
TOBACCO BUSINESS FRANCHISE LICENCES ACT 1980

TABLE OF PROVISIONS
PART I—PRELIMINARY

1. Short title.
2. Interpretation.
3. Membership of a group of wholesale tobacco merchants.
4. Grouping of corporations.
5. Grouping where employees used in another business.
6. Grouping of commonly controlled businesses.
7. Smaller groups subsumed into larger groups.
8. Beneficiaries under discretionary trusts.
9. Crown bound.

PART II—ADMINISTRATION

10. Registrar of Tobacco Business Franchise Licences.
11. Appointment and employment of officers for the purposes of this Act.
12. Inspectors.
13. Powers, &c., of inspectors.
14. Special powers of Registrar with respect to dealings with tobacco.
15. Protection for Registrar, &c.

PART III—LICENCES

16. Offences relating to sale of tobacco.
17. Application for licence.
18. Issue, &c., of licence.
19. Effect of licence.

20. Licence fees.
21. Value of tobacco.
22. Adjustment of fee.
23. Registers of holders of licences to be kept.
24. Amendment of licence.
25. Transfers of licence.
26. Renewal of licence.
27. Revocation, &c., of retail tobacconist's yearly licence.
28. Surrender of licence.
29. Assessment and recovery of unpaid fee from unlicensed person.

PART IV—APPEALS AND OBJECTIONS

30. Appeal against refusal of application for licence.
31. Appeal against refusal of application for renewal of licence.
32. Appeal against revocation of retail tobacconist's yearly licence.
33. Objection to and appeal against assessment of licence fee.
34. Objection to and appeal against reassessment.
35. Objection to and appeal against assessment of unlicensed persons.

ii

PART V—MISCELLANEOUS

36. Records to be kept.
37. Invoices to be issued, &c.
38. Tobacco vending machines.
39. Disclosure of information.
40. False or misleading statements.
41. Evidence.
42. Proceedings on prosecutions.
43. Offences by bodies corporate.
44. Service of documents by the Registrar.
45. Regulations.
46. Repeal of Act No. 29 of 1972.

SCHEDULE 1

RELEVANT PERIODS FOR WHOLESALE TOBACCO MERCHANTS' LICENCES, GROUP WHOLESALE TOBACCO MERCHANTS' LICENCES, AND RETAIL TOBACCONISTS' MONTHLY LICENCES



TOBACCO BUSINESS FRANCHISE LICENCES ACT 1980

No. 89 of 1980

AN ACT to make provision for the issue of licences to be known as tobacco business franchise licences, to prohibit the sale of tobacco except by a person who is enfranchised to sell tobacco by such a licence, and to enact consequential or ancillary provisions.

[Royal Assent 19 December 1980]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART I

PRELIMINARY

1—This Act may be cited as the *Tobacco Business Franchise Licences Act 1980*. Short title.

Interpretation.

2—(1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

- “consumption”, in relation to tobacco, means the smoking or chewing of tobacco by any person;
- “functions” includes duties;
- “group wholesale tobacco merchant’s licence” means a group wholesale tobacco merchant’s licence referred to in section 19 (1) and in force under this Act;
- “inspector” means an inspector referred to in section 12;
- “powers” includes authorities;
- “premises” includes any building or structure (including a building or structure that is of a temporary nature, or that is capable of being moved or transported) and also includes any vehicle, vessel, or aircraft;
- “record” includes book, account, deed, writing, or document and any other source of information compiled, recorded, or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means;
- “register” means a register kept under section 23;
- “Registrar” means the Registrar of Tobacco Business Franchise Licences referred to in section 10;
- “regulations” means regulations under this Act;
- “relevant period”, in relation to a wholesale tobacco merchant’s licence, a group wholesale tobacco merchant’s licence, or a retail tobacconist’s monthly licence which, if issued, would expire at the end of a month specified in column 1 of Schedule 1, means the month last past specified opposite that first-mentioned month in column 2 of that Schedule;
- “retail tobacconist’s licence” means a retail tobacconist’s monthly or yearly licence;
- “retail tobacconist’s monthly licence” means a licence referred to in section 19 (2), and in force under this Act;
- “retail tobacconist’s yearly licence” means a licence referred to in section 19 (3) and in force under this Act;
- “tobacco” means tobacco prepared for consumption, and includes any mixture that contains tobacco and is intended to be consumed;

- “ tobacco business franchise licence ” or “ licence ” means a wholesale tobacco merchant’s licence, a group wholesale tobacco merchant’s licence, or a retail tobacconist’s licence issued and in force under this Act;
- “ tobacco retailing ” means the business of selling tobacco by retail in the course of intrastate trade either alone or in conjunction with any other merchandise, and includes that business carried on as part of or in conjunction with any other business;
- “ tobacco wholesaling ” means the business of selling tobacco in the course of intrastate trade for the purpose of resale either alone or in conjunction with any other merchandise, and includes that business carried on as part of or in conjunction with any other business;
- “ value ”, in relation to any tobacco sold, means the value attributable to that tobacco pursuant to section 21;
- “ vending machine ” means any machine, device, or contrivance that is constructed so as to contain articles that may be obtained therefrom by an operation that involves the insertion in the machine, device, or contrivance of a coin, token, or similar object;
- “ voting share ”, in relation to a body corporate, means an issued share in the body corporate, not being—
- (a) a share to which, in no circumstances, is there attached a right to vote; or
 - (b) a share to which there is attached a right to vote only in one or more of the following circumstances:—
 - (i) during a period during which a dividend (or part of a dividend) in respect of the share is in arrear;
 - (ii) on a proposal to reduce the share capital of the body corporate;
 - (iii) on a proposal that affects rights attached to the share;
 - (iv) on a proposal to wind up the body corporate;
 - (v) on a proposal for the disposal of the whole of the property, business, and undertaking of the body corporate;

(vi) during the winding up of the body corporate;

“ wholesale tobacco merchant’s licence ” means a wholesale tobacco merchant’s licence referred to in section 19 (1) and in force under this Act.

(2) The presence on any premises of a vending machine from which tobacco may be obtained shall be deemed to constitute the carrying on of tobacco retailing on those premises by the occupier, unless a person who is the holder of a retail tobacconist’s licence is carrying on tobacco retailing by means of that machine in accordance with his licence.

(3) A reference in this Act to—

(a) a person who sells tobacco; or

(b) a person who carries on the business of selling tobacco, does not extend to a person who, as an agent or employee of a person referred to in paragraph (a) or (b), sells tobacco or carries on such a business.

(4) A reference in this Act to intrastate trade is a reference to trade carried on in the State which is not trade or commerce among the States within the meaning of section 92 of the Constitution of the Commonwealth.

(5) Where pursuant to a sale made outside the State tobacco is delivered in the course of intrastate trade within the State, that sale shall, for the purposes of this Act, be deemed to have been made within the State.

