



NORTHERN TERRITORY OF AUSTRALIA

No. 27 of 1987

AN ACT

to amend the *Business Franchise (Tobacco) Act* by broadening the scope of that Act to include petroleum products and wholesalers of petroleum products
[Assented to 1 July, 1987]

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 (Tobacco) Amendment Act 1987*.

2. COMMENCEMENT

(1) Sections 1 and 2 shall come into operation on the day on which the Administrator's assent to this Act is declared.

(2) The remaining provisions of this Act shall come into operation on 1 July 1987.

3. PRINCIPAL ACT

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

4. CITATION OF AMENDED ACT

The Principal Act as amended by this Act may be cited as the *Business Franchise Act*.

5. INTERPRETATION

Section 3 of the Principal Act is amended -

- (a) by omitting from subsection (1) the definition of "group tobacco licence" and substituting the following:
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"'group licence', in relation to tobacco or petroleum products, means a group licence which is in force under this Act and relates to a group of wholesale merchants of tobacco or petroleum products, as the case may be;"

- (b) by omitting from the definition of "licence" in subsection (1) "a licence" and substituting "a wholesale merchant's licence or group licence";
- (c) by inserting in subsection (1), after the definition of "premises", the following:

"'petroleum products' means -

- (a) a petroleum or shale product used or capable of use in propelling a diesel engined road vehicle; or
- (b) petrol or other petroleum or shale spirit having a flashpoint of less than 23° Celsius when tested in an Abel Pensky closed test apparatus,

but does not include -

- (c) aviation gasoline;
 - (d) solvents;
 - (e) liquid petroleum gas;
 - (f) liquefied natural gas;
 - (g) special boiling point spirits; or
 - (h) a substance prescribed under subsection (10);"
- (d) by omitting from subsection (1) the definitions of "tobacco retailing" and "tobacco wholesaling" and substituting the following:

"'tobacco wholesaling' means the business of selling tobacco in the course of internal trade;"

- (e) by inserting in the definition of "vending machine" in subsection (1), after "constructed to certain articles", the words "or a substance";
- (f) by inserting in subsection (1), after the definition of "voting share", the following:

"'wholesaling of petroleum products' means selling petroleum products when those petroleum products have not previously been sold in the Territory."; and

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- (g) by omitting subsections (3) to (6) inclusive and substituting the following:

"(3) For the purposes of the interpretation of 'wholesaling of petroleum products' in subsection (1), the supply of petroleum products from a refinery in the Territory for the purposes of resale shall not be regarded as constituting a sale of those petroleum products.

"(4) For the purposes of the interpretation of 'tobacco wholesaling' or 'wholesaling of petroleum products' in subsection (1), but subject to subsection (9), the delivery of tobacco or petroleum products into the Territory from elsewhere shall not by itself be regarded as constituting a sale of those products in the Territory.

"(5) The presence on premises of a vending machine from which tobacco or petroleum products may be obtained shall be deemed to constitute the carrying on of tobacco or petroleum products wholesaling as the case may be, on those premises by the occupier of the premises, unless the machine is owned by a licensee and operated in accordance with his licence.

"(6) A reference in this Act to a person who -

- (a) sells tobacco or petroleum products; or
- (b) carries on the business of selling tobacco or petroleum products,

does not extend to a person who, as an agent or employee of such a person, sells tobacco or petroleum products or carries on such a business.

"(7) A reference in this Act to the carrying on of the business of selling tobacco or petroleum products includes a reference to the selling of tobacco or petroleum products either alone or in conjunction with other merchandise and the carrying on of that business as part of or in conjunction with any other business.

"(8) A reference in this Act to -

- (a) a holder of a group licence includes a reference to each person whose name is, under section 17(3), specified in the group licence; and
- (b) the application for or the grant of a licence includes a reference to the application for the renewal, or the renewal, of a licence.

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"(9) Where, pursuant to a sale made outside the Territory, tobacco or a petroleum product is delivered in the course of internal trade within the Territory, that sale shall, for the purposes of this Act, be deemed to have been made within the Territory.

"(10) The Regulations may prescribe a substance as not being a petroleum product for the purposes of this Act."

