



NORTHERN TERRITORY OF AUSTRALIA

No. 44 of 1988

AN ACT

to amend the *Business Franchise Act*

[Assented to 15 September 1988]

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 1988*.

2. PRINCIPAL ACT

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

3. POWERS OF COMMISSIONER, &c.

Section 11 of the Principal Act is amended -

- (a) by omitting from subsection (1) "any reasonable time" and substituting "any time";
- (b) by omitting from subsection (1)(a) "enter and remain on premises" and substituting "enter and remain on premises, not being residential premises";

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(c) by inserting after subsection (1) the following:

"(1A) The occupier of premises on which the Commissioner or his authorized employee is permitted under this section to enter and remain, and all persons on the premises with the occupier's approval, shall, on request, provide the Commissioner or the Commissioner's authorized employee, as the case may be, with all reasonable facilities and assistance to enable the Commissioner or that employee to effectively exercise his powers under this section.

Penalty: \$5,000."; and

(d) omitting from subsection (2) "Penalty: \$200" and substituting "Penalty: \$5,000".

4. POWER OF COMMISSIONER TO REQUIRE INFORMATION

Section 12(4) of the Principal Act is amended by omitting "Penalty: \$500" and substituting "Penalty: \$5,000".

5. NEW SECTIONS

The Principal Act is amended by inserting after section 12 the following:

"12A. SEARCH WARRANTS

"(1) The Commissioner or an employee authorized for that purpose by the Commissioner may apply to a Magistrate for a warrant to search premises if the Commissioner or that employee has reasonable grounds for believing that -

(a) any records are to be found there, being records to which the Commissioner or the employee would have access if they were kept on premises to which the Commissioner or the employee has access; or

(b) tobacco or a petroleum product in excess of that reasonably required for personal use by persons in occupation of those premises is to be found there.

"(2) A Magistrate to whom an application is made under subsection (1) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorizing the Commissioner or the employee to enter and remain on the premises for the purpose referred to in subsection (3).

"(3) Subject to the terms of the warrant, a warrant under subsection (2) authorizes the Commissioner or the employee to whom it is issued to carry out on or in respect of the relevant premises all of the powers conferred by section 11.

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"(4) Nothing in this section limits or restricts any power conferred on the Commissioner or an employee by section 11.

"12B. SEIZURE OF TOBACCO OR PETROLEUM PRODUCT

"(1) Any tobacco or petroleum product -

(a) in a quantity in excess of that reasonably required for personal use; and

(b) which the Commissioner reasonably believes is evidence of an offence by any person,

may be taken and kept in custody by the Commissioner until proceedings for such an offence have been heard and dealt with.

"(2) When taking tobacco or a petroleum product under subsection (1), the Commissioner shall tender a receipt to the person from whom it is taken.

"(3) This section does not apply to tobacco or a petroleum product in the possession of the driver of a motor vehicle.

"(4) This section does not confer on the Commissioner any right of access to premises in addition to the right conferred by section 11 or by a warrant under section 12A.

"12C. REALIZATION OF VALUE OF SEIZED TOBACCO OR PETROLEUM PRODUCT

"(1) The Commissioner may apply to the Supreme Court for an order under this section in respect of tobacco or a petroleum product taken and kept in custody under section 12B.

"(2) An application under subsection (1) may be heard and dealt with by the Supreme Court in its summary jurisdiction.

"(3) The Supreme Court may, if it thinks fit, require the Commissioner to give notice of an application under subsection (1) to a person who the Court has reason to believe has an interest in the tobacco or petroleum product.

"(4) A person having an interest in tobacco or a petroleum product the subject of an application under subsection (1) is entitled to appear and to adduce evidence at the hearing of the application.

"(5) If at the hearing of the application under subsection (1) evidence is given that the tobacco or petroleum product was in the possession of a person for sale in the course of carrying on a business of selling tobacco or petroleum products, the Court may -

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- (a) by order, empower the Commissioner to sell the tobacco or petroleum product in such manner, and subject to such directions, if any, as the Court specifies, and to pay the proceeds of sale into Court; or
- (b) at the request of a person appearing to the Court to have an interest in the tobacco or petroleum product -
 - (i) fix the value of the person's interest for the purposes of an order under subparagraph (ii); and
 - (ii) order the Commissioner, on payment into Court by that person of an amount equal to the value of the interest so fixed, to deliver tobacco or a petroleum product of that kind, having a value equal to that amount, to that person.

"12D. FORFEITURE OF TOBACCO OR PETROLEUM PRODUCT

"(1) If -

- (a) in proceedings brought before it for an offence under Part IV or VIII, the court finds -
 - (i) the offence proven; and
 - (ii) that tobacco or a petroleum product taken and kept in custody under section 12C was in a person's possession for sale in the course of committing, or for the purposes of committing, the offence; or
- (b) on application subsequently made by the Commissioner to the court before which proceedings referred to in paragraph (a) were brought, the court finds as referred to in paragraph (a)(ii),

the court may, by order, declare that tobacco or petroleum product (or, as the case may be, its liquidated value paid into the Supreme Court under section 12C) forfeited to the Territory.

"(2) Tobacco or a petroleum product forfeited under subsection (1) may be disposed of by the Minister on behalf of the Territory in such manner as the Minister thinks fit.