(6) A reference in this Act to tobacco includes a reference to any wrapping, package, or container in which the tobacco is sold, purchased, received, or handled.

(7) A reference in this Act to a holder of a group wholesale tobacco merchant’s licence includes a reference to each person whose name is, under section 18 (8), specified in a group wholesale tobacco merchant’s licence that is in force under this Act.

(8) A reference in this Act to premises includes a part of the premises.

(9) A reference in this Act to the issue of a licence or a licence that is issued, includes a reference to the renewal of a licence or, as the case may be, a licence that is renewed.

(10) A reference in this Act to a corporation being related to another corporation is a reference to a corporation that is deemed, by virtue of section 6 (5) of the *Companies Act* 1962, to be related to that other corporation for the purposes of that Act.

3—(1) For the purposes of this Act, a person is a member of a group of wholesale tobacco merchants if—

Membership of a group of wholesale tobacco merchants.

- (a) that person is one of the persons who constitute a group for the purposes of this Act; and
- (b) there is not in force a determination under subsection (2) or (3) by the Registrar that that person is not a member of the group.

(2) The Registrar may, by writing under his hand, determine that a person who would, but for the determination, be a member of a group for the purposes of this Act is not a member of the group of wholesale tobacco merchants if he is satisfied that that person—

- (a) has continuously carried on tobacco wholesaling independently of the group;
- (b) will continue to carry on tobacco wholesaling independently of the group; and
- (c) is not subject to control by any other member of the group.

(3) The Registrar may, by writing under his hand, determine that a person who would, but for the determination, be a member of a group for the purposes of this Act is not a member of any group for the purposes of this Act if he is satisfied that the person is not carrying on and has no intention of carrying on tobacco wholesaling.

(4) A determination made under subsection (2) or (3) shall come into force at the time when it is made and shall continue in force until it is revoked by the Registrar and notice of the revocation has been served on the person in respect of whom the determination was made.

(5) Notice of a determination under subsection (2) shall be given by the Registrar to the person in respect of whom the determination was made and to all the members of the group concerned whom he considers are carrying on tobacco wholesaling.

(6) Notice of a determination under subsection (3) shall be published in the *Gazette*.

(7) The Registrar may at any time revoke a determination made under subsection (2) or (3).

(8) Notice of the revocation of a determination made under subsection (2) or (3) shall be given by the Registrar to the person in respect of whom the determination was made and all members of the group in respect of which the determination was made who he considers are carrying on tobacco wholesaling.

Grouping of corporations.

4—For the purposes of this Act, corporations constitute a group if they are related to each other.

Grouping where employees used in another business.

5—For the purposes of this Act, if—

(a) an employee of an employer, or 2 or more employees of an employer, performs or perform duties solely or mainly for or in connection with a business carried on by that employer and another person or other persons or by another person or other persons; or

(b) an employer has, in respect of the employment of, or the performance of duties by, one or more of his employees, an agreement, arrangement, or undertaking (whether formal or informal, whether expressed or implied, and whether or not the agreement, arrangement, or undertaking includes provisions in respect of the supply of goods or services or goods and services) with another person or other persons relating to a business carried on by that other person or those other persons, whether alone or together with another person or other persons,

that employer and—

(c) each such other person; or

(d) both or all of those other persons,

constitute a group.

Grouping of commonly controlled businesses.

6—(1) A reference in this section to 2 businesses does not include a reference to 2 businesses both of which are owned by the same person, not being a trustee, or by the trustee or trustees of a trust.

(2) For the purposes of this Act, where the same person has, or the same persons have together, a controlling interest, as referred to in subsection (3), in each of 2 businesses, the persons who carry on those businesses constitute a group.

(3) For the purposes of subsection (2), the same person has, or the same persons have together, a controlling interest in each of 2 businesses if that person has, or those persons have together, a controlling interest under any of the following paragraphs in one of the businesses and a controlling interest under the same or another of the following paragraphs in the other business:—

- (a) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation, if the directors, or a majority of the directors, or one or more of the directors, being a director or directors who is or are entitled to exercise a majority in voting power at meetings of the directors of the corporation, are or is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions, or wishes of that person or of those persons acting together;
- (b) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation that has a share capital, if that person or those persons acting together could (whether directly or indirectly) exercise, control the exercise of, or substantially influence the exercise of, half or more than half of the voting power attached to voting shares issued by the corporation;
- (c) a person has, or persons have together, a controlling interest in a business, being a business carried on by a partnership, if that person or those persons—
 - (i) owns, or own together, (whether beneficially or not) half or more than half of the capital of the partnership; or
 - (ii) is, or are together, entitled (whether beneficially or not) to half or more than half of the profits of the partnership;
- (d) a person has, or persons have together, a controlling interest in a business, being a business carried on under a trust, if that person (whether or not as the trustee of another trust) is the beneficiary, or those persons (whether or not as the trustees of another trust) are together the beneficiaries, in respect of half or more than half of the value of the interests in the trust firstmentioned in this paragraph;

(e) a person has a controlling interest in a business if, whether or not he is a trustee of a trust, he is the sole owner of the business, or persons, being 2 or more trustees of a trust, have a controlling interest in a business if they are the owners of the business.

(4) Where a corporation has a controlling interest under subsection (3) in a business, it shall be deemed to have a controlling interest in any other business in which another corporation that is related to it has a controlling interest.

(5) Where—

(a) a person has, or persons have together, a controlling interest under subsection (3) in a business; and

(b) the person or persons who carry on that business has or have such a controlling interest in another business,

the person or persons referred to in paragraph (a) shall be deemed to have a controlling interest in that other business.

(6) Where—

(a) a person is a beneficiary under a trust; or

(b) 2 or more persons together are beneficiaries under a trust, in respect of half or more than half of the value of the interests in that trust and the trustee or trustees of that trust has or have under subsection (3) a controlling interest in a business, that beneficiary or those beneficiaries shall, for the purposes of subsection (3), be deemed to have a controlling interest in that business.

Smaller groups
subsumed into
larger groups.

7—(1) Notwithstanding any other provision of this Act (except subsection (2)), where a person is, whether or not by virtue of this subsection, a member of 2 or more groups (each of which is in subsection (2) referred to as a smaller group), all of the members of those groups constitute, for the purposes of this Act, one group.

(2) Except for the purpose of determining whether a group is constituted under subsection (1), a group which, but for this subsection, would be a smaller group ceases to be a group if its members are members of a group constituted under subsection (1).

Beneficiaries
under dis-
cretionary
trusts.

8—A person who, as the result of the exercise of a power or discretion by the trustee of a discretionary trust or by any other person or by that trustee and any other person, may benefit under that trust shall be deemed, for the purposes of this Act, to be a beneficiary in respect of half or more than half of the value of the interests in that trust.

9—This Act binds the Crown not only in right of this State but also, so far as the legislative power of Parliament permits, binds the Crown in all of its other capacities. Crown bound.

