

**EXPLANATORY STATEMENT**

**AUSTRALIAN CAPITAL TERRITORY**

**BUSINESS FRANCHISE (TOBACCO AND PETROLEUM  
PRODUCTS)(AMENDMENT) ORDINANCE 1987**

No. 38 of 1987

The Business Franchise (Tobacco and Petroleum Products)  
(Amendment) Ordinance 1987 amends the Business Franchise (Tobacco  
and Petroleum Products) Ordinance 1984 to:

- remove provisions which are redundant under the Taxation  
(Administration) Ordinance 1987;
- remove redundant transitional provisions;
- provide for the licensing of retail business groups; and
- provide better controls on licensing under the Ordinance.

Details of the Ordinance are as follows.

**BUSINESS FRANCHISE (TOBACCO AND PETROLEUM PRODUCTS) (AMENDMENT)  
ORDINANCE 1987**

Short title

Section 1 cites the Ordinance as the Business Franchise (Tobacco and Petroleum Products) (Amendment) Ordinance 1987.

Commencement

Section 2 provides for the commencement of the Ordinance.

Principal Ordinance

Section 3 defines the Principal Ordinance as the Business Franchise (Tobacco and Petroleum Products) Ordinance 1987.

Incorporation of Taxation (Administration) Ordinance 1987

Section 4 provides that the Taxation (Administration) Ordinance 1987 is incorporated into and is to be read with the Ordinance.

Interpretation

Section 5 amends section 3 of the Principal Ordinance, which deals with interpretation, principally to provide for the licensing of groups of retail businesses and to make the interpretation provisions consistent with the Taxation (Administration) Ordinance 1987.

Relevant period: interpretation

Section 6 omits subsection 3A(2) which is a redundant transitional provision from the Principal Ordinance.

Tobacco vending machines

Section 7 amends the Principal Ordinance to provide that group wholesalers who own tobacco vending machines are to be taken to be carrying on wholesaling, as opposed to retailing, for the purpose of assessment of levies.

Repeals

Section 8 repeals sections 4 to 10 (inclusive) of the Principal Ordinance which deal with the grouping of businesses which will be dealt with under the provisions of the Taxation (Administration) Ordinance 1987.

Section 9 removes the administration provisions from the Principal Ordinance which will be administered under the provisions of the Taxation (Administration) Ordinance 1987.

### Offences relating to the sale of tobacco and petroleum

Sections 10 and 11 amend sections 24 and 25 of the Principal Ordinance, which deal with offences by licence holders for tobacco or petroleum products, respectively, by:

- removing redundant transitional provisions;
- including amendments consequential on the insertion of provisions to license retail business groups;
- creating an offence when the holder of a tobacco licence contravenes a condition to which the licence is subject; and
- creating an offence when the holder of a petroleum products licence carries on business from unlicensed premises.

The offence provisions provide that an offence is punishable on conviction by a maximum fine of \$2,000 (or imprisonment for 12 months, or both in the case of section 11) in the case of a natural person, or a maximum fine of \$10,000 for a corporation.

### Grant of licences

Sections 12 and 13 amend sections 26 and 27 of the Principal Ordinance, which deal with the grant of tobacco and petroleum licences, respectively, by:

- providing that licences may incorporate conditions;
- providing for the grant of licences to members of retail business groups;
- correcting certain errors in the Principal Ordinance;
- amending subsection (6) in each section by removing the references to the period of the licences (which is dealt with in the new section 35); and
- removing the requirement to give written notice of decisions, which will be provided for by the Taxation (Administration) Ordinance 1987.

### Conditional licences, refusal and cancellation of licences

Section 14 inserts new sections 27AA, 27A and 27B into the Principal Ordinance.

The new subsection 27AA(1) provides that the Commissioner may specify conditions to which a licence is subject.

The new subsection 27AA(2) provides that the Commissioner may by written notice to the holder of the licence vary a licence so as to:

- specify conditions or further conditions; or
- vary or cancel any conditions of the licence.

The new subsection 27A(1) provides that the Commissioner shall not grant a licence to a person who is, in the Commissioner's opinion, not a fit and proper person.

The new subsection 27A(2) provides the Commissioner may refuse to grant a licence to a business group if, in the Commissioner's opinion, a member of the group is not a fit and proper person.

The new subsection 27A(3) provides the Commissioner may refuse to grant a licence to a corporation if, in the Commissioner's opinion, a director, secretary or other officer of the corporation is not a fit and proper person.

The new subsection 27A(4) requires the Commissioner, where he refuses a licence, to refund any fees paid by the applicant for the grant of a licence.

The new subsection 27B(1) sets out the circumstances in which the Commissioner may cancel a licence.

The new subsection 27B(2) requires the Commissioner to give the licensee written notice to show cause why a licence should not be cancelled before he cancels a licence.

The new subsection 27B(3) provides such a notice is to contain particulars of the grounds of cancellation and requires the licensee to respond in writing within a specified time.

