

NORTHERN TERRITORY OF AUSTRALIA
BUSINESS FRANCHISE AMENDMENT ACT 1989

No. 5 of 1989

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NORTHERN TERRITORY OF AUSTRALIA

No. 5 of 1989

AN ACT

to amend the *Business Franchise Act*

[Assented to 28 March 1989]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Business Franchise Amendment Act 1989*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Business Franchise Act* is in this Act referred to as the Principal Act.

4. INTERPRETATION

Section 3 of the Principal Act is amended -

- (a) by omitting from subsection (1) the definitions of "internal trade", "tobacco wholesaling" and "wholesaling of petroleum products";
 - (b) by omitting from the definition of "group licence" in subsection (1) "wholesale merchants of tobacco or petroleum products" and substituting "tobacco merchants or petroleum products merchants";
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- (c) by omitting from the definition "licence" in subsection (1) "wholesale merchant's licence or group";
- (d) by omitting from subsection (1) the definition of "relevant period" and substituting the following:

"'relevant period' -

- (a) in relation to a licence which, if granted, would be granted for and expire at the end of a month specified in Column 1 of the Schedule, means the preceding month specified opposite that month in Column 2 of the Schedule; and
- (b) in relation to a licence which, if granted, would be granted for a period greater than one month, means the period of equal duration to the proposed period of the licence expiring at the end of the month immediately preceding the month in which the application for the licence is made;

"'sale' includes -

- (a) the supply for or in expectation of reward or a benefit paid or provided, or to be paid or provided, by the person supplied or another person, whether or not any person was or is under an obligation to pay or provide a reward or benefit; and
 - (b) the supply in satisfaction or part satisfaction of an existing or future debt or other obligation, whether or not the supply was to the person to whom the debt or obligation was or will be owed;"
- (e) by omitting subsections (3) and (4);
 - (f) by omitting from subsection (5) "the carrying on of tobacco or petroleum products wholesaling" and substituting "carrying on the business of selling tobacco or petroleum products"; and
 - (g) by omitting subsection (9).

5. MEMBERSHIP OF GROUP

Section 5 of the Principal Act is amended -

- (a) by omitting from subsection (1) "wholesale" (twice occurring);
- (b) by omitting from subsection (2)(a) "in the course of internal trade";

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- (c) by omitting from subsection (4) ", in the course of internal trade"; and
- (d) by omitting subsection (8) and substituting the following:

"(8) Notice of a determination made under subsection (2) or (4), or the revocation of such a determination, shall be given by the Commissioner to the person in respect of whom the determination was made and to every member of the group concerned who the Commissioner considers is carrying on the business of selling tobacco or petroleum products, as the case may be."

6. GROUPING OF CORPORATIONS

Section 6 of the Principal Act is amended by omitting "of wholesale tobacco merchants, or of wholesale petroleum products merchants, as the case may be," and substituting "carrying on the business of selling tobacco or petroleum products, as the case may be,".

7. GROUPING WHERE EMPLOYEES USED IN ANOTHER BUSINESS

Section 7(1) of the Principal Act is amended by omitting from paragraphs (a) and (b) "of wholesale tobacco merchants or of wholesale petroleum products merchants, as the case may be," and substituting "of selling tobacco or petroleum products, as the case may be,".

8. GROUPING OF COMMONLY CONTROLLED BUSINESSES

Section 8(1) of the Principal Act is amended by omitting paragraph (b) and substituting the following:

"(b) one of which is the business of selling tobacco and the other that of selling petroleum products."

9. SMALLER GROUPS SUBSUMED INTO LARGER GROUPS

Section 9(1) of the Principal Act is amended by omitting "of wholesale tobacco merchants or wholesale petroleum merchants" and substituting "carrying on the business of selling tobacco or petroleum products".