PART II

ADMINISTRATION

10—(1) For the purpose of administering the provisions of this Act, there shall be a Registrar of Tobacco Business Franchise Licences who shall be appointed under, and hold office subject to, the *Public Service Act 1973*. Registrar of Tobacco Business Franchise Licences.

(2) The office of Registrar may be held in conjunction with any other office of the Public Service.

(3) The Registrar may, from time to time, direct or authorize a person for the time being appointed under section 11 to perform or exercise the functions or powers of the Registrar under this Act, or such of those functions or powers as may be specified in the direction or authorization, and, where any such person is so directed or authorized, a reference in this Act to the Registrar includes a reference to that person.

(4) No person shall be concerned to inquire whether a person directed or authorized under subsection (3) is entitled to perform or exercise the functions or powers of the Registrar under this Act.

11—(1) The Registrar may, by writing under his hand, appoint any assessor for the time being appointed under the *Stamp Duties Act 1931* or any officer of the Treasury to be an officer for the purposes of this Act. Appointment and employment of officers for the purposes of this Act.

(2) In addition to the Registrar and persons appointed under subsection (1), such other officers and employees as may be required for the purposes of this Act may be appointed and employed under and subject to the *Public Service Act 1973*.

(3) An appointment under subsection (2) may be held in conjunction with any other appointment as an officer or employee of the Public Service.

12—(1) The Registrar may, by warrant under his hand, authorize any person for the time being appointed as an officer or employee under section 11 to be an inspector to exercise the powers conferred on inspectors by this Act. Inspectors.

(2) The Registrar shall be deemed to be an inspector and may exercise the powers conferred on inspectors by this Act.

Powers, &c.,
of inspectors.

13—(1) For the purposes of this Act, an inspector, on production of his warrant of authorization as such, may at any reasonable time and with such assistants as he considers necessary—

- (a) enter and remain in any premises at which, or at which he reasonably suspects, the business of processing, packaging, distributing, selling, or purchasing tobacco is or has been carried on or which, or which he reasonably suspects, is being or has been used for the storage or custody of any record relating to the processing, packaging, distribution, sale, or purchase of tobacco;
- (b) request any person found in or on any premises which, or which he reasonably suspects, are or have been used for the processing, packaging, distribution, sale, or purchase of tobacco or for the storage or custody of any record relating to the processing, packaging, distribution, sale, or purchase of tobacco or in or on which, or in or on which he reasonably suspects, tobacco is or has been stored for sale—
 - (i) to produce any record which relates to, or which the inspector reasonably suspects relates to, the processing, packaging, distribution, sale, or purchase of tobacco and which, at the time of the request, is in the possession or under the control of that person;
 - (ii) to produce a statement, written in the English language, setting out the particulars contained in any such record that are not written or not written in the English language; and
 - (iii) to answer any question with respect to any such record or statement or the processing, packaging, distribution, sale, or purchase of any tobacco; or
- (c) inspect, or take copies of, or make notes in respect of, any record or statement referred to in this subsection or any part of any such record or statement.

(2) Whenever the Registrar exercises a power conferred by subsection (1) in his capacity as an inspector, it shall be sufficient for the purposes of that subsection if he produces evidence of his appointment as Registrar.

(3) Any person who—

- (a) prevents or attempts to prevent an inspector from exercising any power conferred on him by subsection (1);
- (b) hinders or obstructs an inspector in the exercise of any such power; or
- (c) fails to comply with a request of an inspector under subsection (1) (b),

is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$250 or to imprisonment for a term not exceeding 3 months, or both, and, in the case of an offence under paragraph (c), to an additional penalty not exceeding \$50 for every day during which the offence continues.

(4) A person is not guilty of an offence under subsection (3) (c) by reason of his failure to answer any question referred to in subsection (1) (b) (iii) if he proves to the satisfaction of the court before which he is prosecuted for the offence that he did not know, and could not with reasonable diligence have ascertained, the answer to the question.

(5) A person is not excused from answering any question if required to do so under subsection (1) (b) on the ground that the answer might tend to incriminate him or make him liable to a penalty, but the information provided by him shall not be admissible against him in any proceedings, civil or criminal, except in proceedings for an offence under subsection (3) or section 40.

(6) Where an answer to a question referred to in subsection (1) (b) (iii) or any information whatever is given to an inspector by an officer of a corporation within the meaning of the *Companies Act* 1962 which is carrying on or has carried on the business of selling tobacco, the answer and information are, for the purposes of any proceedings against the corporation under any of the provisions of this Act, binding on and admissible in evidence against the corporation, unless it is proved that the answer or information was given in relation to a matter in respect of which the officer had no authority to bind the corporation.

(7) The provisions of subsection (6) are in addition to any rule of law relating to the binding effect and admissibility in evidence of statements made by any officer or employee of a corporation.

Special powers
of Registrar
with respect
to dealings
with tobacco.

14—(1) In this section, a reference to dealing with tobacco includes a reference to processing, packaging, distributing, selling, and purchasing tobacco.

(2) The Registrar may serve on—

(a) a person who is carrying on, or has carried on, or is or was concerned in, a business of dealing with tobacco; or

(b) a person who, as agent or employee of a person referred to in paragraph (a), has or has had duties or provides or has provided services in connection with a business so referred to,

an instrument in writing requiring that person to provide the Registrar in writing, within such period as is specified in the instrument or such further period as the Registrar may allow, with—

(c) a statement of such particulars with respect to that tobacco, or any of it, as are so specified; and

(d) if the Registrar thinks fit, a certificate signed by a person registered or qualified for registration under the *Companies Act* 1962 as a company auditor, certifying that the statement is correct.

(3) Any person who fails to comply with any requirement made of him under subsection (2) is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$2 500.

(4) A person is not guilty of an offence under subsection (3) if the court hearing the charge is satisfied—

(a) that the defendant could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates; or

(b) that the defendant complied with that requirement to the extent of his ability to do so.

Protection for
Registrar, &c.

15—(1) Subject to subsection (2), any matter or thing done by the Registrar, an inspector, or any other person in good faith for the purpose or purported purpose of administering or executing this Act shall not subject him personally to any action, liability, claim, or demand.

(2) Subsection (1) does not preclude the Crown from being subject to any action, liability, claim, or demand to which the Crown would, but for that subsection, have been subject.

PART III

LICENCES

16—(1) On or after 1st February 1981, a person shall not carry on tobacco wholesaling unless he is the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence. Offences relating to sale of tobacco.

Penalty: \$500 for every day on which the person carries on the business.

(2) On or after 1st February 1981, a person shall not carry on tobacco retailing unless he is the holder of a retail tobacconist's licence.

Penalty: \$250 for every day on which the person carries on the business.

(3) On or after 1st February 1981, a person shall not sell tobacco in the course of intrastate trade unless he is the holder of a wholesale tobacco merchant's licence, a group wholesale tobacco merchant's licence, or a retail tobacconist's licence.

Penalty: \$250.

(4) A licensee shall not carry on the business of selling tobacco on premises that are not specified in the licence as premises to be used for that business.

Penalty: \$250.

(5) Where tobacco is sold on any premises otherwise than by a licensee, the occupier of the premises shall be deemed to have sold the tobacco, unless it is established—

(a) that the sale took place without his knowledge or connivance; and

(b) that he took all such steps as are reasonable in the circumstances to prevent the sale being made.

(6) In any prosecution relating to a charge for an offence against subsection (1), (2), or (3), the defendant has a defence to that charge if he satisfies the court that, although he did not hold a licence authorizing him to carry on tobacco wholesaling or tobacco retailing, or to sell tobacco in the course of intrastate trade, at a time alleged in the charge, he had, before that time, made an application for such a licence in accordance with this Act and tendered payment of the fee payable under section 20 in respect of such a licence and the Registrar had not refused to issue a licence of the kind applied for.

Application for
licence.

17—(1) Any person who carries on or proposes to carry on tobacco wholesaling, other than a person who is a member of a group of wholesale tobacco merchants, may make an application for a wholesale tobacco merchant's licence.

(2) Any person who is a member of a group of wholesale tobacco merchants which carries on or proposes to carry on tobacco wholesaling may make an application for a group wholesale tobacco merchant's licence on behalf of all or any members of the group.

(3) Any person who carries on or proposes to carry on tobacco retailing may make an application for a retail tobacconist's monthly licence or a retail tobacconist's yearly licence.

(4) An application under this section shall—

(a) be in writing in a form provided by the Registrar;

(b) specify the name of the applicant and the address of the premises at which he carries on or proposes to carry on tobacco wholesaling or tobacco retailing or, in the case of an application for a group wholesale tobacco merchant's licence, the names of the members of the group and the addresses of the premises at which they carry on or propose to carry on tobacco wholesaling; and

(c) contain such particulars relating to the tobacco wholesaling or tobacco retailing business carried on or proposed to be carried on by the applicant or, in the case of an application for a group wholesale tobacco merchant's licence, by the members of the group as may be directed by the form.

(5) Where, as a result of not being satisfied as to the particulars provided in an application under this section, the Registrar serves on the applicant an instrument under section 14 requiring the applicant to provide him with a statement of further particulars in respect of the application, he may decline to consider the application until the applicant has provided him with such a statement and, where any such statement is so provided, he may decline to issue the licence applied for until he is satisfied as to the particulars contained in the statement.

18—(1) Where an application is made under section 17 for a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence, the Registrar shall— Issue, &c., of licence.

(a) if the application is in accordance with that section and the applicant has complied with any requirement under section 14 made in relation to the application; and

(b) on payment by the applicant of the fee payable under section 20 in respect of a licence of the kind applied for,

issue to the applicant a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence, as the case requires.

(2) Where an application is made under section 17 for a retail tobacconist's monthly licence, the Registrar shall—

(a) if the application is in accordance with that section and the applicant has complied with any requirement under section 14 made in relation to the application; and

(b) on payment by the applicant of the fee payable under section 20 in respect of such a licence,

issue to the applicant a retail tobacconist's monthly licence.

(3) Where an application is made under section 17 for a retail tobacconist's yearly licence, the Registrar shall—

(a) if the application is in accordance with that section and the applicant has complied with any requirement under section 14 made in relation to the application;

(b) if the applicant—

(i) satisfies the Registrar that he has not at any time during the period of 12 months preceding the date of the application purchased tobacco for the purpose of his tobacco retailing business from a person other than—

- (a) the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence; or
 - (b) where any part of that period of 12 months precedes 1st February 1981—a person whose name has been notified in writing to the applicant as being an approved tobacco wholesaler for the purpose of this section; and
- (ii) enters into an undertaking in writing with the Registrar that he will not during the period on and from the date on which the application was made until the end of the period to which a retail tobacconist's yearly licence would, if issued to him, be in force purchase tobacco for the purposes of his tobacco retailing business from a person other than the holder of a licence of the kind referred to in subparagraph (i) (a); and
- (c) on payment by the applicant of the fee payable under section 20 in respect of a retail tobacconist's yearly licence,
- issue to the applicant a retail tobacconist's yearly licence.

(4) Where, on an application under section 17, the Registrar refuses to issue a wholesale tobacco merchant's licence, a group wholesale tobacco merchant's licence, or a retail tobacconist's monthly licence, he—

- (a) shall serve on the applicant a notice in writing of the refusal and the reasons for it; and
- (b) where payment of the fee payable under section 20 has been made—shall, unless the applicant agrees in writing to that amount being held in credit for him, refund that fee to the applicant.

(5) Where, on an application under section 17, the Registrar refuses to issue a retail tobacconist's yearly licence, he—

- (a) shall serve on the applicant a notice in writing of the refusal and the reasons for it;

- (b) if the reason for the refusal is that the applicant failed to satisfy the Registrar as referred to in subsection (3) (b) (i) or to enter into an undertaking referred to in subsection (3) (b) (ii), shall—
- (i) include in the notice a statement to the effect that he would, on payment of the fee payable under section 20 in respect of a retail tobacconist's monthly licence, be prepared to issue to the applicant a licence of that kind; and
 - (ii) specify in the notice the amount of the fee so payable; and
- (c) where payment of the fee payable in respect of the licence to which the application relates has been made—shall, unless the applicant agrees in writing to the amount of the fee being held in credit for him, refund that amount to the applicant.

(6) Where a notice served on an applicant under subsection (5) includes a statement in accordance with paragraph (b) of that subsection, the Registrar shall, on payment by the applicant of the fee specified in the notice, issue to the applicant a retail tobacconist's monthly licence.

(7) When issuing a licence under this section, the Registrar shall cause particulars identifying the premises which are to be used for or in connection with the business authorized by the licence to be specified in the licence.

(8) When issuing a group wholesale tobacco merchant's licence, the Registrar shall cause the name of each person who is a member of the group of wholesale tobacco merchants and on whose behalf the application for the licence was made to be specified in the licence.

19—(1) A wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence—

Effect of licence.

- (a) authorizes the holder of the licence to carry on tobacco wholesaling at the premises specified in the licence; and
- (b) has force on and from the date specified in the licence as the date for the licence to come into force until, unless the licence ceases to be in force earlier, the last day of the month for which it is issued,

and such a licence may, in accordance with section 26, be renewed for successive periods of 1 month.

(2) A retail tobacconist's monthly licence—

- (a) authorizes the holder of the licence to carry on tobacco retailing at the premises specified in the licence; and
- (b) has force on and from the date specified in the licence as the date for the licence to come into force until, unless the licence ceases to be in force earlier, the last day of the month for which it is issued,

and such a licence may, in accordance with section 26, be renewed for successive periods of 1 month.

(3) A retail tobacconist's yearly licence—

- (a) authorizes the holder of the licence to carry on tobacco retailing at the premises specified in the licence; and
- (b) has force on and from the date specified in the licence as the date for the licence to come into force until, unless the licence ceases to be in force earlier, 31st January next following,

and such a licence may, in accordance with section 26, be renewed for successive periods of 12 months.

Licence fees.

20—(1) Subject to this section, the fee payable in respect of a licence is as follows:—

- (a) where the licence is a wholesale tobacco merchant's licence—a fee of \$10 and an amount equal to 10 per cent of the value of tobacco sold by the applicant for the licence or a renewal of the licence in the course of tobacco wholesaling during the relevant period;
- (b) where the licence is a group wholesale tobacco merchant's licence—a fee of \$10 and an amount equal to 10 per cent of the value of tobacco sold by all persons who are members of the group of wholesale tobacco merchants of which the applicant for the licence or a renewal of the licence is a member (whether or not the application was made by them or on their behalf and whether or not they were members of that group during the whole or any part of the relevant period) in the course of tobacco wholesaling during the relevant period;
- (c) where the licence is a retail tobacconist's monthly licence—a fee of \$1 and an amount equal to 10 per cent of the value of tobacco sold by the applicant for

the licence or a renewal in the course of tobacco retailing during the relevant period (other than tobacco purchased in the course of intrastate trade from the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence) or, where the relevant period precedes 1st February 1981, from a person whose name has been notified in writing to the applicant as being an approved tobacco wholesaler for the purpose of this section;

(d) where the licence is a retail tobacconist's yearly licence—
a fee of \$10.

(2) Where an applicant for a wholesale tobacco merchant's licence or a renewal of such a licence was, at any time during the relevant period for the licence in relation to which the application or application for renewal is made, a member of a group of wholesale tobacco merchants, the tobacco sold by the applicant in the course of tobacco wholesaling during that relevant period shall, for the purposes of subsection (1) (a), be deemed to have included any tobacco sold by the other or, if more than one, all of the other members of the group in the course of tobacco wholesaling during that period, unless the applicant satisfies the Registrar that a fee for a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence, or a renewal of such a licence, has been paid to the Registrar after having been assessed in respect of the sale of that tobacco during that relevant period.

(3) Where—

(a) an application is made on behalf of all or any of the members of a group of wholesale tobacco merchants for a group wholesale tobacco merchant's licence or a renewal of any such licence; and

(b) any member of the group referred to in paragraph (a) was, at any time during the relevant period for the licence in relation to which the application or application for renewal is made, a member of another group of wholesale tobacco merchants (any one or more of the members of which is not a member of the group referred to in paragraph (a)),

the tobacco sold by members of the first-mentioned group in the course of tobacco wholesaling during that relevant period shall, for

the purposes of subsection (1) (b), be deemed to have included any tobacco sold by any of the members of the other group in the course of tobacco wholesaling during that period, unless the applicant satisfies the Registrar that a fee for a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence, or a renewal of such a licence, has been paid to the Registrar after having been assessed in respect of the sale of that tobacco during that relevant period.

(4) For the purposes of subsections (1) (a) and (b), (2), and (3), tobacco sold to the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence, or, where the relevant period precedes 1st February 1981, sold to a person whose name has been notified in writing to the applicant as being an approved tobacco wholesaler for the purposes of this section, shall be disregarded.

(5) Where—

- (a) an application is made for a licence; and
- (b) the applicant did not carry on the business in respect of which the application for the licence was made during the whole of the relevant period,

the fee payable in respect of the licence shall be such amount as is assessed by the Registrar as being just and reasonable in the circumstances of the case, having regard to—

- (c) the tobacco that in the opinion of the Registrar would have been sold by the applicant had he been carrying on that business during the whole of that period; and
- (d) the relevant principles of determining fees under subsections (1) to (4).

(6) Where—

- (a) an application is made for a licence;
- (b) the applicant carried on the business in respect of which the application for the licence was made during the whole of the relevant period; and
- (c) the Registrar is of the opinion that he cannot for any reason accurately ascertain the fee payable under subsection (1),

the fee payable in respect of the licence shall be such amount as is assessed by the Registrar as being just and reasonable in the circumstances of the case, having regard to—

(d) the tobacco that in the opinion of the Registrar was sold by the applicant during that period; and

(e) the relevant principles of determining fees under subsections (1) to (4).

(7) A fee payable in respect of a licence under subsection (5) or (6) is payable by the applicant for the licence.

(8) In subsections (5) and (6), "applicant", in relation to a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence, includes any person whose tobacco wholesaling during the relevant period for the licence would have been required to be taken into account by reason of subsections (1) (b), (2), or (3) for the purpose of determining the fee for the licence if the fee had not been required to be assessed under either subsection (5) or (6).

(9) The value of any tobacco sold for delivery and consumption outside the State shall be disregarded in determining fees payable under this section.

(10) Where a fraction of a cent remains after calculating the amount that would, but for this subsection, be the fee payable in respect of a licence, the fee shall be that amount less that fraction of a cent.

(11) Where in relation to an application for a licence or the renewal of a licence the applicant has paid an amount in excess of that payable under this section in respect of the licence, the Registrar shall, unless the applicant lodges with the Registrar a consent in writing to the contrary, immediately refund the excess amount to the applicant.

(12) The fact that an applicant for a licence or the renewal of a licence may lodge an objection or appeal, or proposes to lodge an objection or appeal, under Part IV does not absolve him from making payment of the fee payable under this section before the issue of the licence.

(13) Where it appears to the Registrar that a person was before 1st February 1981 engaged in tobacco wholesaling, he may, by instrument in writing, declare that person to be an approved tobacco wholesaler for the purposes of this section and section 18 and may, by a similar instrument, revoke the declaration.

21—(1) For the purposes of this Act, the value of tobacco of any kind shall be taken to be the gross price at which tobacco of that kind is ordinarily purchased in Tasmania by persons engaged in tobacco retailing. Value of tobacco.

(2) Where tobacco is of a kind to which subsection (1) does not apply or is of a kind for which there is more than one gross price at which tobacco of that kind is ordinarily purchased as referred to in that subsection, its value for the purposes of this Act shall be taken to be such amount as the Registrar considers to be fair and reasonable having regard to the gross prices at which tobacco of other kinds is purchased by persons engaged in tobacco retailing.

(3) A reference in this section to the gross price of tobacco purchased by persons engaged in tobacco retailing shall be taken to include a reference to any excise duty that forms part of the price but to exclude any amount included in the price in consideration of a fee payable in respect of a licence or any other component of the price prescribed in the regulations for the purpose of this section.

Adjustment
of fee.

