the first application for renewal as a consequence of the replacement of the advance fee by the initial fee.

Subclause 7(b) - amends section 9 by inserting a new subsection 2A to provide that where a licence is not in force during the whole of the first month, a franchise fee in the second month following the month in which the licence is granted will be calculated, in accordance with new section 20A(1), having regard to trading in the initial and second months of the licence.

Subclause 7(c) - omits subsection (4), which is duplicated in subsection (5), and subsection 6 which, with the replacement of the advance fee, is no longer required.

Insertion

Clause 8 - inserts a new section 9A - "Duration of Renewal" - which provides that the duration of a renewed licence is the end of the month for which it is renewed.

Cancellation

Clause 9 - amends section 10 of the Principal Act by omitting references to director, secretary or officer of company and substituting the newly defined category of influential person in line with amendments to subsection 5(4) of the Principal Act.

Corporate licensees - change of personnel

Clause 10 - amends section 14 of the Principal Act to omit reference to director, secretary or officer of a company and substitutes the newly defined category of influential person.

Substitution

Clause 11 - repeals section 19 of the Principal Act (Advance fees) and substitutes new section 19 - Initial fees

- new subsection 19(1) provides that an initial fee in relation to a grant of a licence under section 5 of the Principal Act, will be an amount assessed by the Commissioner as being fair and reasonable having regard to the circumstances set out in subsection 19(2).

- new subsection 19(2) sets out the circumstances, referred to in new subsection 19(1), to which the Commissioner is to assess the initial fee.

Franchise fees - general

Clause 12 - amends section 20 of the Principal Act by making reference to franchise fees assessed under the new section 20A.

Insertion

Clause 13 - provides for the insertion of a new section 20A.

Franchise fees - renewal for second month following grant of licence

- new subsection 20A(1) establishes the method of assessing the franchise fee required for the renewal of a licence for the third month, that is the second full month after the month in which the licence was granted.

- new subsection 20A(2) requires the Commissioner to notify the licensee of his assessment of the fee in writing.

- new subsection 20A(3) provides that the fee is due within 14 days of receipt by the licensee of the notice under subsection 20A(2).

- new subsection 20A(4) provides that an amount paid under subsection 9(2A) is to be regarded as payment on account of the fee assessed under subsection 20A(1).

Application of franchise fee.

Clause 14 - amends section 21 of the Principal Act by omitting the reference to an advance fee as a consequence of its removal from the Act and the inclusion of a new definition of franchise fee.