



Serial 257
Business Franchise
Amendment (No. 2)
Mr Coulter

NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the *Business Franchise Act*

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 (No. 2) 1993*.

2. COMMENCEMENT

(1) Sections 6 and 9 of this Act shall be deemed to have come into operation on 19 August 1993.

(2) Subject to subsection (1), 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 inserting after "licensee" the following:

"'motor spirit' includes petrol and any other fuel prescribed for the purposes of this definition;"

(b) by omitting the definition of "premises";

- (c) by omitting the definition of "petroleum products" and substituting the following:

"'petroleum products' means -

- (a) a petroleum or shale product used or capable of use in a diesel engine; or
- (b) a motor spirit (whether or not derived from petroleum or shale);
- (c) a petroleum or shale spirit having a flashpoint of less than 23° celsius when tested in an Abel Pensky closed test apparatus;
- (d) any combination of substances referred to in paragraphs (a), (b) or (c) with or without any other additive; or
- (e) a substance prescribed for the purposes of this definition,

but does not include -

- (f) aviation gasoline;
- (g) solvents;
- (h) liquid petroleum gas;
- (j) liquified natural gas;
- (k) special boiling point spirits; or
- (m) a substance or combination of substances prescribed under subsection (10);"

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

"(2) A reference in this Act to premises includes a reference to all or a part of any -

- (a) land;
- (b) building or structure (including a tank or container and a building or structure of a temporary nature or that is capable of being moved or transported); and
- (c) vehicle, vessel or aircraft.

"(3) A sale of a petroleum product or tobacco outside of the Territory in the course of wholesaling or retailing shall, for the purposes of this Act, be deemed as having been made in the Territory if the terms of the sale, whether express or implied, or of a contract for the sale -

(a) require either party to deliver or to arrange delivery of; or

(b) contemplates the delivery of,

the petroleum product or tobacco into or within the Territory or, whether or not a term of the sale or contract, the petroleum product or tobacco is in fact delivered into the Territory."

5. POWER OF COMMISSIONER TO REQUIRE INFORMATION

Section 12 of the Principal Act is amended by omitting subsection (5).

6. LICENCE FEES

Section 23 of the Principal Act is amended -

(a) by omitting from subsection (1)(a) "60%" and substituting "85%"; and

(b) by omitting from subsection (2)(b) "in fact".

7. NEW SECTION

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

"26B. REFUNDS TO BE PAID TO PERSON ENTITLED

"(1) The Commissioner shall not make a refund of any amount paid as a purported licence fee under this Act unless satisfied that the person to whom the refund is payable (in this section called 'the applicant') -

(a) has not charged to, or recovered from, and will not charge to, or recover from, any other person any amount in respect of the whole or any part of that amount so paid; or

(b) if the applicant has so charged or recovered any such amount, will reimburse, or will take all reasonable steps to reimburse, each such other person for the amount so charged or recovered.

"(2) If a refund is made to an applicant to whom subsection (1)(b) applies -

(a) the applicant shall -

(i) not later than 90 days after receiving the refund, reimburse each other person for the amount charged to or recovered from that person; and

(ii) notify the Commissioner in writing not later than 7 days after that period of 90 days that all amounts charged or recovered have been reimbursed; or

(b) if any such amount is not reimbursed within that period of 90 days, the applicant shall not later than 7 days after that period -

(i) notify the Commissioner in writing of the amounts not reimbursed; and

(ii) pay those amounts to the Commissioner, together with interest at the specified rate from the date the refund was made to the date of payment.

Penalty: \$2,000.

"(3) An amount payable under subsection (2)(b)(ii) is a debt due and payable by the applicant to the Territory.

"(4) In this section, 'specified rate' means such percentage, not exceeding 20% per annum, as the Commissioner specifies when the refund is made."

8. NEW SECTION

The Principal Act is amended by inserting after section 36A the following:

"36B. OFFENCES BY CORPORATIONS

"(1) Where a corporation contravenes, whether by act or omission, a provision of this Act or the Regulations, each person being a director of the corporation or a person concerned in the management of the corporation shall be taken to have contravened the same provision unless the person proves that he or she had no knowledge of the commission of the offence and could not, by the exercise of due diligence, have prevented the commission of the offence.

"(2) A person may be proceeded against and convicted pursuant to this section whether or not the corporation has been proceeded against or been convicted.

"(3) Nothing in this section affects the liability imposed on a corporation for an offence committed by the corporation against this Act or the Regulations.

"(4) Without limiting any other law or practice relating to the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had at a particular time, a particular intention, is evidence that the corporation had that intention at that time."

9. NEW SECTION

Section 37 of the Principal Act is repealed and the following substituted:

"37. CERTIFICATION OF EVIDENCE

"In proceedings for an offence against this Act or the Regulations, or civil proceeding for the recovery of an amount payable under this Act, a certificate that purports to be signed by the Commissioner that -

- (a) on a date, or during a period, specified in the certificate a person named in the certificate held or did not hold a licence of a particular kind;
- (b) that fees to be paid under this Act have been correctly assessed at the amount specified in the certificate; or
- (c) that a notice required to be issued in respect of an assessment of a fee to be paid under this Act has been correctly issued or served,

is prima facie evidence of the matter so certified."

10. TRANSITIONAL

(1) Notwithstanding section 23(1) of the Principal Act as amended by this Act, the fee to be paid for a licence to sell tobacco in respect of the month of October 1993 is the fixed amount of \$10 plus 60% of the value of tobacco purchased in or outside the Territory by the applicant for the licence (or, in the case of a group licence, by all the members of the group) during the period 1 to 18, inclusive, of August 1993 and 85% of the value of such purchases during the period 19 to 31, inclusive, of August 1993.

(2) Subject to subsection (1), section 23 of the Principal Act applies in the interpretation of that subsection.

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