

Business Franchise Acts (Amendment) Bill

EXPLANATORY MEMORANDUM

PART 1

Clause 1 outlines the purpose of the Bill.

Clause 2 provides for the Bill to commence on receipt of Royal Assent apart from a number of sections which amend penalties and enforcement provisions from 1 December 1988.

PART 2

Clause 3 contains the citation of the Principal Act for Part 2. The Principal Act is the *Business Franchise (Tobacco) Act 1974*.

Clause 4:

Sub-clause (1) introduces a definition of “consume” as a consequence of the amendments which exclude from licence fees tobacco which is consumed outside Victoria.

Sub-clause (2) widens the definition of tobacco wholesaling to wholesaling outside as well as inside Victoria.

Clause 5 amends section 5A (1) to require the Commissioner to keep a register of all holders of licences.

Clause 6:

Paragraph (a) repeals section 6 (1) as it will no longer be compulsory to obtain a wholesaler’s licence.

Paragraph (b) increases the penalty for retailing without a licence to 20 penalty units, which is consistent with the penalty for retailing petroleum products without a licence.

Paragraph (c) is a consequential technical amendment to the amendment made by paragraph (a).

Clause 7 inserts a new sub-section (3B) into section 7 to impose an obligation on the Commissioner to issue a wholesale tobacco merchant’s licence if the only dispute regarding the issue of the licence concerns the quantity of tobacco that the wholesaler claims is for re-sale or consumption outside Victoria.

Clause 8 repeals a number of now unnecessary provisions in section 8, namely sub-sections (1), (1A), (1B), (4) and (5). In addition a technical amendment is made in sub-section (3).

Clause 9 amends section 10 to substitute the licence fees which will apply in respect of licence periods commencing on or after 1 December 1988 (refer clause 26 of the Bill).

Paragraphs (a) and (b): A wholesale tobacco merchant’s licence or a group wholesale tobacco merchant’s licence will attract a fee of \$50 plus an *ad valorem* fee of 30% of the value of tobacco sold by the wholesaler in the relevant period except for tobacco that—

- (i) the wholesaler knows or reasonably believes is for re-sale or consumption outside Victoria; or
- (ii) has been identified in a retailer’s statement under the new section 11C given to the wholesaler as having been sold outside Victoria since the retailer

purchased it from the wholesaler but prior to the commencement of the licence period for which the *ad valorem* fee is payable; or

(iii) was sold to a licensed wholesaler.

(c): A retail tobacconist's licence attracts a fee of either \$50 if a yearly licence is issued or \$10 if a monthly licence is issued plus an *ad valorem* fee of 30% of the value of tobacco purchased from a person who is not a licensed wholesaler except for tobacco which is for re-sale or consumption outside Victoria.

Clause 10 is a technical consequential amendment and repeals section 10 (6).

Clause 11:

Sub-clause (1) makes a technical amendment to section 11A (1) to ensure it refers to a person who is carrying on the business of tobacco retailing.

Sub-clause (2) increases the fine for a breach of section 11A from 15 penalty units to 20 penalty units.

Clause 12 makes a technical amendment to section 11B (1) to require licensed wholesalers to show the quantity of tobacco sold as well as the total consideration.

Clause 13 inserts a new section 11C. The new sub-section (1) enables a retailer to give to a licensed wholesaler from whom the retailer has purchased tobacco, a statement setting out the quantity and value of that tobacco which has been re-sold outside Victoria during the licence period. Unless the wholesaler knows, or should have known, that the statement is false, he may rely on it to exclude the value of that tobacco in calculating the licence fee payable.

As a wholesaler may exclude the value of tobacco identified by a retailer in a statement under this new provision for the purposes of the calculation of a licence fee, any false or misleading statement by a retailer is a serious offence. Accordingly a substantial penalty is inserted in the new sub-section (2) of 100 penalty units.

Clause 14 makes a technical amendment to section 13 so that it does not relate to unlicensed wholesalers and increases the penalty for non-compliance to 50 penalty units.

Clause 15 increases the penalty under section 13A to 50 penalty units.

Clause 16 increases the penalty under section 14 (3) to 50 penalty units.

Clause 17:

Sub-clause (1) increases the penalty under section 15 (4) to 50 penalty units.

Sub-clause (2) makes it clear that a person cannot claim the common law privilege against self-incrimination when requested or summoned by the Commissioner to provide information or give evidence.

Clause 18 amends section 15A which deals with search warrants.

Sub-clause (1) inserts three amendments in sub-section (1) to enable the seizure of tobacco or petroleum products from particular places and particular vehicles as well as from premises.

Sub-clause (2) makes a technical amendment to sub-section (3A) consequent to it not being mandatory that wholesalers be licensed.

Sub-clause (3) makes three technical amendments for consistency with sub-section (1) so that reference to taking possession of the products concerned is substituted for "seizure" of the products concerned.

In addition the sub-clause increases the penalty to 50 penalty units under sub-section (4).

Clause 19 increases the penalty in section 19 (1) and (2) to 100 penalty units.

Clause 20:

Sub-clause (1) is a technical amendment to section 19A (1) which deletes the reference to tobacco or petroleum wholesaling consequent on wholesalers no longer being required to take out a licence.

Sub-clause (2) imposes a penalty equal to the amount of assessment on persons liable under section 19A (1).

Clause 21:

Sub-clause (1) is a technical amendment consequent to the new section 19A (2).

Sub-clause (2) makes a similar technical amendment to section 19B (2).

