

# LEGISLATIVE ASSEMBLY

Read 1° 23 March 1983

(Brought in by Mr. Jolly and Mr. Crabb)

## A BILL

To amend the *Business Franchise (Tobacco) Act* 1974 and the *Business Franchise (Petroleum Products) Act* 1979 and for other purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. (1) This Act may be cited as the *Business Franchise Acts (Amendment) Act* 1983. Short title.

(2) Except where otherwise expressly provided, the several provisions of this Act shall come into operation on the day on which this Act receives the Royal Assent. Commence-  
ment.

(3) This Act is divided into Parts as follows:

Part I.—Amendments to the *Business Franchise (Tobacco) Act* 1974 ss. 2–6.

15 Part II.—Amendments to the *Business Franchise (Petroleum Products) Act* 1979 ss. 7–10. Division into  
Parts.

PART I.—AMENDMENTS TO THE BUSINESS FRANCHISE (TOBACCO)  
ACT 1974

2. In this Part the *Business Franchise (Tobacco) Act 1974* is referred to as the Principal Act.

Principal  
Act No. 8597.  
Reprinted to  
No. 9301.

Subsequently  
amended by  
Nos. 9436,  
9549, 9674,  
9699 and 9766.

Amendment of  
No. 8597.

Right to object  
to certain  
decisions or  
determinations  
of the  
Commissioner.

Objection to  
certain decisions  
or  
determinations.

3. The Principal Act shall be amended as follows:

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(a) In section 2A, in sub-sections (2), (3) and (4) after the words "The Commissioner may" there shall be inserted the words "in his absolute discretion"; and

(b) After section 16 there shall be inserted the following section:

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"16A. Any person who is dissatisfied with any determination or decision of the Commissioner forming part of the process of making or leading up to the making of an assessment under the Business Franchise Acts may object in writing against that determination or decision pursuant to section 16 as if that determination or decision was an assessment and the provisions of sections 16, 17, 18, 18A, 18B, 18C, 18D, 18E and 18F shall apply to such an objection with such modifications as are necessary."

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4. (1) For section 9 of the Principal Act there shall be substituted the following section:

"9. (1) A licence shall be in the prescribed form and shall—

(a) in the case of a retail tobacconist's licence, except as otherwise provided in sub-section (2); and

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(b) in the case of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence—

be in force on and from the day specified in the licence as the date from which the licence commences until, unless it sooner ceases to have effect, the last day of the month in which it commenced.

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(2) The Commissioner may in his absolute discretion issue to a person who has applied for a retail tobacconist's licence a licence revocable at will which unless so revoked or otherwise ceasing to have effect shall be in force on and from the day specified in the licence as the date from which the licence commences until 31 December next following.

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(3) Upon the revocation of a retail tobacconist's licence issued pursuant to sub-section (2) the following provisions shall apply:

(a) The retail tobacconist's licence shall be deemed to continue in force only until the end of the month in which the revocation is made;

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(b) The

- 5 (b) The Commissioner shall notify the person who is the holder of the retail tobacconist's licence of the revocation and shall make and issue an assessment of the amount which in his opinion should be paid in respect of that retail tobacconist's licence until the end of the month in which the revocation is made after deducting any amount previously paid in respect of that retail tobacconist's licence and that person shall be liable to pay that amount except in so far as he establishes on objection or appeal that the assessment is excessive;
- 10 (c) Where a person who held a retail tobacconist's licence which is revoked under this sub-section applies for another retail tobacconist's licence the relevant period for the first licence issued after the revocation shall notwithstanding section 2 (6A) be from 1 October in the preceding calendar year until the last day of the month second preceding the month for which the licence is issued;
- 15 (d) Notwithstanding anything to the contrary in section 7 (3) the Commissioner shall not issue another retail tobacconist's licence to a person who held a retail tobacconist's licence which is revoked under this sub-section unless the amount assessed as being payable in respect of the revoked retail tobacconist's licence pursuant to paragraph (b) has been paid or an arrangement is entered into pursuant to section 7A;
- 20 (e) The revocation of a retail tobacconist's licence pursuant to this sub-section shall be effective in law unless and until quashed in proceedings for certiorari and notwithstanding anything to the contrary in any other Act whatsoever no proceedings for certiorari, prohibition, mandamus, a declaration of invalidity or an injunction shall be maintained unless the amount assessed as being payable in respect of the revoked retail tobacconist's licence pursuant to paragraph (b) has been paid or, an arrangement is entered into pursuant to section 7A."
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(2) The Principal Act shall be amended as follows:

- (a) In section 2 (6A)—
- 40 (i) in paragraph (a) for the expression "in relation to which the Commissioner has not made a determination under section 9 (2)" there shall be substituted the expression "of the duration specified in section 9 (1)," ; and
- 45 (ii) in paragraph (b) for the expression "in relation to which the Commissioner has made a determination under section 9 (2)" there shall be substituted the

expression

Amendment of  
No. 8597.  
Consequential  
amendments.

expression "revocable at will issued pursuant to section 9 (2)";

(b) In section 10 (1)—

(i) in paragraph (c) for the expression "in relation to which the Commissioner has made a determination under section 9 (2)" there shall be substituted the expression "revocable at will issued pursuant to section 9 (2)"; and 5

(ii) in paragraph (d) for the expression "in relation to which the Commissioner has not made a determination under section 9 (2)" there shall be substituted the expression "of the duration specified in section 9 (1)"; and 10

(c) In section 11 (1) for the expression "in relation to which the Commissioner has made a determination under section 9 (2)" there shall be substituted the expression "revocable at will issued pursuant to section 9 (2)". 15

(3) Except as otherwise provided in sub-section (4), upon the commencement of this section—

(a) a retail tobacconist's licence issued before the commencement of this section in respect of which the Commissioner of Business Franchises had made a determination under section 9 (2) of the Principal Act as in force before the commencement of this section shall be deemed to be a retail tobacconist's licence revocable at will under section 9 (2) of the Principal Act as in force after the commencement of this section; and 20 25

(b) a retail tobacconist's licence issued before the commencement of this section in respect of which the Commissioner of Business Franchises had not made a determination under section 9 (2) of the Principal Act as in force before the commencement of this section or in respect of which the Commissioner of Business Franchises had revoked a determination under section 9 (4) of the Principal Act as in force before the commencement of this section shall be deemed to be a retail tobacconist's licence of the duration specified in section 9 (1) of the Principal Act as in force after the commencement of this section. 30 35 40

(4) Notwithstanding the provisions of sub-section (3), the rights of the parties to any legal proceedings instituted before the commencement of this section in respect of any decision of the Commissioner of Business Franchises made before the commencement of this section under section 9 of the Principal Act as in force before the commencement of this section in relation to a retail tobacconist's licence issued before the commencement of this section shall be determined as if this Act had not been enacted. 45

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5. In section 5 (1) of the Principal Act after paragraph (b) there shall be inserted the following paragraph:

Amendment of  
No. 8597 s. 5 (1).

“(ba) any member of the police force;”.

6. (1) Section 7A (7) of the Principal Act shall be amended as follows:

Amendment of  
No. 8597  
s. 7A (7).

(a) After paragraph (a) the word “or” shall be repealed;

(b) In paragraph (b) for the expression “payable—” there shall be substituted the expression “payable; or”; and

10 (c) After paragraph (b) there shall be inserted the following paragraph:

“(c) when the whole of the arranged amount has been paid—”.

(2) Sub-section (1) shall be deemed to have come into operation on 18 November 1980.

15 PART II.—AMENDMENTS TO THE BUSINESS FRANCHISE  
(PETROLEUM PRODUCTS) ACT 1979

7. In this Part the *Business Franchise (Petroleum Products) Act* 1979 is referred to as the Principal Act.

Principal Act  
No. 9272.  
Amended by  
Nos. 9295,  
9418, 9588, 9674,  
9861 and 9863.

20 8. In section 3 of the Principal Act, in sub-sections (2), (3) and (4) after the words “The Commissioner may” there shall be inserted the words “in his absolute discretion”.

Amendment of  
No. 9272.

9. (1) For section 6 of the Principal Act there shall be substituted the following section:

Amendment of  
No. 9272  
s. 6 substituted.  
Form and  
duration of  
licences.

“6. (1) A licence shall be in the prescribed form and shall—

25 (a) in the case of a petroleum retailers’ licence, except as otherwise provided in sub-section (2); and

(b) in the case of a petroleum wholesalers’ licence or a group petroleum wholesalers’ licence—

30 be in force on and from the day specified in the licence as the date from which the licence commences until, unless it sooner ceases to have effect, the last day of the month in which it commenced.

35 (2) The Commissioner may in his absolute discretion issue to a person who has applied for a petroleum retailers’ licence a licence revocable at will which unless so revoked or otherwise ceasing to have effect shall be in force on and from the day specified in the licence as the date from which the licence commences until 30 June next following.