"12E. ORDER FOR RETURN OF TOBACCO OR PETROLEUM PRODUCT

"On the application of a person claiming to be entitled to tobacco or a petroleum product taken, or money paid into Court, under section 12B or 12C, the Supreme Court may -

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- (a) if it is of the opinion that proceedings whereby the tobacco, petroleum product or money might be declared forfeit to the Territory are not likely to be taken; or
- (b) in any case with the consent of the Commissioner,

order that the tobacco, petroleum product or money be delivered or paid to a person appearing to the Court to be entitled to it.

"12F. RETURN OF TOBACCO OR PETROLEUM PRODUCT BY COMMISSIONER

"Nothing in this Part prevents the Commissioner from at any time causing tobacco or a petroleum product taken and kept in custody under section 12B to be delivered to a person who the Commissioner considers is entitled to it."

6. SELLERS OF TOBACCO OR PETROLEUM PRODUCTS TO BE LICENSED

Section 14 of the Principal Act is amended by omitting from subsections (1) and (2) "Penalty: \$1,000" and substituting "Penalty: \$20,000".

7. RECOVERY OF FEE FROM UNLICENSED PERSON

Section 25 of the Principal Act is amended -

- (a) by omitting from subsection (1) all words after "liable to pay to the Commissioner" and substituting the following:

"a fee equal to the sum of -

- (a) the fee that would have been payable if the person had applied for and been granted and issued a licence; and
- (b) twice the amount of that fee."; and
- (b) by adding at the end the following:

"(4) The Commissioner may, in his absolute discretion, forgive the debt constituted by the amount payable under subsection (1)(b) or such part of that debt as the Commissioner thinks fit and, accordingly, the amount of that debt or part ceases to be due and payable to the Territory."

8. NEW SECTION

The Principal Act is amended by inserting after section 25 the following:

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"25A. COMMISSIONER MAY COLLECT FEE FROM PERSON OWING MONEY TO DEBTOR

"(1) The Commissioner may, by notice in writing (a copy of which shall be furnished to the person liable to pay a fee) require -

- (a) a person by whom any money is due or accruing, or may become due, to a debtor;
- (b) a person who holds, or may subsequently hold, money for or on account of a debtor;
- (c) a person who holds, or may subsequently hold, money for or on account of some other person for payment to a debtor; or
- (d) a person having authority from another person to pay money to a debtor,

to pay to the Commissioner, either forthwith on the money becoming due or being held, or at or within a time specified in the notice (not being a time before the money becomes due or is held) -

- (e) so much of the money as is sufficient to pay an amount due in respect of a fee under this Act payable by the debtor, or the whole of the money when it is equal to or less than that amount; or
- (f) such amount as is specified in the notice out of each of any payments that the person so notified becomes liable from time to time to make to the debtor, until the amount due in respect of the fee payable by the debtor is satisfied,

and may at any time, by further notice in writing, amend or revoke the first-mentioned notice, or extend the time for making any payment in pursuance of that notice.

"(2) A person making a payment in pursuance of this section shall be deemed to have been acting under the authority of the debtor and of all other persons concerned and is, by force of this subsection, indemnified in respect of that payment.

"(3) If the Commissioner receives a payment in respect of the amount due by the debtor before payment is made by the person so notified, the Commissioner shall forthwith give notice of receipt of the payment to that person.

"(4) In this section -

"'debtor' means a person liable to pay to the Commissioner a fee under this Act;

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"'fee' includes further fee or a penalty, a judgment debt or costs in respect of a fee or penalty, further fee or penalty and any fine or costs imposed by a court in respect of an offence against this Act."

9. ACCOUNTS TO BE KEPT BY LICENSEE

Section 27 of the Principal Act is amended by omitting subsection (1) and substituting the following:

"(1) Subject to subsection (2), a person who carries on tobacco wholesaling or the wholesaling of petroleum products shall keep such accounts, records, books and documents, containing such particulars, as are necessary to give an accurate indication of such sales and purchases made by the person and to enable an accurate assessment of the relevant licence fees payable under this Act to be made, or as are prescribed, and shall preserve each of those accounts, records, books and documents for 5 years after the last entry was made in it.

Penalty: \$5,000."

10. ENDORSEMENT OF INVOICES

Section 28 of the Principal Act is amended -

- (a) by omitting from subsection (1) "Penalty: \$500" and substituting "Penalty: \$1,000"; and
- (b) by omitting from subsection (2) "Penalty: \$1,000" and substituting "Penalty: \$2,000".

11. REPEAL OF SECTION 34

Section 34 of the Principal Act is repealed.

12. OFFENCES RESULTING FROM SALE

Section 35 of the Principal Act is amended -

- (a) by omitting from subsection (1) "Penalty: \$1,000" and substituting "Penalty: \$20,000"; and
- (b) by omitting from subsection (3) "Penalty: \$250" and substituting "Penalty: \$2,500".

13. OFFENCES CONCERNING LICENCES

Section 36 of the Principal Act is amended by omitting from subsections (1) and (2) "Penalty: \$500" and substituting "Penalty: \$2,000".

14. NEW SECTION

The Principal Act is amended by inserting in Part IX, before section 37, the following:

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"36B: ASSISTANCE OF POLICE

"To the extent to which a member of the Police Force is not so authorized by any other law, a member of the Police Force is, by this section, authorized to provide -

- (a) the Commissioner or an employee of the Commissioner; or
- (b) a lawful delegate of the Commissioner,

with such assistance as may in a particular case be required for or in connection with the performance of a function, or the exercise of a power, of the Commissioner, employee or delegate."
