



**TOBACCO PRODUCTS REGULATION (LICENCE FEES)  
AMENDMENT ACT 1998**

**No. 26 of 1998**

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*Transitional Provision*



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**ELIZABETHAE II REGINAE**

**A.D. 1998**

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**No. 26 of 1998**

**An Act to amend the Tobacco Products Regulation Act 1997.**

*[Assented to 2 April 1998]*

The Parliament of South Australia enacts as follows:

**Short title**

1. (1) This Act may be cited as the *Tobacco Products Regulation (Licence Fees) Amendment Act 1998*.

(2) The *Tobacco Products Regulation Act 1997* is referred to in this Act as "the principal Act".

**Commencement**

2. This Act will come into operation on a day to be fixed by proclamation.

**Amendment of long title**

3. The long title to the principal Act is amended by striking out "to recover from consumers of tobacco products an appropriate contribution towards the State's revenues;" .

**Amendment of s. 3—Objects of Act**

4. Section 3 of the principal Act is amended by striking out paragraph (a).

**Amendment of s. 4—Interpretation**

5. Section 4 of the principal Act is amended—

- (a) by striking out from subsection (1) the definitions of "Commissioner", "corresponding law" and "relevant period";
- (b) by inserting in the definition of "sell" in subsection (1) "and offer or expose for sale or such supply" after "consideration)";
- (c) by striking out from subsection (1) the definitions of "tobacco merchandising", "tobacco merchant" and "wholesale" .

**Repeal of s. 5**

6. Section 5 of the principal Act is repealed.

**Substitution of Part 2**

7. Part 2 of the principal Act is repealed and the following Part is substituted:

**PART 2  
LICENCES****Requirement for licence**

6. A person must not—

- (a) carry on the business of selling tobacco products by retail; or
- (b) hold himself or herself as carrying on such a business,

unless the person holds a licence under this Part.

Maximum penalty: \$10 000.

**Issue or renewal of licence**

7. (1) The Minister may, on application by a person, issue or renew, or refuse to issue or renew, a licence under this Part.

(2) The Minister may, if he or she thinks fit, renew a licence despite the fact that application for renewal of the licence was made after the end of the previous term of the licence.

**Licence term, etc.**

8. (1) Subject to this Act, a licence expires on the anniversary of the date of issue of the licence and may be renewed on application for successive terms of one year.

(2) A licence has effect, on issue or renewal, from the date specified in the licence for that purpose which may be earlier than the date of application for the issue or renewal of the licence.

(3) The holder of a licence may, at any time, by notice in writing to the Minister, surrender the licence, at which time the licence ceases to have effect.

**Licence conditions**

9. (1) The Minister may fix conditions of a licence.

(2) Without limiting subsection (1), a licence condition may limit the place or places at which the holder of the licence is authorised to carry on business under the licence or require that the Minister be notified of the place or places at which business is carried on under the licence.

(3) The Minister may, on application or at the Minister's own initiative, vary a licence.

(4) A licence may be varied by endorsement of the licence or by notice in writing to the holder of the licence.

(5) The holder of a licence must not contravene, or fail to comply with, a condition of the licence.

Maximum penalty: \$5 000.

**Form of application and licence fee**

10. (1) An application for the issue, renewal or variation of a licence must be made to the Minister in a manner and form approved by the Minister and contain the information required by the Minister.

(2) An applicant must provide any further information that the Minister reasonably requires for the purposes of determining the application.

(3) An application may not be granted except on payment of the appropriate fee under the regulations.

**Cancellation or suspension of licence**

11. The Minister may, by written notice to the holder of a licence, suspend or cancel the licence if satisfied that the holder of the licence has contravened this Act or is not or is no longer for any reason a fit and proper person.

**Review of decision of Minister**

12. (1) A person who is dissatisfied with a decision of the Minister under this Part may apply to the Minister for a review of the decision.

(2) An application for review—

(a) must be made within one month after the applicant received notice of the decision to which the application relates; and

(b) must set out in detail the grounds on which the applicant seeks the review.

(3) If an application is made under subsection (1), the Minister must review the decision to which the application relates.

(4) On a review the Minister may—

(a) confirm or vary the decision under review; or

(b) quash the decision and substitute for it a decision that should, in the Minister's opinion, have been made in the first instance.

(5) The Minister must inform the applicant in writing of the result of the review.

**Appeal**

13. (1) A person who is dissatisfied with a decision taken by the Minister on a review may appeal to the Administrative and Disciplinary Division of the District Court against the decision.

(2) The Court may, in exercising its jurisdiction under this section, be constituted of a Magistrate.

(3) Subject to subsection (4), an appeal must be instituted within one month of receipt of notice of the Minister's decision.

