

AUSTRALIAN CAPITAL TERRITORY

BUSINESS FRANCHISE (TOBACCO AND PETROLEUM PRODUCTS)
(AMENDMENT) ORDINANCE 1985

ORDINANCE NO. 36 1985

EXPLANATORY STATEMENT

The Business Franchise (Tobacco and Petroleum Products) Ordinance 1984 (the Principal Ordinance) provides for the licensing of vendors of tobacco and petroleum products in the Australian Capital Territory. Prior to the making of the Business Franchise (Tobacco and Petroleum Products) (Amendment) Ordinance 1985 (the Amending Ordinance) sellers of tobacco or petroleum products in the Territory were only required to pay fees in respect of tobacco or petroleum products sold in the course of interstate trade. The Amending Ordinance ensures that sellers of tobacco in the Territory are required to pay fees in respect of tobacco sold for delivery and consumption inside the Territory. The amending Ordinance also amends the Principal Ordinance in relation to other matters.

The effect of each of the provisions in the proposed Ordinance is outlined in the attachment.

ORD 40/85.

**BUSINESS FRANCHISE (TOBACCO AND PETROLEUM PRODUCTS) (AMENDMENT)
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Sections 1 and 2 are interpretation provisions.

Section 3(a) omits the definition of 'relevant period'.

Section 3(b) defines 'standard grade motor spirit' as motor spirit that has a research octane number not less than 89.0 and not more than 92.0 and super grade motor spirit as motor spirit that has a research octane number of 97.0.

Section 3(c) omits the definition of 'value' and defines 'unleaded motor spirit' to mean motor spirit that contains not more than 0.013 grams of lead per litre, contains not more than 0.0013 grams of phosphorous per litre, contains not more than 0.10 percent of sulphur by weight or, while a determination under section 42A of the Air Pollution Ordinance 1984 specifying a higher percentage is in force, not more than that percentage, has a research octane number of not less than 91.0 and not more than 93.0 and has a motor octane number of not less than 82.0. Section 3(c) also defines 'value' to mean, in relation to any tobacco sold, the value attributed to the tobacco pursuant to section 30 of the Principal Ordinance.

Section 3(d) omits the provision in the Principal Ordinance deeming owners of tobacco vending machines to be carrying on the business of tobacco wholesaling and provides that a reference to motor spirit in the Principal Ordinance is to be read as including a reference to super grade motor spirit, standard grade motor spirit or unleaded motor spirit.

Section 4 defines 'relevant period' in relation to an application for a licence or for the renewal of a licence, in respect of a month the name of which is specified in Column 1 of the Schedule to the Principal Ordinance as a reference to the last preceding month of the name specified in Column 2 of the Schedule opposite the name of the first-mentioned month. Section 4 also provides that a reference to a relevant period in relation to the renewal of a retail tobacconist's licence issued before 21 August 1985 is to be read as including a reference to the period beginning on 1 August 1984 and ending on 20 August 1985. Section 4 also provides that if the Owner of a tobacco vending machine holds or is required to hold a wholesale tobacco merchant's licence then that person is deemed to carry on tobacco wholesaling. The Owner of a tobacco vending machine who does not hold or is not required to hold a wholesale tobacco merchant's licence is deemed to carry on tobacco retailing.

Section 5(a) omits the provision of the Principal Ordinance which requires applications for a tobacco licence to be accompanied by a fee or the first instalment of a fee and provides that applications for a tobacco licence need only be accompanied by the fee assessed by the Commissioner.

Section 5(b) ensures that sub-section 26(6) of the Principal Ordinance refers to a tobacco licence rather than to a licence.

Section 6 ensures that sub-section 27(6) of the Principal Ordinance refers to a 'petroleum products' licence rather than to a licence.

Section 7(a) provides that a reference in paragraph 28(1)(c) of the Principal Ordinance to tobacco sold by the applicant is not to be read as including a reference to tobacco sold by the applicant on or after 21 August 1985 if the tobacco was bought by the applicant from the holder of a wholesale tobacco merchant's licence or from the holder of a group wholesale tobacco merchant's licence.

Section 7(b) ensures that the value of any tobacco sold before 21 August 1985 for delivery and consumption inside the Territory is to be disregarded in determining fees for tobacco licences.

Section 7(c) provides that the fee for a retail tobacconist's licence issued before 21 August 1985 and in force after that date and in force for 11 months or less may be reduced on a pro-rata basis depending on the period for which the licence will be in force.

Section 7(d) corrects a typographical error.

Section 7(e) omits the provisions in the Principal Ordinance which empower the Minister to specify fees for tobacco licences and which deem references to tobacco in the Principal Ordinance to be references to tobacco sold in the course of interstate trade and provides that a reference in section 28 of the Principal Ordinance to a specified amount, or to a specified percentage is to be read as a reference to either an amount or percentage specified by the Minister pursuant to section 44A of the Principal Ordinance. Section 7(e) also provides that for the purpose of assessing fees under section 28 of the Principal Ordinance, the value of tobacco sold in the Territory for delivery and consumption in a State or another Territory, being -

- . tobacco sold before 21 August 1985 by the holder of a retail tobacconist's licence;
- . tobacco sold on or after 21 August 1985 by the holder of a retail tobacconist's licence where the tobacco was not bought by the retailer from the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence;
- . tobacco sold before 21 August 1985 by the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence; or
- . tobacco sold on or after 21 August 1985 by the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence;

is not to be taken into account if the licensee who sold the tobacco would, if the tobacco had been sold in the State or other Territory, be liable to pay a fee in respect of the tobacco, and the licensee has paid an amount equal to the fee to the appropriate authority in that State or other Territory.