22—(1) Where it appears to the Registrar that the fee assessed in respect of any licence was assessed incorrectly, he may at any time, whether or not the licence has ceased to be in force, reassess the fee in accordance with the principles of assessing fees under section 20.

(2) Without limiting the generality of subsection (1), where—

(a) a wholesale tobacco merchant's licence, a group wholesale tobacco merchant's licence, or a retail tobacconist's monthly licence is not renewed or otherwise ceases to be in force; and

(b) it appears to the Registrar that—

(i) the business authorized by the licence is no longer carried on, either by the person who held the licence or by any other person; and

(ii) the value of tobacco sold under the authority of the licence during the period for which the licence was in force, or was last in force before the business ceased to be carried on, was less than or more than the value of tobacco sold during the relevant period for that licence,

the Registrar may reassess the fee in respect of that licence by reducing it or increasing it, according to whether the value first-mentioned in paragraph (b) (ii) was less than or more than the value last mentioned in that paragraph.

(3) Where on a reassessment of a fee under subsection (1) or (2) the fee is reduced, the amount overpaid shall be refunded by the Registrar in accordance with subsection (4).

(4) Where—

- (a) during the whole of the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by one person, the amount to be refunded shall be refunded to that person; or
- (b) during the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by 2 or more persons successively, the amount to be refunded shall be refunded to those persons in proportion to the periods, in days, for which they held the licence.

(5) Where on a reassessment of a fee under subsection (1) or (2) the fee is increased, the additional amount payable by virtue of the reassessment shall be due and payable—

- (a) if the reassessment was made in respect of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence—in accordance with subsections (6) and (8); or
- (b) if the reassessment was made in respect of a retail tobacconist's monthly licence—in accordance with subsections (7) and (8).

(6) For the purpose of subsection (5), where an additional amount is payable by virtue of a reassessment in respect of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence, that amount shall be due and payable (whether or not the licence has ceased to be in force)—

- (a) within 14 days after notice of the reassessment is served on the person who is or was the holder of the wholesale tobacco merchant's licence or on any one or more of the persons who are or were holders of the group wholesale tobacco merchant's licence, as the case may be; and

- (b) by the person or, where notice is served on more than one person, by each of the persons on whom the notice is served,

unless, in respect of the additional amount or any part of the additional amount so due and payable by that person or any of those persons, approval has been given under subsection (8) for the payment of that amount or part by instalments.

(7) For the purpose of subsection (5), where an additional amount is payable by virtue of a reassessment in respect of a retail tobacconist's monthly licence and—

- (a) during the whole of the period for which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, that licence has held by one person, the additional amount shall be due and payable by that person within 14 days after notice of the reassessment is served on that person; or
- (b) during the period for which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, that licence was held by 2 or more persons successively, the additional amount shall be due and payable, within 14 days after notice of the reassessment is served on them, by those persons in proportion to the periods, in days, for which they held the licence,

unless, in respect of the additional amount or any part of the additional amount so due and payable by that person or any of those persons, approval has been given under subsection (8) for the payment of that amount or part by instalments.

(8) A person by whom any additional amount or part is payable under subsection (6) or (7) may, within 14 days after the service on him of notice of the reassessment by virtue of which the additional amount or part became so payable by him, apply to the Registrar for approval to pay that amount or part by instalments, and, if the Registrar approves of the amount or part being so paid, it shall be due and payable by that person by such instalments payable at such times as are specified in the instrument of the Registrar's approval.

(9) For the purposes of making the apportionment referred to in subsection (4) (b) or (7) (b), where the licence has not ceased to be in force the period, in days, for which the licensee who was the holder of the licence at the time of the reassessment has held the licence together with the unexpired period, in days, of the licence shall be deemed to be the period for which that licensee held the licence.

(10) An amount which is due and payable by any person under subsection (6), (7), or (8) and which is unpaid may be recovered by the Registrar in a court of competent jurisdiction as a debt due to the Crown.

23—(1) The Registrar shall cause to be kept for the purposes of this Act a register of wholesale tobacco merchants' licences and group wholesale tobacco merchants' licences and a register of retail tobacconists' licences. Registers of holders of licences to be kept.

(2) The Registrar shall enter or cause to be entered in the registers kept under subsection (1) such particulars relating to licences referred to in that subsection and to the holders of those licences as may be prescribed in the regulations.

(3) Any member of the public attending the office of the Registrar during the hours that that office is ordinarily open for business may request to inspect either of the registers kept under subsection (1), and, where any such request is made, it is the duty of the Registrar to comply with the request.

24—If at any time while a licence is in force the holder of the licence or, where the licence is held by more than one person, any of the holders, lodges with the Registrar an instrument in writing in a form approved by him requesting him to amend the licence by adding to, substituting, or deleting from the licence particulars of the premises specified in the licence, the Registrar shall, if satisfied as to the truth of the statements contained in the instrument, make the amendment requested. Amendment of licence.

25—(1) A licensee and any person to whom the licensee proposes to transfer his licence may, by application in a form approved by the Registrar accompanied by the prescribed fee (if any), request the Registrar to transfer the licence held by the licensee as on and from such day as is specified in the application. Transfers of licence.

(2) On receipt of the application and the prescribed fee (if any), the Registrar shall endorse the transfer on the licence and record particulars of the transfer in the appropriate register, and the licence shall thereupon be deemed to be transferred.

Renewal of
licence.

26—(1) Subject to this section, the holder of a wholesale tobacco merchant's licence, a group wholesale tobacco merchant's licence, or a retail tobacconist's monthly licence may, at any time before the expiry of the licence, apply to the Registrar for the renewal of the licence for a further period of 1 month.

(2) Subject to this section, the holder of a retail tobacconist's yearly licence may, at any time before the expiry of the licence, apply to the Registrar for the renewal of the licence for a further period of 12 months.

(3) An application under this section shall—

- (a) be in writing in a form provided by the Registrar;
- (b) specify the name of the applicant and the address of the premises at which he carries on tobacco wholesaling or tobacco retailing or, in the case of an application for the renewal of a group wholesale tobacco merchant's licence, the names of the members of the group and the addresses of the premises at which they carry on tobacco wholesaling; and
- (c) contain such particulars relating to the tobacco wholesaling or tobacco retailing business carried on by the applicant or, in the case of an application for the renewal of a group wholesale tobacco merchant's licence, by the members of the group as may be directed by the form.

(4) Where, as a result of not being satisfied as to the particulars provided in an application under this section, the Registrar serves on the applicant an instrument under section 14 requiring the applicant to provide him with a statement of further particulars in respect of the application, he may decline to consider the application until the applicant has provided him with such a statement, and where any such statement is so provided, he may decline to issue the licence applied for until he is satisfied as to the particulars contained in the statement.