(3) Upon

(3) Upon the revocation of a petroleum retailers' licence issued pursuant to sub-section (2) the following provisions shall apply:

- (a) The petroleum retailers' licence shall be deemed to continue in force only until the end of the month in which the revocation is made; 5
- (b) The Commissioner shall notify the person who is the holder of the petroleum retailers' licence of the revocation and shall make and issue an assessment of the amount which in his opinion should be paid in respect of that petroleum retailers' licence until the end of the month in which the revocation is made after deducting any amount previously paid in respect of that petroleum retailers' licence and that person shall be liable to pay that amount except in so far as he establishes on objection or appeal that the assessment is excessive; 10 15
- (c) Where a person, who held a petroleum retailers' licence which is revoked under this sub-section applies for another petroleum retailers' licence the relevant period for the first licence issued after the revocation shall notwithstanding section 2 (2) be from 1 April which immediately follows the relevant period for the revoked licence until the last day of the month second preceding the month for which the licence is issued; 20
- (d) Notwithstanding anything to the contrary in section 7 (8) the Commissioner shall not issue another petroleum retailers' licence to a person who held a petroleum retailers' licence which is revoked under this sub-section unless the amount assessed as being payable in respect of the revoked petroleum retailers' licence pursuant to paragraph (b) has been paid or an arrangement is entered into pursuant to section 7A of the *Business Franchise (Tobacco) Act 1974*; 25 30
- (e) The revocation of a petroleum retailers' licence pursuant to this sub-section shall be effective in law unless and until quashed in proceedings for certiorari and notwithstanding anything to the contrary in any other Act whatsoever no proceedings for certiorari, prohibition, mandamus, a declaration of invalidity or an injunction shall be maintained unless the amount assessed as being payable in respect of the revoked petroleum retailers' licence pursuant to paragraph (b) has been paid or an arrangement is entered into pursuant to section 7A of the *Business Franchise (Tobacco) Act 1974*." 35 40

(2) The

(2) The Principal Act shall be amended as follows:

Amendment of  
No. 9272.  
Consequential.

(a) In section 2 (2)—

(i) in paragraph (a) for the expression “in relation to which the Commissioner has not made a determination under section 6 (3)” there shall be substituted the expression “of the duration specified in section 6 (1),”; and

(ii) in paragraph (b) for the expression “in relation to which the Commissioner has made a determination under section 6 (3)” there shall be substituted the expression “revocable at will issued pursuant to section 6 (2)”; and

(b) In section 7 (1) for the expression “in relation to which the Commissioner has not made a determination under section 6 (3)” there shall be substituted the expression “of the duration specified in section 6 (1)”.

(3) Except as otherwise provided in sub-section (4), upon the commencement of this section—

(a) a petroleum retailers’ licence issued before the commencement of this section in respect of which the Commissioner of Business Franchises had made a determination under section 6 (3) of the Principal Act as in force before the commencement of this section shall be deemed to be a petroleum retailers’ licence revocable at will under section 6 (2) of the Principal Act as in force after the commencement of this Act; and

(b) a petroleum retailers’ licence issued before the commencement of this section in respect of which the Commissioner of Business Franchises had not made a determination under section 6 (3) of the Principal Act as in force before the commencement of this section or in respect of which the Commissioner of Business Franchises had revoked a determination under section 6 (5) of the Principal Act as in force before the commencement of this section shall be deemed to be a petroleum retailers’ licence of the duration specified in section 6 (1) of the Principal Act as in force after the commencement of this section.

(4) Notwithstanding the provisions of sub-section (3), the rights of the parties to any legal proceedings instituted before the commencement of this section in respect of any decision of the Commissioner of Business Franchises made before the commencement of this section under section 6 of the Principal Act

as in force before the commencement of this section in relation to a petroleum retailers' licence issued before the commencement of this section shall be determined as if this Act had not been enacted.

Amendment of  
No. 9272 s. 7.

10. (1) In section 7 (3) of the Principal Act after the expression 5  
“sub-section (1)” where first occurring there shall be inserted the words “exceeds the value of that product as determined in the previous month but”.

(2) After section 7 (3) of the Principal Act there shall be inserted 10  
the following sub-section:

“(3A) Notwithstanding anything contained in this section, where the amount that would be determined by the Commissioner as the value of a petroleum product for the purposes of sub-section (1) is less than the value of that product as last determined by the Commissioner, the Commissioner shall determine the value of that 15  
product as being the lesser value.”

(3) This section shall be deemed to have come into operation on 1 September 1982.