Section 8 repeals section 29 of the Principal Ordinance which permits holders of tobacco licences to pay fees by instalments.

Section 9(a) omits 'value' from section 31 of the Principal Ordinance and inserts 'volume' in order to provide that fees for petroleum products licences are calculated by reference to the volume of petroleum products sold rather than by reference to the value of petroleum products sold.

Section 9(b) omits 'an amount of' from sub-section 31(2) and inserts 'the sum of' in sub-section 31(2).

Section 9(c) and section 9(d) omit 'prescribed percentages of the value' and 'prescribed percentage of the value' from sub-section 31(2) of the Principal Ordinance and insert 'determined amount per litre'.

Section 9(e) provides that for the purpose of assessing fees under section 31 of the Principal Ordinance, the volume of petroleum products sold in the Territory (including petroleum products sold before 21 August 1985 by the holder of a petroleum products licence) for delivery and consumption in a state or another Territory is not to be taken into account if the licensee who sold the products would, if the products had been sold in the State or other Territory, be liable to pay a fee in respect of the products and the licensee has paid an amount equal to the fee to the appropriate authority in that State or other Territory.

Section 9(f) omits sub-section 31(11) of the Principal

Ordinance which empowers the Minister to specify fees for petroleum products licences and inserts a provision providing that a reference in section 31 of the Principal Ordinance to either a specified amount or a determined amount is to be read as a reference to the amount specified or determined by the Minister pursuant to section 44A of the Principal Ordinance.

Section 9(g) provides that the Commissioner is to notify an applicant for a petroleum products licence of the terms of 'the Commissioner's decision' rather than 'this decision'.

Section 10 repeals section 32 of the Principal Ordinance which empowers the Minister to determine the value of petroleum products.

Section 11 provides that where on a reassessment of a fee under sub-section 33(6) of the Principal Ordinance the fee is reduced, an amount equal to the amount overpaid is payable to the applicant or to the person who is or was the holder of the licence concerned, as the case requires.

Section 12(a) amends sub-section 35(1) of the Principal Ordinance by providing that a retail tobacconists licence is to remain in force for such period, not exceeding 1 month, as is specified in the licence.

Section 12(b) omits sub-section 35(2) of the Principal Ordinance which provides for the renewal of retail tobacconist's licences and inserts a provision to the effect that a retail tobacconist's licence issued before 21 August 1985 remains in force for such period, not exceeding 12 months, as is specified in the licence. Section 12(b) also provides that a retail tobacconist's licence may, from time to time, upon -

. application made to the Commissioner in accordance with the approved form;

- . receipt by the Commissioner of the particulars, if any, required by him to be furnished under section 23 of the Principal Ordinance; and
- . payment of the fee assessed by the Commissioner in accordance with section 28 of the Principal Ordinance,

be renewed for such period, not exceeding 1 month, as is specified in the licence.

Section 13(a) omits sub-section 36(1) of the Principal Ordinance which provides that 'licensee' means the holder of a petroleum products licence and inserts a provision to the effect that 'licensee' in sub-section 36(1) of the Principal Ordinance means the holder of a retail tobacconists licence or a petroleum retailer's licence.

Sections 13(b) and(c) provide that a holder of a retail tobacconist's licence and the holder of a petroleum products licence are deemed to hold a retail tobacconist's licence or a petroleum products licence respectively, if the licensee has furnished to the Commissioner any particulars that would be required as referred to in paragraphs 26(1)(b) or 27(1)(b) of the Principal Ordinance and pays the fee that would be payable under paragraphs 26(1)(c) or 27(1)(c) of the Principal Ordinance even though the holder of the retail tobacconist's licence or the holder of the petroleum products licence has not formally applied for a new retail tobacconist's licence or a new petroleum products licence.

Section 14 amends section 40 of the Principal Ordinance by altering the form of endorsement that must appear on invoices issued by:

- . a holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence.
- . a person connected with the sale of tobacco
- . a holder of a petroleum wholesaler's licence or a group petroleum wholesaler's licence; and
- . a person connected with the sale of petroleum products.

In all cases the endorsement reads 'sold by licensed ACT Wholesaler'. Section 14 also amends section 40 of the Principal Ordinance to provide that a person shall not, in connection with the sale of tobacco, issue an invoice which bears the words 'sold by licensed ACT wholesaler' (or words of like import) unless that person holds the relevant tobacco licence or petroleum products licence.

Section 15 inserts a new provision in the Principal Ordinance which permits the Minister, by notice in the Gazette to specify an amount or a percentage or determine an amount in relation to the calculation of fees payable under the Principal Ordinance.

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