10. REPEAL AND SUBSTITUTION

Section 14 of the Principal Act is repealed and the following substituted:

"14. SELLERS OF TOBACCO OR PETROLEUM PRODUCTS TO BE LICENSED

"A person shall not carry on the business of selling tobacco or petroleum products unless the person is the holder of the relevant licence or group licence.

Penalty: \$20,000."

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11. DURATION OF LICENCE

Section 19 of the Principal Act is amended -

- (a) by omitting "A licence" and substituting "(1) Subject to subsection (2), a licence"; and
- (b) by adding at the end the following:

"(2) Where the Commissioner is of the opinion that the value of tobacco or volume of petroleum products does not warrant the granting of a monthly licence to an applicant or for any other reason a licence for a greater period should be granted, the Commissioner may grant a licence for such period greater than one month as he thinks fit.

"(3) Where the Commissioner grants a licence for a period greater than one month, the fee payable under this Act in respect of the licence shall be the fixed amount plus the *ad valorem* amount calculated by reference to the relevant purchases by the applicant during the relevant period."

12. RENEWAL OF LICENCE

Section 20 of the Principal Act is amended -

- (a) by omitting from subsection (1) "the month" and substituting "the month or last month of the period"; and
- (b) by omitting from subsection (3) "further month" and "the month" and substituting "further month or greater period, as the case may be" and "the month or last month of the period" respectively.

13. LICENCE FEES

Section 23 of the Principal Act is amended -

- (a) by omitting from subsection (1) paragraphs (a), (b), (c) and (d) and substituting the following:
 - "(a) in the case of a licence to sell tobacco - a fixed amount of \$10 plus an amount equal to 35% of the value of tobacco purchased in or outside the Territory by the applicant (or, in the case of a group licence, by all the members of the group) during the relevant period for sale by retail in the Territory; and
 - (b) in the case of a licence to sell petroleum products - a fixed amount of \$10 plus an amount equal to 3.5 cents per litre of petroleum products purchased in or outside the Territory by the applicant (or, in the case of a group licence, by all the members of the group) during

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the relevant period for sale by retail in the Territory.";

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

"(2) For the purposes of subsection (1) -

- (a) the value of tobacco purchased shall be determined by the Commissioner as the amount, including any duty thereon, for which, in his opinion, the tobacco would ordinarily be expected to be sold in an arm's length transaction to persons engaged in retailing tobacco or the amount for which it is subsequently purchased for sale by retail, whichever is the greater; and
- (b) where tobacco is or petroleum products are in fact sold by retail, it or they shall be deemed to have been purchased for sale by retail.

"(2A) Where an applicant for a licence does not purchase tobacco or petroleum products but produces it or them in the Territory for sale by retail, whether in the Territory or otherwise -

- (a) in the case of tobacco - the *ad valorem* amount to be paid by the applicant for the licence shall be calculated on the amount the Commissioner determines would be the value of the tobacco if the applicant had purchased it in an arm's length transaction from a person who had not already paid a fee under this Act in respect of the tobacco; and
- (b) for the purposes of calculating the licence fee payable under subsection (1)(b) in the case of petroleum products - the petroleum products shall be deemed to have been purchased from a person who had not already paid a fee under this Act in respect of them,

and the tobacco or petroleum products shall be deemed to have been purchased for sale by retail in the Territory.

"(2B) Without limiting the generality of subsections (2) or (2A), where tobacco is or petroleum products are produced or purchased, whether in the Territory or otherwise, without it being clear that it was or they were produced or purchased for sale by retail in any particular State or Territory, or in Australia at all, and it is or they are subsequently sold by retail in the Territory, that tobacco or those petroleum products so sold in the Territory shall be deemed to have been purchased or produced for sale by retail in the Territory.";

- (c) by omitting from subsection (3) ", if any,";

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- (d) by omitting from subsection (3) "sold to the applicant during that period" and substituting "purchased by the applicant during that period for sale by retail";
- (e) by omitting from subsection (4) "sold" (twice occurring) and substituting "purchased";
- (f) by omitting from subsection (4) "relevant period" and substituting "relevant period for sale by retail";
- (g) by omitting from subsection (5) all words before paragraph (a) and substituting the following:

"(5) Where an application is made for a licence to sell tobacco or petroleum products and the applicant (or, in the case of a group, the group) did not carry on the business of selling tobacco or petroleum products, as the case may be, during the whole of the relevant period, the fee payable by the applicant in respect of the licence shall be the fixed amount, plus such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard to -";

- (h) by omitting from subsection (5)(a) "handled by the applicant" and substituting "purchased by the applicant for sale by retail"; and
- (j) by omitting subsection (6) and substituting the following:

"(6) The Commissioner may grant a rebate of so much of a fee otherwise payable under this Act in respect of a licence as is prescribed where prescribed arrangements have been made for the payment of the licensee's licence fee to the Commissioner.

"(7) Where a licence is granted for a period greater than one month, the Commissioner may arrange for the collection of the fee payable under this Act in such instalments, and at such times, as the Commissioner thinks fit."

14. NEW SECTION

The Principal Act is amended by inserting after section 23 the following:

"23A. SUBSEQUENT SALES

- "(1) Where -
 - (a) tobacco or a petroleum product, in respect of the purchase of which a person has paid under this Act to the Commissioner a fee, is sold by retail and subsequently resold in a State or another Territory of the Commonwealth; and

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- (b) by virtue of the resale in that State or other Territory a person has paid a fee under a law of that State or Territory that corresponds to this Act,

the Commissioner shall refund, to the person who paid it to the Commissioner, any fees paid under this Act to the Commissioner in respect of the purchase of the tobacco or petroleum product.

"(2) Where tobacco or petroleum products, in respect of the purchase of which a person has paid under this Act to the Commissioner a fee, and subsequent to the sale by retail it is resold in the Territory, no further *ad valorem* amount shall be payable under this Act in respect of the purchase for the purposes of that resale."

15. ACCOUNTS TO BE KEPT BY LICENSEE

Section 27(1) of the Principal Act is amended by omitting "tobacco wholesaling or the wholesaling of petroleum products" and substituting "the business of selling tobacco or petroleum products".

16. REPEAL AND SUBSTITUTION

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

"28. ENDORSEMENT OF INVOICE

"(1) A holder of a licence shall endorse or cause to be endorsed on every invoice issued by him for or in relation to the sale by him of tobacco or petroleum products otherwise than by retail the words 'SOLD BY LICENSED WHOLESALER - LICENCE No. ' followed by the number of his licence.

Penalty: \$1,000.

"(2) A person shall not issue an invoice for or in relation to the sale by him of tobacco or a petroleum product which bears the words 'LICENCE No. ', or words conveying a similar meaning, followed by a number, unless he is the holder of a relevant licence bearing that number.

Penalty: \$2,000."

17. OFFENCES RESULTING FROM SALE

Section 35 of the Principal Act is amended -

- (a) by omitting subsections (1) and substituting the following:

"(1) Subject to this section, a person shall not sell tobacco or a petroleum product in the course of carrying on the business of selling tobacco or petroleum

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products unless the person is the holder of the relevant licence.

Penalty: \$20,000."; and

- (b) by omitting from subsection (3) "tobacco wholesaling or the wholesaling of petroleum products" and substituting "selling tobacco or petroleum products".

18. REGULATIONS

Section 38(2) of the Principal Act is amended -

- (a) by omitting from the end of paragraph (a) "and";

- (b) by omitting from paragraph (b)(iv) "the Regulations." and substituting "the Regulations; and"; and

- (c) by adding at the end the following:

"(c) make provision for or in relation to the payment of amounts by one person on behalf of another and accounting for those payments.".

19. SCHEDULE

The Schedule to the Principal Act is amended by omitting the heading and substituting the following:

"RELEVANT PERIODS FOR LICENCES".