6. MEMBERSHIP OF GROUP

Section 5 of the Principal Act is amended -

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

"(1) For the purposes of this Act, a person is a member of a group of wholesale tobacco merchants or of a group of wholesale petroleum products merchants if -

- (a) he is one of the persons who constitutes the group; and
- (b) there is not in force a determination under subsection (2) or (4) to the effect that the person is not a member of the group.";
- (b) by omitting from subsection (2)(a) "tobacco" and substituting "tobacco or petroleum products, as the case may be,";
- (c) by omitting from subsection (4) "tobacco" and substituting "tobacco or petroleum products, as the case may be,"; and
- (d) by omitting from subsections (6) and (8) "tobacco retailing" and substituting "the wholesaling of petroleum products, as the case may be,".

7. GROUPING OF COMMONLY CONTROLLED BUSINESSES

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

"(1) A reference in this section to 2 businesses does not include a reference to 2 businesses -

- (a) both of which are owned by the same person, not being a trustee, or by the trustee or trustee of a trust; or
- (b) one of which is the business of wholesale tobacco merchants and the other that of wholesale petroleum products merchants."

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8. HEADING TO PART IV

The Principal Act is amended by omitting from the heading to Part IV "TOBACCO" and substituting "TOBACCO OR PETROLEUM PRODUCTS".

9. 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

"(1) A person shall not carry on tobacco wholesaling or the wholesaling of petroleum products unless the person is the holder of the relevant wholesale merchant's licence or group licence.

Penalty: \$1,000.

"(2) A person shall not, in the course of carrying on tobacco or petroleum products retailing, purchase tobacco or a petroleum product, as the case may be, except -

- (a) from the holder of a relevant wholesale merchant's licence or group licence; or
- (b) from a person carrying on tobacco or petroleum products retailing who has purchased that tobacco or petroleum product from the holder of a relevant licence.

Penalty: \$1,000."

10. APPLICATION FOR LICENCE

Section 15 of the Principal Act is amended by omitting all words before "shall be made" and substituting "An application for a licence".

11. AMENDMENT OF GROUP LICENCE

Section 21 of the Principal Act is amended by omitting "group tobacco licence" and substituting "group licence".

12. LICENCE FEES

Section 23 of the Principal Act is amended -

- (a) by omitting from subsection (1) "and to section 39";
- (b) by omitting from subsection (1)(b) "or purchased, as the case may be," and "and";

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- (c) by omitting subsection (1)(c) and substituting the following:

"(c) in the case of a wholesale petroleum products merchant's licence - a fixed amount of \$50 plus an amount equal to 3.5 cents per litre of petroleum products sold by the applicant in the course of internal trade during the relevant period (other than petroleum products sold to the holder of a wholesale petroleum products merchant's licence or a group petroleum products licence); and

- (d) in the case of a group petroleum products licence - a fixed amount of \$50 plus an amount equal to 3.5 cents per litre of petroleum products sold by all members of the group in the course of internal trade during the relevant period (other than petroleum products sold to the holder of a wholesale petroleum products merchant's licence or group petroleum products licence).";

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

"(2) For the purposes of subsection (1)(a) and (b), the value of tobacco sold shall be determined by the Commissioner as the amount, including any duties thereon, for which, in his opinion, the tobacco would ordinarily be expected to be sold to persons engaged in tobacco retailing.";

- (e) by omitting from subsection (3) "shall be such amount" and substituting "shall be the fixed amount, if any, plus such amount";

- (f) by omitting from subsection (3) "that, in the opinion of the Commissioner, was sold to or purchased by, as the case may be," and substituting "or petroleum products that, in the opinion of the Commissioner, was or were sold to";

- (g) by inserting in subsection (4), after "tobacco", the words "or petroleum products";

- (h) by omitting from subsection (5) all words before "during the whole of the relevant period" (first occurring) and substituting "Where an application is made for a wholesale merchant's licence or group licence and the applicant did not carry on tobacco wholesaling or the wholesaling of petroleum products, as the case may be";

- (j) by omitting from subsection (5) "shall be such amount" and substituting "shall be the fixed amount, if any, plus such amount";

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- (k) by omitting from subsection (5)(a) "the tobacco" and substituting "the tobacco or petroleum products"; and
- (m) by omitting from subsection (6) "The value of tobacco" and substituting "The value or quantity of tobacco or petroleum products".