Clause 22:

Sub-clause (1) inserts two new averment provisions in section 19E (1) so that the Commissioner's certificate is *prima facie* evidence that—

a named person sold tobacco or petroleum products whether or not of a specified value during the course of tobacco or petroleum retailing or wholesaling whether or not during a specified period or on a specified date or at a specified place; and

a named person sold tobacco or petroleum products of a specified value to or bought such products from another person whether or not during a specified period or on a specified date or at a specified place.

Sub-clause (2) makes a technical amendment to section 19E (1) (e).

Sub-clause (3) makes technical amendments to sections 19E (1), 19E (5) and 19E (7).

Clause 23 inserts section 19EA which deems tobacco or petroleum products in the possession of a retailer to have been purchased by that retailer.

Clause 24 makes two technical amendments to section 19G.

Clause 25 amends the form of warrant in Schedule 1 of the Act to extend the target of a search from certain premises to include a certain place or certain vehicle.

Clause 26:

Sub-clause (1) makes the necessary amendment to apply the Principal Act as amended by section 9 of this Act to licences issued for a licensed period commencing on or after 1 December 1988.

Sub-clause (2) retains the operation of section 10 of the Principal Act in relation to licences issued for a licence period ending on or before 31 October 1988.

Clause 27:

Sub-clause (1) contains a transitional provision which imposes an *ad valorem* fee on retailers' licences where those retailers have purchased tobacco during the period 7 June 1988 to 30 November 1988 from unlicensed wholesalers. This fee may be collected on any licence issued for a period ending on or before 31 December 1989.

Sub-clause (2) ensures that if an *ad valorem* fee has been paid in respect of the period 7 June 1988 to 30 November 1988, it will not again be payable on a subsequent licence.

PART 3

Clause 28 contains the citation of the Principal Act for Part 3. The Principal Act is the *Business Franchise (Petroleum Products) Act 1979*.

Clause 29 widens the definition of petroleum wholesaling to wholesaling outside as well as inside Victoria.

Clause 30 repeals various references and provisions dealing with petroleum wholesaling as it is no longer compulsory to obtain a wholesaler's licence (paragraphs (a), (b) and (c)). Paragraph (d) repeals the now unnecessary sub-sections (6) and (7).

Clause 31 amends section 7 to substitute the licence fees which will apply in respect of licence periods commencing on or after 1 December 1988.

Paragraphs (a) and (b): A petroleum wholesaler's or group wholesaler's licence will attract a fee of \$50 plus an *ad valorem* fee of 7.8% of the value of motor spirit and 11% of the value of diesel fuel sold by the wholesaler in the relevant period except for petroleum that—

- (i) the wholesaler knows or reasonably believes is for re-sale or consumption outside Victoria; or
- (ii) has been identified in a retailer's statement under the new section 11 given to the wholesaler as having been sold outside Victoria since the retailer purchased it from the wholesaler but prior to the commencement of the licence period for which the *ad valorem* fee is payable; or
- (iii) was purchased from a licensed wholesaler; or
- (iv) was purchased from a licensed retailer who purchased the product from a licensed wholesaler.

Paragraph (c): A petroleum retailer's licence attracts a fee of either \$50 if a yearly licence is issued or \$10 if a monthly licence is issued plus an *ad valorem* fee of 7.8% of the value of motor spirit and 11% of the value of diesel fuel purchased from a person who is not a licensed wholesaler or a licensed retailer who purchased the product from a licensed wholesaler, except for petroleum products which are for re-sale or consumption outside Victoria.

Clause 32 inserts a new sub-section (8A) into section 7 to impose an obligation on the Commissioner to issue a petroleum wholesaler's licence if the only dispute regarding the issue of the licence concerns the quantity of petroleum products that the wholesaler claims are for re-sale or consumption outside Victoria.

Clause 33:

Sub-clause (1) makes a technical amendment to section 7A (1) to ensure it refers to a person who is carrying on a business of petroleum retailing.

Sub-clause (2) increases a fine for a breach of section 7A (1) from 15 penalty units to 20 penalty units.

Clause 34 repeals a number of now unnecessary provisions in section 8, namely sub-sections (1), (1A), (1B) and (3).

Clause 35 amends section 9 to require the Commissioner to keep a register of all holders of licences.

Clause 36 inserts a new section 11. The new sub-section (1) enables a retailer to give to a licensed wholesaler from whom the retailer has purchased petroleum products a statement setting out the quantity and value of those products which have been re-sold outside Victoria during the licence period. Unless the wholesaler knows or should have known that

the statement is false, he may rely on it to exclude the value of those petroleum products in calculating the licence fee payable.

As a wholesaler may exclude the value of petroleum identified by a retailer in a statement under this new provision for the purposes of the calculation of a licence fee, any false or misleading statement by a retailer is a serious offence. Accordingly a substantial penalty is inserted in the new sub-section (2) of 100 penalty units.

Clause 37:

Sub-clause (1) makes the necessary amendment to apply the Principal Act as amended by section 9 of this Act to licences issued for a licence period commencing on or after 1 December 1988.

Sub-clause (2) retains the operation of section 10 of the Principal Act in relation to licences issued for a licence period ending on or before 31 October 1988.

Clause 38:

Sub-clause (1) contains a transitional provision which imposes an *ad valorem* fee on retailers' licences where those retailers have purchased petroleum during the period 7 June 1988 to 30 November 1988 from unlicensed wholesalers. This fee may be collected on any licence issued for a period ending on or before 31 December 1989.

Sub-clause (2) ensures that if an *ad valorem* fee has been paid in respect of the period 7 June 1988 to 30 November 1988, it will not again be payable on a subsequent licence.