The new subsection 27B(4) provides that if the licensee does not show cause within the specified time the licence may be cancelled.

The new subsection 27B(5) requires the Commissioner to give written notice of the cancellation to the licensee.

The new subsection 27B(6) provides that the cancellation takes effect at the expiration of the day on which the notice of cancellation is served on the licensee.

#### Fees for business groups

Sections 15 and 17 amend sections 28 and 31 of the Principal Ordinance, which deal with fees for the grant of tobacco and petroleum licences, respectively.

The amendments:

- . provide for the removal of redundant transitional provisions;
- . include amendments consequential on the licensing of retail business groups; and
- . provide for the imposition of fees on members of retail business groups.

Section 15 further provides that where a retailer purchases tobacco from an unlicensed source, an assessment is made on the value of tobacco so purchased.

### Value of tobacco

Section 16 amends section 30 of the Principal Ordinance, which allows the Minister to determine the value of tobacco sold, to allow the Minister to also determine the value of tobacco purchased. (This is required to enable assessment of tobacco purchased from unlicensed sources.)

### Repeal

Section 18 repeals section 33 of the Principal Ordinance, which deals with adjustment of fees. The Taxation (Administration) Ordinance 1987 will provide for the making of objections to the Commissioner in respect of amended assessment of licence fees.

### Surrender and termination of licences

Section 19 amends section 34 of the Principal Ordinance by omitting subsection 34(2) and adding new subsections 34(2), (3) and (4).

The new subsection 34(2) provides that a licence shall cease to be in force if any fee assessed under the Principal Ordinance or any amount due under the Taxation (Administration) Ordinance 1987 remains unpaid.

The new subsection 34(3) requires a licensee to notify the Commissioner within 7 days of ceasing to carry on the business the subject of a licence.

The new subsection 34(4) creates an offence for failing to notify the Commissioner in accordance with subsection 34(3) which is punishable on conviction by a fine not exceeding \$500 in the case of a natural person, or \$2,500 for a corporation.

### Duration and renewal of licences

Section 20 repeals section 35 of the Principal Ordinance, which deals with the renewal of tobacco licences, and inserts new sections numbered 35 and 35A.

The new section 35 specifies expiry dates of the various classes of licences presently in force under the Principal Ordinance and for the new group retail licenses.

The new subsection 35A(1) provides that the Commissioner may renew a licence where:

- . the licensee makes written application for renewal within the specified time;
- . the licensee provides any further particulars required by the Commissioner; and
- . the licensee pays the fee assessed by the Commissioner.

The subsection also specifies the period for which licences are renewed.

The new subsection 35A(2) provides that renewal will not take effect if the licence has been previously surrendered or cancelled.

The new subsection 35A(3) provides for the refund of any fees paid where the Commissioner refuses to renew a licence.

#### Notification of decisions and appeal rights, returns and records

Section 21 repeals sections 37, 38 and 39 of the Principal Ordinance, which deal with the review of decisions, the notification of decisions, and records to be kept, respectively, and replaces them with new sections 37, 38, 38A and 39.

The new subsection 37(1) requires the Commissioner when he has made certain decisions refusing, cancelling, refusing to renew or imposing or varying conditions in a licence, to give written notice of the decision to the applicant or licensee as the case may be.

The new subsection 37(2) provides that the notice shall include a statement of the person's appeal rights.

The new subsection 37(3) provides that the failure to comply with the preceding subsection will not affect the validity of the decision in respect of which notice is given.

The new section 38 provides for appeals to the Administrative Appeals Tribunal from the decisions of the Commissioner referred to in the new section 37.

The new section 38A requires the holder of a retail licence for tobacco to provide returns of any tobacco purchased for sale in the Territory from a person who does not hold a wholesaling licence for tobacco. The returns must be provided not later than 7 days after the end of the month and contain details of the relevant transactions. Failure to do so is an offence, punishable on conviction by a maximum fine of \$1,000 for a natural person or \$2,500 for a corporation.

The new section 39 enables the Minister to, by Regulation, prescribe the keeping of records in addition to records required to be kept by section 96 of the Taxation (Administration) Ordinance 1987.

#### Repeal

Section 22 amends section 41 of the Principal Ordinance by omitting subsection 41(7) which deals with recovery of licence fees from unlicensed persons. This matter is dealt with in the Taxation (Administration) Ordinance 1987.

Section 23 repeals sections 42, 43 and 44 of the Principal Ordinance, which deal with prosecutions, evidentiary certificates and giving of notices, respectively. These matters are dealt with in the Taxation (Administration) Ordinance 1987.

Schedule

Section 24 corrects an error in the Schedule to the Principal Ordinance.

Additional amendments

Section 25 amends the Principal Ordinance in accordance with the Schedule to the Ordinance. The Schedule corrects grammatical errors arising from confusion between the genitive and plural.

Transitional

Section 26 provides that licences currently in force continue to be in force for specified periods.

Ord. 44/87