(5) Where an application is made under subsection (1) for the renewal of a licence of a kind referred to in that subsection, the Registrar shall—

(a) if the application is in accordance with this section and the applicant has complied with any requirement under section 14 made in relation to the application; and

(b) on payment by the applicant of the fee payable under section 20 in respect of such a licence,

renew the licence for a further period of 1 month expiring, unless it ceases to be in force earlier, on the last day of the month for which it is renewed.

(6) Where an application is made under subsection (2) for a retail tobacconist's yearly licence, the Registrar shall—

(a) if the application is in accordance with this section;

(b) if the applicant—

(i) satisfies the Registrar that he has not since the licence was issued or, if previously renewed, since it was last renewed, purchased tobacco for the purposes of his tobacco retailing business from a person other than the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence; and

(ii) enters into a further undertaking with the Registrar that he will not, during the period on and from that on which the renewal would, if granted, come into force until the end of the period of renewal, purchase tobacco for the purposes of his tobacco retailing business from a person other than the holder of a licence of the kind referred to in subparagraph (i); and

(c) on payment by the applicant of the fee payable under section 20 in respect of a retail tobacconist's yearly licence,

renew the licence for a further period of 12 months expiring, unless it ceases to be in force earlier, on 31st January next following.

(7) Where an application is made under subsection (1) for the renewal of a licence of a kind referred to in that subsection that has, since the date of its issue or, if it has previously been renewed, the date of its last renewal, been transferred in accordance with section 25 and the relevant period for the application is a period during which the transferor carried on the business to which the licence relates, any tobacco sold by that transferor during the relevant period shall, for the purposes of section 20, be deemed to have been sold by the applicant.

(8) Where, on an application under subsection (1) for the renewal of a licence of a kind referred to in that subsection, the Registrar refuses to renew the licence, he—

- (a) shall serve on the applicant a notice in writing of the refusal and the reasons for it; and
- (b) where payment of the fee payable under section 20 has been made in respect of the renewal—shall, unless the applicant agrees in writing to the amount of the fee being held in credit for him, refund that amount to the applicant.

(9) Where, on an application under subsection (2) for the renewal of a retail tobacconist's yearly licence, the Registrar refuses to renew the licence, he—

- (a) shall serve on the applicant a notice in writing of the refusal and the reasons for it;
- (b) if the reason for the refusal is that the applicant failed to satisfy the Registrar as referred to in subsection (6) (b) (i) or to enter into an undertaking referred to in subsection (6) (b) (ii), shall—
 - (i) include in the notice a statement to the effect that he would, on payment of the fee payable under section 20 in respect of a retail tobacconist's monthly licence, be prepared to issue to the applicant a licence of that kind; and
 - (ii) specify in the notice the amount of the fee so payable; and
- (c) where payment of the fee payable in respect of the licence to which the application relates has been made—shall, unless the applicant agrees in writing to the amount of the fee being held in credit for him, refund that amount to the applicant.

(10) Where a notice served on an applicant under subsection (9) includes a statement in accordance with paragraph (b) of that subsection, the Registrar shall, on payment by the applicant of the fee specified in the notice, issue to the applicant a retail tobacconist's monthly licence.

(11) Where a person who is the holder of a licence has applied for the renewal of the licence in accordance with this section and pays the fee payable under section 20 in respect of the renewal before the expiry of the licence, but the Registrar has not renewed the licence before that expiry, that person shall nevertheless be deemed to continue to be the holder of that licence.

27—(1) Subject to subsection (3), where on inquiry it appears to the Registrar that a person who is or was the holder of a retail tobacconist's yearly licence—

Revocation,
&c., of retail
tobacconist's
yearly licence.

- (a) included in his application for the licence a statement to the effect that he had not, during the period of 12 months immediately preceding the date of the application, purchased tobacco for the purpose of his tobacco retailing business from a person other than the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence or a person approved as being a tobacco wholesaler for the purpose of section 18, or provided such a statement in accordance with a requirement made by the Registrar under section 14, and the statement so included or provided was false or misleading in a material respect; or
- (b) purchases tobacco in contravention of an undertaking entered into as referred to in section 18 (3) (b) (ii) or section 26 (6) (b) (ii),

the Registrar may, if the licence is still in force, revoke the licence and, whether or not the licence has ceased to be in force, assess the fee that would have been payable by that person in relation to tobacco sold by him during the relevant period or periods if the licence held by him had been a retail tobacconist's monthly licence issued and in force for the whole of the period from the time when the retail tobacconist's yearly licence came into force until the end of the month in which it ceased to be in force, and, where the

amount so assessed is more than the amount paid as a fee in respect of the retail tobacconist's yearly licence, the additional amount shall be due and payable by that person in accordance with the provisions referred to in subsection (2), as applied and modified by that subsection.

(2) The provisions of section 22, so far as applicable and with necessary modifications, apply to and in relation to an assessment under subsection (1) in the same way as they apply to and in relation to a reassessment under that section of an additional amount payable in respect of a retail tobacconist's monthly licence.

(3) The Registrar shall not revoke a licence or make an assessment under subsection (1) unless he has previously afforded the holder of the licence an opportunity to appear at a hearing before him and to make submissions and give evidence to him in relation to the matter.

(4) Where a retail tobacconist's yearly licence held by a person is revoked under subsection (1) or, if such a licence has otherwise ceased to be in force, an additional amount has been assessed under subsection (1) as being payable by the person who held that licence, that person is, by virtue of this subsection, disqualified from holding a retail tobacconist's yearly licence for a period of 12 months after the date of the revocation or, as the case may be, the date on which the licence otherwise ceased to be in force or for such longer period as may be determined by the Registrar and notified to that person in writing, but the fact that a person is so disqualified from being the holder of such a licence does not in any way preclude him from applying for and being issued a retail tobacconist's monthly licence.

(5) A revocation of a retail tobacconist's yearly licence under subsection (1) takes effect on the date on which the decision of the Registrar revoking the licence is served on the person who was the holder of the licence, and so takes effect notwithstanding that that person appeals or may appeal against the revocation under Part IV.

Surrender of
licence.

28—(1) A holder of a retail tobacconist's licence may, at any time, by notice in writing to the Registrar, inform the Registrar that he wishes to surrender the licence, and, on receipt by the Registrar of the notice and the licence, the licence shall cease to be in force.

(2) A licence shall cease to be in force if any additional amount that is due and payable under section 22 in respect of the licence is unpaid.

29—(1) Where a person was required by this Act to hold a licence in respect of any period, but did not do so, that person is liable to pay to the Registrar an amount equal to the fee which would have been payable if he had applied for and been issued a licence in accordance with this Act.

Assessment and recovery of unpaid fee from unlicensed person.

(2) The Registrar may assess the amount referred to in subsection (1) as if the person had applied for a licence.

(3) As soon as practicable after making an assessment under subsection (2), notice of the assessment shall be served by the Registrar on the person.

(4) Subject to subsection (5), where an amount assessed under subsection (2) is unpaid, that amount may be recovered by the Registrar in any court of competent jurisdiction as a debt due to the Crown.