13. NEW SECTION

The Principal Act is amended by inserting in Part V, after section 26, the following:

"26A. APPROPRIATION OF AMOUNT OF REBATE

"Where a fee for a licence in respect of petroleum products is rebated under the Regulations, the Consolidated Fund is, by force of this section, appropriated to the extent necessary to satisfy that rebate."

14. APPEAL AFTER OBJECTION

Section 31(1) of the Principal Act is amended by omitting "section 32" and substituting "section 30".

15. REGULATIONS

Section 38 of the Principal Act is amended by omitting subsection (2) and substituting the following:

"(2) Without limiting the generality of subsection (1), the Regulations may -

- (a) provide for the remission or rebating of a fee for a licence in respect of petroleum products payable by a person or a member of a class of persons specified in the Regulations; and
- (b) make provision for or in relation to -
 - (i) the records to be kept by licensees;
 - (ii) the display of licences or duplicate licences on licensed premises;
 - (iii) the issue of duplicate licences; and
 - (iv) the fixing and imposing of penalties, not exceeding a fine of \$200, for offences against the Regulations."

16. REPEAL

Section 39 of the Principal Act is repealed.

17. FURTHER AMENDMENTS

The Principal Act is further amended as set out in the Schedule.

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18. TRANSITIONAL

(1) The fee to be paid under the Principal Act as amended by this Act for a licence relating to petroleum products in respect of each of the months of July and August 1987 by a person required to hold such a licence is \$50.

(2) A person who was, immediately before 1 July 1987 carrying on the business of the wholesaling of petroleum products on premises is not guilty of an offence against section 14 or 35 of the Principal Act as amended by this Act in respect of the person's continuing to carry on that business on those premises on or after 1 July 1987 during the period of 7 days after that date or, where during that period the person applied for a licence in respect of that business and those premises, until the application has been granted or refused under section 16 of that Act as so amended.

(3) Section 3 of the Principal Act as amended by this Act applies to the interpretation of words and expressions used in this section as though this section were part of that Act as so amended.

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SCHEDULE

Section 17

Provision of Act	Amendment	
	omit	substitute
Long title	"tobacco"	"certain"
Section 6	"a group"	"a group of wholesale tobacco merchants or of wholesale petroleum products merchants, as the case may be,"
Section 7(1) (a) and (b)	"a business"	"a business of wholesale tobacco merchants or of wholesale petroleum products merchants, as the case may be,"
Section 9(1)	"more groups"	"more groups of wholesale tobacco merchants or wholesale petroleum products merchants, as the case may be,"
Section 11(1)	"tobacco" (wherever occurring)	"tobacco or petroleum products"
Section 12(5)	"of a State or Territory"	"of a State or another Territory of the Commonwealth"
Section 17(3)	"tobacco"	
Section 26(3)	"tobacco"	
Section 27(1)	"or tobacco"	"or the wholesaling of petroleum products"
Section 28(1)	"tobacco" (first and second occurring)	
	"tobacco" (third occurring)	"tobacco or petroleum products"
Section 28(2)(a)	"a wholesale tobacco merchant's licence"	"the relevant wholesale merchant's licence"
	"a group tobacco licence"	"the relevant group licence"

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SCHEDULE - continued

Provision of Act	Amendment	
	omit	substitute
Section 28(2)(b)	"a wholesale tobacco merchant's licence"	"a relevant wholesale merchant's licence"
Section 35(1)	"and section 39"	
	"sell tobacco"	"sell tobacco or petroleum products"
	"made in the course of tobacco retailing and is a sale of tobacco"	"a sale of tobacco or or petroleum products"
Section 35(2)	"tobacco is sold"	"tobacco or a petroleum product is sold"
	"sold the tobacco"	"sold the tobacco or the petroleum product"
Section 35(3)	"Subject to section 39, a licensee"	"A licensee"
	"or tobacco retailing"	"or the wholesaling of petroleum products"
Schedule Heading	"TOBACCO" (twice occurring)	
	"TOBACCONIST'S"	