

Business Franchise Acts (Amendment) Bill

No.

TABLE OF PROVISIONS

PART 1—PRELIMINARY

Clause

1. Purpose.
2. Commencement.

PART 2— AMENDMENT OF *BUSINESS FRANCHISE ACT (TOBACCO) ACT 1974*

3. Principal Act.
4. Amendment of section 2.
5. Register of licences.
6. Amendment of section 6.
7. Amendment of section 7.
8. Amendment of section 8.
9. Fees for licences.
10. Further amendment of section 10.
11. Amendment of section 11A.
12. Amendment of section 11B.
13. New section 11C inserted.
11C. Statement of tobacco sold, etc. outside Victoria.
14. Amendment of section 13.
15. Amendment of section 13A.
16. Amendment of section 14.
17. Amendment of section 15.
18. Warrants.
19. Penalty for failing to keep records.
20. Default assessment.
21. Amendment of section 19B.
22. Evidence.
23. New section 19EA inserted.
19EA. Possession of tobacco or petroleum products.
24. Continuing offences.
25. Amendment of Schedule One.
26. Application of Principal Act.
27. Relevant period where tobacco purchased from unlicensed wholesaler.

PART 3— AMENDMENT OF *BUSINESS FRANCHISE (PETROLEUM PRODUCTS) ACT 1979*

28. Principal Act.
29. Amendment of section 2.
30. Amendment of section 4.
31. Fees for licences.
32. Amendment of section 7.
33. Amendment of section 7A.
34. Amendment of section 8.
35. Register of licences.

36. **New section 11 inserted—
 11. **Statement of petroleum products sold outside Victoria.****
37. **Application of Principal Act.**
38. **Relevant period where petroleum products purchased from unlicensed wholesaler.**

LEGISLATIVE ASSEMBLY

Read 1° 2 August 1988

(Brought in by Mr Jolly and Mr Fordham)

A BILL

to amend the Business Franchise Acts and for other purposes.

Business Franchise Acts (Amendment) Act 1988

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

Purpose.

5 1. The purpose of this Act is to make further provision for the licensing of persons selling tobacco or petroleum products.

Commencement.

2. (1) Except as provided in sub-section (2), this Act comes into operation on the day on which this Act receives the Royal Assent.

10 (2) Sections 6, 8, 20, 21, 30 and 34 come into operation on 1 November 1988.

PART 2—AMENDMENT OF BUSINESS FRANCHISE ACT (TOBACCO) ACT 1974

Principal Act.

15 3. In this Part, the *Business Franchise (Tobacco) Act 1974* is called the Principal Act.

Amendment of section 2.

4. (1) In section 2 (1) of the Principal Act, after the definition of "Commissioner" insert—

‘ “Consume”, in relation to tobacco means—

(a) smoke; or

(b) in the case of tobacco in the form of a powder, inhale;
or

(c) chew or suck; or

(d) except in the definition of "tobacco", give away.’

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(2) In section 2 (1) of the Principal Act, in the definition of "Tobacco wholesaling" for "in Victoria" substitute "whether in or outside Victoria".

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Register of licences.

5. In section 5A of the Principal Act, for sub-section (1), substitute—

“(1) The Commissioner must cause to be kept a register of the holders of licences.”.

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Amendment of section 6.

6. Section 6 of the Principal Act is amended as follows:

(a) Sub-section (1) is repealed;

(b) In sub-section (2), for "10 penalty units" substitute "20 penalty units";

(c) In sub-section (3), omit "(1) or".

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Amendment of section 7.

7. After section 7 (3A) of the Principal Act insert—

“(3B) The Commissioner must not refuse to issue a wholesale tobacco merchant’s licence or a group wholesale tobacco merchant’s licence by reason only of a dispute about the quantity of tobacco that the applicant claims to know or believe is for re-sale or consumption outside Victoria.”.

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Amendment of section 8.

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8. In section 8 of the Principal Act—

(a) sub-sections (1), (1A) and (1B) are repealed; and

(b) in sub-section (3), omit "against this Act"; and

(c) sub-sections (4) and (5) are repealed.

Fees for licences.

9. In section 10 (1) of the Principal Act, for paragraphs (a), (b), (c) and (d) substitute—

- 5 “(a) For a wholesale tobacco merchant’s licence, a fee of \$50 together with an amount of 30 per centum of the value of tobacco sold in the relevant period by the applicant, other than tobacco that—
- (i) the applicant knows or believes is for re-sale or consumption outside Victoria; or
- 10 (ii) has been identified in a statement under section 11c given to the applicant by the holder of a retail tobacconist’s licence as having been sold outside Victoria, not being a statement the applicant knows or ought to know is false; or
- 15 (iii) was sold to the holder of a wholesale tobacco merchant’s licence or group wholesale merchant’s licence;
- (b) For a group wholesale tobacco merchant’s licence, a fee of \$50 together with an amount of 30 per centum of the value of tobacco sold in the relevant period by the members of the group of wholesale tobacco merchants of which the applicant is a member, other than tobacco that—
- 20 (i) the applicant knows or believes is for re-sale or consumption outside Victoria; or
- (ii) has been identified in a statement under section 11c given to the applicant or another member of the group by the holder of a retail tobacconist’s licence as having been sold outside Victoria, not being a statement the applicant or another member of the group knows or ought to know is false; or
- 25 (iii) was sold to the holder of a wholesale tobacco merchant’s licence or group wholesale tobacco merchant’s licence;
- 30 (c) For a retail tobacconist’s licence, a fee —
- (i) in the case of a licence, revocable at will issued under section 9 (2), \$50; or
- 35 (ii) in the case of a monthly licence under section 9 (1), \$10—
- and, if the applicant has, in the relevant period, purchased tobacco from a person carrying on tobacco wholesaling who is not the holder of a wholesale tobacco merchant’s licence or a group wholesale tobacco merchant’s licence, together with an amount of 30 per centum of the value of tobacco (other than tobacco for re-sale or consumption outside Victoria) purchased in the relevant period from such a person.”.
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Further amendment of section 10.

10. In section 10 of the Principal Act, sub-section (6) is repealed.

Amendment of section 11A.

11. (1) In section 11A (1) of the Principal Act, after "Where a person" insert "carrying on tobacco retailing". 5

(2) In section 11A (3) of the Principal Act, for "15 penalty units" substitute "20 penalty units".

Amendment of section 11B.

12. In section 11B (1) (a) of the Principal Act, after "invoice showing the" insert "quantity of and". 10

New section 11C inserted.

13. After section 11B of the Principal Act, insert—

Statement of tobacco sold, etc. outside Victoria.

"11C. (1) The holder of a retail tobacconist's licence who sells outside Victoria any tobacco purchased during a month from the holder of a wholesale tobacco merchant's licence or group wholesale tobacco merchant's licence may, before the end of the next month, give to the holder of the wholesale tobacco merchant's licence or group wholesale tobacco merchant's licence a statement in writing in a form approved by the Commissioner giving particulars of the quantity and value of the tobacco sold outside Victoria during either of those months. 15 20

(2) A person must not give a statement under sub-section (1) which is false or misleading in a material particular.

Penalty applying to this sub-section: 100 penalty units."

Amendment of section 13. 25

14. In section 13 of the Principal Act, for sub-section (1) substitute—

"(1) A person who—

(a) carries on tobacco retailing or petroleum retailing; or

(b) is the holder of a wholesale tobacco merchant's licence, group wholesale tobacco merchant's licence, petroleum wholesaler's licence or group petroleum wholesaler's licence— 30

shall keep such accounts, records, books and documents as may be prescribed containing such particulars as may be prescribed and shall preserve each of those accounts, records, books and documents for a period of five years after the last entry was made in it. 35

Penalty: 50 penalty units."

Amendment of section 13A.

15. In section 13A (3) of the Principal Act, for “10 penalty units” substitute “50 penalty units”.

Amendment of section 14.

5 16. In section 14 (3) of the Principal Act, for “10 penalty units” substitute “50 penalty units”.

Amendment of section 15.

17. (1) In section 15 (4) of the Principal Act, for “10 penalty units” substitute “50 penalty units”.

10 (2) After section 15 (4) of the Principal Act insert—

15 “(5) A person is not excused from complying with a requirement to give evidence under sub-section (1) on the ground that the evidence might tend to incriminate the person but, if the person claims before giving evidence that the evidence might tend to incriminate that person, the evidence is not admissible against the person in criminal proceedings, other than proceedings under this section or other proceedings in respect of the falsity of the evidence.”

Warrants.

20 18. (1) In section 15A of the Principal Act—

(a) in sub-section (1), after “particular premises” insert “or at a particular place or in or on a particular vehicle”; and

(b) in sub-section (1) (a), after “premises” insert “, that place or that vehicle”; and

25 (c) in sub-section (1) (b), after “premises” (where twice occurring) insert “, place or vehicle”.

(2) In section 15A of the Principal Act, for sub-section (3A) substitute—

30 “(3A) If possession is taken under this section of any tobacco or petroleum products and the Commissioner is not satisfied that—

(a) the tobacco or petroleum products were or will be purchased by a person carrying on tobacco retailing or petroleum retailing—

35 (i) who has made an application for a licence under and in accordance with the Business Franchise Acts; or

(ii) who will make such an application within three months after the taking of possession of the tobacco or petroleum products; or

- (b) the tobacco or petroleum products will not be sold in Victoria—

the Commissioner may, by notice published in the *Government Gazette* after the expiration of the period of three months after the taking of possession of the tobacco or petroleum products, declare that the tobacco or petroleum products are forfeited to the Crown.” 5

(3) In section 15A of the Principal Act—

- (a) in sub-section (3C), for “the tobacco or petroleum products were seized” substitute “possession was taken of the tobacco or petroleum products”; and 10
- (b) in sub-section (3D), for “the seizure” substitute “possession was taken”; and
- (c) in sub-section (4)—
- (i) in paragraph (a), for “seizure” substitute “taking of possession”; and 15
- (ii) for “10 penalty units” substitute “50 penalty units”.

Penalty for failing to keep records.

19. In section 19 of the Principal Act—

- (a) in sub-section (1), for “10 penalty units” substitute “100 penalty units”; and 20
- (b) in sub-section (2), for “10 penalty units” substitute “100 penalty units”.

Default assessment.

20. (1) In section 19A (1) (d) of the Principal Act, for “, tobacco wholesaling, petroleum retailing or petroleum wholesaling” substitute “or petroleum retailing”. 25

(2) After section 19A (1) of the Principal Act, insert—

“(2) A person liable to pay an amount under an assessment under sub-section (1) is also liable to pay as a penalty an amount equal to the amount payable under that assessment.”. 30

Amendment of section 19B.

21. (1) In section 19B (1) of the Principal Act, after “section 18E (4) of this Act” insert “or a penalty under section 19A (2) of this Act”.

(2) In section 19B of the Principal Act, for sub-section (2) substitute— 35

“(2) An amount, arranged amount, interest or penalty referred to in sub-section (1) may be sued for and recovered—

- (a) in a magistrates’ court, irrespective of the amount of the assessment, amended assessment, arranged amount, interest or penalty; or 40

- (b) in any other court of competent jurisdiction—
 by the Commissioner or Deputy Commissioner of Business Franchises
 suing in his or her official name or by an officer of the public service
 employed in the administration of the Business Franchise Acts and
 5 authorised to sue for and recover amounts on behalf of the
 Commissioner, suing in the official name of the Commissioner.”.

Evidence.

22. (1) In section 19E (1) of the Principal Act, after paragraph (d)
 insert—

- 10 “(da) a person named in the certificate sold tobacco or petroleum
 products or tobacco or petroleum products whether or not
 of a specified value, whilst carrying on tobacco retailing or
 tobacco wholesaling or petroleum retailing or petroleum
 15 wholesaling, whether or not during a specified period or on
 a specified date or at a specified place;
 (db) a person named in the certificate sold tobacco or petroleum
 products or tobacco or petroleum products of a specified
 value, to, or bought tobacco or petroleum products from,
 another person whether or not during a specified period or
 20 on a specified date or at a specified place;”.

(2) In section 19E (1) (e) of the Principal Act, after “is not,” insert
 “or, at any particular time was, or was not,”.

(3) In section 19E of the Principal Act—

- 25 (a) in sub-section (1), for “this Act” (where last occurring)
 substitute “the Business Franchise Acts”; and
 (b) in sub-section (5), for “this Act” (where twice occurring)
 substitute “the Business Franchise Acts”; and
 (c) in sub-section (7), for “this Act” substitute “the Business
 Franchise Acts”.

30 **New section 19EA inserted.**

23. After section 19E of the Principal Act insert—

Possession of tobacco or petroleum products.

“19EA. For the purposes of the Business Franchise Acts or
 proceedings relating to a contravention of the Business Franchise Acts—

- 35 (a) tobacco in the possession of a person carrying on tobacco
 retailing shall be deemed to have been purchased by that
 person; and
 (b) petroleum products in the possession of a person carrying
 on petroleum retailing shall be deemed to have been
 40 purchased by that person.”.

Continuing offences.