(4) The Court may dispense with the requirement in subsection (3) if satisfied that it is just and reasonable in the circumstances of the case to do so.

(5) The Court may, on the hearing of an appeal—

- (a) affirm, vary or quash the decision appealed against or substitute, or make in addition, any decision that the Court thinks appropriate; and
- (b) make an order as to any other matter that the case requires (including an order for costs).

**Repeal of s. 28**

8. Section 28 of the principal Act is repealed.

**Amendment of s. 38—Sale of tobacco products to children**

9. Section 38 of the principal Act is amended—

- (a) by striking out from subsection (5) "who is not a member of a group of tobacco merchants";
- (b) by striking out from subsection (5)(a) "tobacco merchant's licence" and substituting "licence under Part 2";
- (c) by striking out from subsection (5)(b) "an unlicensed tobacco merchant" and substituting "unlicensed under Part 2";
- (d) by striking out subsections (6) and (7) and substituting the following subsection:

(6) Subsection (5) does not limit or affect the power of the Minister to suspend or cancel a licence under Part 2.

**Amendment of s. 39—Evidence of age may be required**

10. Section 39 of the principal Act is amended by striking out from paragraph (a) of the definition of "authorised person" in subsection (3) and substituting the following paragraph:

- (a) a person who holds a licence under Part 2 or an employee of such a person; or.

**Amendment of s. 47—Smoking in enclosed public dining or cafe areas**

11. Section 47 of the principal Act is amended by striking out from subsection (5) "Division 4 of".

**Amendment of s. 58—Continuation of Fund**

12. Section 58 of the principal Act is amended by striking out paragraph (a) of subsection (2) and substituting the following paragraph:

- (a) money appropriated by Parliament for the purposes of the Fund; and.

**Amendment of s. 63—Appointment of authorised officers**

13. Section 63 of the principal Act is amended by striking out from subsection (4) "and authorised officers under the *Taxation Administration Act 1996*".

**Amendment of s. 65—Power to require information or records or attendance for examination**

14. Section 65 of the principal Act is amended by striking out "or the Commissioner" wherever occurring.

**Amendment of s. 66—Powers of authorised officers**

15. Section 66 of the principal Act is amended by striking out paragraph (h) of subsection (1).

**Amendment of s. 69—Powers in relation to seized tobacco products**

16. Section 69 of the principal Act is amended—

- (a) by striking out from subsection (1) "Commissioner" wherever occurring and substituting, in each case, "Minister";
- (b) by striking out from subsection (1)(f) "in accordance with section 16 for the purpose of assessing licence fees" and substituting "by reference to the price that would have been obtained from their sale by the owner in the ordinary course of business";
- (c) by striking out subsection (2).

**Repeal of Part 6**

17. Part 6 of the principal Act is repealed.

**Amendment of s. 72—Delegation**

18. Section 72 of the principal Act is amended by striking out from subsection (1) "or the Commissioner".

**Repeal of s. 74**

19. Section 74 of the principal Act is repealed.

**Amendment of s. 76—Minister may require verification of information**

20. Section 76 of the principal Act is amended by striking out from subsection (1) "or the Commissioner".

**Amendment of s. 78—Confidentiality**

21. Section 78 of the principal Act is amended by striking out paragraph (d).

**Amendment of s. 80—Immunity from personal liability**

22. Section 80 of the principal Act is amended by striking out paragraph (a) of subsection (1).

**Substitution of s. 82**

23. Section 82 of the principal Act is repealed and the following section is substituted:

**Prosecutions**

82. Proceedings for an offence against this Act must be commenced—

- (a) in the case of an expiable offence—within the time limits prescribed for expiable offences by the *Summary Procedure Act 1921*;
- (b) in any other case—within five years after the date on which the offence is alleged to have been committed.

**Repeal of ss. 83 and 84**

24. Sections 83 and 84 of the principal Act are repealed.

**Amendment of s. 85—Evidence**

25. Section 85 of the principal Act is amended—

- (a) by striking out paragraph (c) of subsection (1);
- (b) by striking out subsection (3).

**Amendment of s. 87—Regulations**

26. Section 87 of the principal Act is amended—

- (a) by striking out paragraphs (a) and (b) of subsection (2);
- (b) by striking out subsections (4) and (5).

**Substitution of schedules 1 and 2**

27. Schedules 1 and 2 of the principal Act are repealed and the following schedule is substituted:

**SCHEDULE***Transitional Provision*

A class A licence in force under Part 2 immediately before the commencement of this Schedule under which a person was carrying on the business of selling tobacco products by retail continues (subject to the provisions of this Act) as a licence under Part 2 authorising the carrying on of such a business for the balance of the period for which the licence was granted (including periods for which it was to have been automatically renewed).

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor