

# Business Franchise Acts (Amendment) Bill 1983

## EXPLANATORY MEMORANDUM

*Clause 1.* This clause provides for the title and commencement of the proposed legislation and divides it into two parts. Part I. concerns the *Business Franchise (Tobacco) Act 1974* which is dealt with in clauses 2 to 6 of the Bill. Part II. concerns the *Business Franchise (Petroleum Products) Act 1979* which is dealt with in clauses 7 to 10 of the Bill.

### PART I.

*Clause 2.* Citation clause identifying the *Business Franchise (Tobacco) Act 1974* as the Principal Act for the purposes of Part I.

*Clause 3:*

*Paragraph (a)* amends sub-sections (2), (3) and (4) of section 2A of the *Business Franchise (Tobacco) Act 1974*. Sub-sections (2) and (3) empower the Commissioner to determine that a person is not a member of a group of wholesale tobacco merchants. Sub-section (4) empowers the Commissioner to revoke such a determination. This amendment ensures that the power to make such a determination or revocation is in the absolute discretion of the Commissioner.

*Paragraph (b)* inserts a new section 16A to enable a person who is dissatisfied with a determination or decision of the Commissioner to use the objection and appeal procedures in the Act to protect his interests.

*Clause 4.* This clause substitutes a new section 9. The new section 9 empowers the Commissioner to issue a retail tobacconist's licence, a wholesale tobacco merchant's licence and a group wholesale tobacco merchant's licence. A wholesale tobacco merchant's licence and a group wholesale tobacco merchant's licence have effect from the date of issue until the last day of the month in which the licence commenced. In the case of a retail tobacconist's licence the Commissioner may issue a licence which operates from the date of issue until the end of the month in which it is issued or he may issue a licence with effect from the date of its issue until 31 December next following its issue but which is revocable at will (sub-clauses (1) and (2)).

Where the Commissioner revokes a licence which was revocable at will the new section 9 (3) provides that the licence will continue only until the end of the month in which the revocation is made and that the Commissioner shall notify the licence holder of the revocation and shall issue an assessment in respect of any licence fee which has not been paid in respect of the licence (paragraphs (a) and (b)).

*Paragraph (c)* provides that where a person whose licence has been revoked applies for his first licence after the revocation the period for determining the amount of licence fee payable is from 1 October in the preceding calendar year until the last day of the month second preceding the month in which the licence is issued.

*Paragraph (d)* provides that the Commissioner shall not issue a retail tobacconist's licence after a licence has been revoked unless and until the applicant pays or enters into an arrangement to pay outstanding licence fees.

*Paragraph (e)* provides that a person may take Court proceedings in relation to a revocation provided that he has paid any outstanding licence fees.

*Clause 4 (2)* of the Bill provides for consequential amendments to section 2 (6A) consequent to the amendment to section 9 (1).

*Clause 4 (3)* of the Bill is a transitional provision to provide that any retail tobacconist's licence issued before the commencement of this Bill will be dealt with as if it were a licence issued under the provisions of the new section 9 (1).

*Clause 4 (4)* is also a transitional provision to ensure that any legal proceedings that have been instituted before the commencement of this Bill will not be prejudiced in any way by this Bill.

*Clause 5.* This clause is a technical amendment to section 5 (1) of the *Business Franchise (Tobacco) Act 1974*, to restore the ability of the Commissioner to discuss matters arising under the Business Franchise Acts with a member of the Police Force. This provision was previously included in the *Business Franchise (Tobacco) Act 1974* but was inadvertently repealed when the *Evidence (Commissions) Act 1982* was enacted.

*Clause 6.* This clause is a technical amendment to section 7A (7) of the *Business Franchise (Tobacco) Act 1974*. Section 7A of the *Business Franchise (Tobacco) Act 1974* empowers the Commissioner to enter into arrangements with taxpayers to enable taxpayers to pay outstanding licence fees over a period of time or by instalments. A technical deficiency exists in relation to the recovery by the Commissioner of interest outstanding under an arrangement. This amendment overcomes that deficiency. It will have effect from 18 November 1980 which was the date on which section 7A originally came into operation.

## PART II.

*Clause 7.* Citation clause identifying the *Business Franchise (Petroleum Products) Act 1979* as the Principal Act for the purposes of Part II.

*Clause 8.* This clause has the same effect in relation to petroleum products as clause 3 (a) of this Bill has in relation to tobacco.

*Clause 9.* This clause substitutes a new section 6 in the *Business Franchise (Petroleum Products) Act 1979* and has the same effect in relation to petroleum products as clause 4 of this Bill has in relation to tobacco with a minor variation in that the relevant period for determining the licence fee payable by a petroleum retailer, is different from that of a tobacco retailer because their twelve-monthly licence period differs. Retail tobacconists' licences operate on the basis of a calendar year whereas petroleum retailers' licences operate on the basis of a financial year.

*Clause 10.* The *Business Franchise (Petroleum Products) Act 1979* empowers the Commissioner each month to determine the value of petroleum products for the purposes of determining licence fees payable by petroleum wholesalers and retailers. The Act operates in such a way that the value determined either remains static from month to month or increases. Where the value of petroleum products is less than the value previously determined there is not any provision for the Commissioner to base licence fees on the lower value.

This clause amends section 7 (3) and inserts a new section 7 (3A) to enable the Commissioner where the value of petroleum products does fall to determine a lower value.

This provision will operate from 1 September 1982.