24. In section 19G of the Principal Act—

- (a) for “this Act” substitute “the Business Franchise Acts”; and
- (b) after “conviction” insert “or after service by the Commissioner on the person of notice of contravention”.

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Amendment of Schedule One.

25. In Schedule One of the Principal Act—

- (a) after “certain premises” insert “or at a certain place or in or on a certain vehicle”; and
- (b) after “the premises” (where three times occurring) insert “, place or vehicle”.

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Application of Principal Act.

26. (1) The Principal Act as amended by section 9 of this Act applies to licences issued under the Principal Act for a licence period commencing on or after 1 November 1988.

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(2) Despite section 9 of this Act, section 10 of the Principal Act as in force immediately before the commencement of section 9 of this Act continues to apply to licences issued under that Act for a licence period ending on or before 31 October 1988.

Relevant period where tobacco purchased from unlicensed wholesaler.

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27. (1) If the Commissioner is satisfied that—

- (a) a person carrying on tobacco retailing purchased tobacco (other than tobacco for re-sale or consumption outside Victoria) during the period commencing on 7 June 1988 and ending on 31 October 1988 from a person carrying on tobacco wholesaling who was not the holder of a wholesale tobacco merchant’s licence or a group wholesale tobacco merchant’s licence; and
- (b) if a retail tobacconist’s licence has been issued to that person since 7 June 1988, all or any part of that tobacco has not been taken into account in determining the fee payable in respect of a licence issued to that person since that date—

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then, for the purposes of determining the fee payable on an application for a retail tobacconist’s licence in respect of a period ending on or before 31 December 1989, or that would have been payable had such an application been made, the relevant period (despite anything to the contrary in the Principal Act) is the period commencing on 7 June 1988 and ending on the last day of the month before the month immediately preceding the commencement of the licence period applicable, or that would have been applicable, to such an application.

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(2) Where sub-section (1) applies, the value of any tobacco taken into account in determining a fee payable in respect of any earlier licence period shall be disregarded in determining the fee payable by reason of that sub-section.

5 **PART 3—AMENDMENT OF *BUSINESS FRANCHISE (PETROLEUM PRODUCTS) ACT 1979***

Principal Act.

28. In this Part, the *Business Franchise (Petroleum Products) Act 1979* is called the Principal Act.

No. 9272.
Reprinted to No. 9986 and subsequently amended by Nos. 88/1986 and 14/1987.

10 **Amendment of section 2.**

29. In section 2 (1) of the Principal Act, in the definition of “Petroleum wholesaling” for “in Victoria” (where twice occurring) substitute “whether in or outside Victoria”.

Amendment of section 4.

15 **30. Section 4 of the Principal Act is amended as follows:**

- (a) Sub-section (1) is repealed;
- (b) Sub-section (3) is repealed;
- (c) In sub-section (4), for “sub-sections (1) or (2)” substitute “sub-section (2)”;
- 20 (d) Sub-sections (6) and (7) are repealed.

Fees for licences.

31. In section 7 of the Principal Act, for sub-sections (1), (1A) and (1B) substitute—

25 “(1) The fees to be paid for licences issued under this Act are as follows:

- (a) For a petroleum wholesaler’s licence, a fee of \$50 together with an amount of—
 - (i) 7.8 per centum of the value of motor spirit; and
 - (ii) 11 per centum of the value of diesel fuel—
- 30 sold by the applicant in the course of petroleum wholesaling in the relevant period, other than motor spirit or diesel fuel that—
- (iii) the applicant knows or believes is for re-sale or consumption outside Victoria; or
- 35 (iv) has been identified in a statement under section 11 given to the applicant by the holder of a petroleum retailer’s licence as having been sold outside Victoria,

- not being a statement the applicant knows or ought to know is false; or
- (v) was purchased from the holder of a petroleum wholesaler's licence or group petroleum wholesaler's licence; or 5
- (vi) in the case of diesel fuel, sold for use otherwise than for propelling diesel engined road vehicles on roads;
- (b) For a group petroleum wholesaler's licence, a fee of \$50 together with an amount of— 10
- (i) 7.8 per centum of the value of motor spirit; and
- (ii) 11 per centum of the value of diesel fuel—
 sold by the members of the group of petroleum wholesalers of which the applicant is a member in the course of petroleum wholesaling in the relevant period, other than motor spirit or diesel fuel that— 15
- (iii) the applicant knows or believes is for re-sale or consumption outside Victoria; or
- (iv) has been identified in a statement under section 11 given to the applicant by the holder of a petroleum retailer's licence as having been sold outside Victoria, not being a statement the applicant knows or ought to know is false; or 20
- (v) was purchased from the holder of a petroleum wholesaler's licence or group petroleum wholesaler's licence; or 25
- (vi) in the case of diesel fuel, sold for use otherwise than for propelling diesel engined road vehicles on roads;
- (c) For a petroleum retailer's licence, a fee—
- (i) in the case of a licence revocable at will issued under section 9 (2), \$50; or 30
- (ii) in the case of a monthly licence under section 9 (1), \$10—
- and, if the applicant has, in the relevant period, purchased motor spirit or diesel fuel from a person carrying on petroleum wholesaling who is not the holder of a petroleum wholesaler's licence or a group petroleum wholesaler's licence, together with an amount of— 35
- (iii) 7.8 per centum of the value of motor spirit; and
- (iv) 11 per centum of the value of diesel fuel— 40
- (other than motor spirit for resale or consumption outside Victoria or diesel fuel for resale or consumption outside Victoria or sold for use otherwise than for propelling diesel engined road vehicles on roads) purchased by the applicant in the course of petroleum retailing in the relevant period.”.

Amendment of section 7.

32. (1) In section 7 of the Principal Act, sub-section (7) is repealed.

(2) After section 7 (8A) of the Principal Act insert—

5 “(8B) The Commissioner must not refuse to issue a petroleum wholesaler’s licence or group petroleum wholesaler’s licence by reason only of a dispute about the quantity of petroleum products that the applicant claims to know or believe is for re-sale or consumption outside Victoria.”.

Amendment of section 7A.

10 33. (1) In section 7A (1) of the Principal Act, after “If a person” insert “carrying on petroleum retailing”.

(2) In section 7A (2) of the Principal Act, for “15 penalty units” substitute “20 penalty units”.

Amendment of section 8.

15 34. In section 8 of the Principal Act, sub-sections (1), (1A), (1B) and (3) are repealed.

Register of licences.

35. In section 9 of the Principal Act, for sub-section (1) substitute—

20 “(1) The Commissioner must cause to be kept a register of the holders of licences.”.

New section 11 inserted.

36. After section 10 of the Principal Act insert—

Statement of petroleum products sold outside Victoria.

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25 “11. (1) The holder of a petroleum retailer’s licence who sells outside Victoria any petroleum products purchased during a month from the holder of a petroleum wholesaler’s licence or group petroleum wholesaler’s licence may, before the end of the next month, give to the holder of the petroleum wholesaler’s licence a statement in writing in a form approved by the Commissioner giving particulars of the quantity and value of the petroleum products sold outside Victoria during either
30 of those months.

(2) A person must not give a statement under sub-section (1) which is false or misleading in a material particular.

Penalty applying to this sub-section: 100 penalty units.”.

Application of Principal Act.

37. (1) The Principal Act, as amended by sections 31 and 32 of this Act, applies to licences issued under the Principal Act for a licence period commencing on or after 1 November 1988.

(2) Despite sections 31 and 32 of this Act, section 10 of the Principal Act as in force immediately before the commencement of section 31 of this Act continues to apply to licences issued under that Act for a licence period ending on or before 31 October 1988.

Relevant period where petroleum products purchased from unlicensed wholesaler.

38. (1) If the Commissioner is satisfied that—

(a) a person carrying on petroleum retailing purchased petroleum products (other than petroleum for re-sale outside Victoria) during the period commencing on 7 June 1988 and ending on 31 October 1988 from a person carrying on petroleum wholesaling who was not the holder of a petroleum wholesaler's licence or a group petroleum wholesaler's licence; and

(b) if a petroleum retailer's licence has been issued to that person since 7 June 1988, all or any part of those petroleum products have not been taken into account in determining the fee payable in respect of a licence issued to that person since that date—

then, for the purposes of determining the fee payable on an application for a petroleum retailer's licence in respect of a period ending on or before 31 December 1989, or that would have been payable had such an application been made, the relevant period (despite anything to the contrary in the Principal Act) is the period commencing on 7 June 1988 and ending on the last day of the month before the month immediately preceding the commencement of the licence period applicable, or that would have been applicable, to such an application.

(2) Where sub-section (1) applies, the value of any petroleum products taken into account in determining the fee payable in respect of any earlier licence period shall be disregarded in determining the fee payable by reason of that sub-section.