(5) Proceedings may not be commenced for the purpose of recovering an amount assessed under subsection (2) until—

- (a) if the person to whom the assessment relates does not lodge an objection to the assessment under section 35—the expiration of 1 month after service of notice of the assessment under subsection (3);
- (b) if that person lodges such an objection to the assessment but does not appeal under section 35 against the determination of the Registrar under that section—the expiration of the period during which an appeal could have been made;
- (c) if that person appeals under section 35 against the determination of the Registrar under that section—the appeal is determined; or
- (d) if that person lodges an objection under section 35 or appeals under that section but withdraws the objection or appeal—the withdrawal of the objection or appeal.

(6) A certificate purporting to be signed by the Registrar and stating that a specified amount is the amount assessed under this section in respect of a specified person is admissible in the proceedings and shall be evidence of the matter so certified.

PART IV

APPEALS AND OBJECTIONS

Appeal against
refusal of
application for
licence.

30—(1) Where, on an application for a licence, the Registrar refuses to issue the licence, the person who made the application may, within such period as may be prescribed, appeal to the Supreme Court against the refusal of the application.

(2) If, on the hearing of an appeal under subsection (1), the Supreme Court is satisfied that in all the circumstances of the case a licence of the kind to which the appeal relates ought to have been issued, it shall make an order directing that, subject to the payment of the appropriate licence fee, a licence of that kind be issued to the appellant to be in force on and from such date as is specified in the order.

(3) The Registrar shall give effect to any order made by the Supreme Court under subsection (2).

(4) Subject to this section, an appeal under subsection (2) shall be instituted, heard, and determined in accordance with rules of court of the Supreme Court.

Appeal against
refusal of
application for
renewal of
licence.

31—(1) Where, on an application for the renewal of a licence, the Registrar refuses to renew the licence, the applicant for renewal may appeal against the refusal to the Supreme Court.

(2) The provisions of section 30 (2) to (4), with any necessary modifications, apply to and in respect of an appeal under subsection (1) of this section in the same way as they apply to and in respect of an appeal against a refusal to issue a licence.

Appeal against
revocation of
retail
tobacconist's
yearly licence.

32—(1) Where the Registrar revokes a retail tobacconist's yearly licence, the person who was the holder of the licence may, within such period as may be prescribed, appeal to the Supreme Court against the revocation.

(2) If, on the hearing of an appeal under subsection (1), the Supreme Court is satisfied that in all the circumstances of the case the licence to which the appeal relates ought not to have been revoked, it shall make an order directing that the licence be reinstated from such date, whether before, on, or after the date of the order, and on such terms and conditions, as may be specified in the order.

(3) The Registrar shall give effect to any order made by the Supreme Court under subsection (2).

(4) Subject to this section, an appeal under subsection (1) shall be instituted, heard, and determined in accordance with rules of court of the Supreme Court.

33—(1) Where a licensee who has paid the fee assessed in respect of his licence in accordance with section 20 is dissatisfied with the assessment on the ground that the fee has been incorrectly assessed, he may, within 1 month after the issue of the licence, lodge an objection in writing with the Registrar against the assessment. Objection to and appeal against assessment of licence fee.

(2) As soon as practicable after an objection is lodged with him under subsection (1), the Registrar shall determine the objection either by confirming the assessment of the fee to which the objection relates or by increasing or reducing it, and shall serve on the licensee concerned a notice of the determination in writing.

(3) If—

(a) a licensee on whom a notice is served under subsection (2) is not satisfied with the determination as set out in the notice; or

(b) a licensee has not, within 1 month after lodging an objection under subsection (1), been served under subsection (2) with a notice setting out the Registrar's determination of the objection,

that licensee may, on the ground referred to in subsection (1), appeal to the Supreme Court against the Registrar's determination or, where paragraph (b) applies, against the assessment of the fee to which objection relates.

(4) An appeal under subsection (3) may be lodged—

(a) where the licensee concerned is not satisfied with the determination of his objection as set out in the notice served on him under subsection (2)—within 1 month after being served with the notice; or

(b) where the licensee concerned has not, within 1 month after lodging the objection under subsection (1), been served with a notice of determination in respect of the objection—within 2 months after lodging the objection.

and such an appeal may be lodged in the circumstances specified in paragraph (a) notwithstanding that the licensee could have previously lodged such an appeal in the circumstances specified in paragraph (b).

(5) On the hearing of an appeal under subsection (3), the Supreme Court may make an order confirming or varying the determination or assessment appealed against, and, in making an order varying that determination or assessment, the Court shall have regard to the provisions of section 20.

(6) The Supreme Court may make such ancillary orders for the purpose of giving effect to an order under subsection (5) as it considers just and equitable.

(7) The decision of the Supreme Court on an appeal under subsection (3) is conclusive.

(8) Subject to this section, an appeal under subsection (3) shall be instituted, heard, and determined in accordance with rules of court of the Supreme Court.

(9) Where —

(a) on an objection or appeal under this section, the Registrar or, as the case may be, the Supreme Court upholds the objection or appeal either wholly or in part;

(b) the whole of the amount of the fee (if any) as determined on the objection or appeal has been paid; and

(c) the amount of fee as so determined is less than the amount of fee originally paid,

the Registrar shall refund to the person who lodged the objection or appeal the difference between the amounts referred to in paragraph (c).

Objection to
and appeal
against
reassessment.

34—(1) Where a notice of reassessment is served on a person under section 22 requiring him to pay an additional amount, he may, within 1 month after service of the notice, lodge an objection in writing with the Registrar on the ground that the additional amount is excessive or that it is not payable.

(2) As soon as practicable after an objection is lodged with him under subsection (1), the Registrar shall determine the objection by confirming, varying, or quashing the reassessed fee, and shall serve on the person who lodged the objection a notice of the determination in writing.

(3) If—

(a) a person on whom a notice is served under subsection (2) is not satisfied with the determination as set out in the notice; or

- (b) a person has not, within 1 month after lodging an objection under subsection (1), been served under subsection (2) with a notice setting out the Registrar's determination of the objection,

that person may, on a ground referred to in subsection (1), appeal to the Supreme Court against the Registrar's determination, or, where paragraph (b) applies, against the reassessment of the fee to which objection relates.

- (4) An appeal under subsection (3) may be lodged—

(a) where the person concerned is not satisfied with the determination of his objection as set out in the notice served on him under subsection (2)—within 1 month after being served with the notice; or

(b) where the person concerned has not, within 1 month after lodging the objection under subsection (1), been served with a notice of determination in respect of the objection—within 2 months after lodging the objection,

and such an appeal may be lodged in the circumstances specified in paragraph (a) notwithstanding that the appellant could have previously lodged such an appeal in the circumstances specified in paragraph (b).

(5) On the hearing of an appeal under subsection (3), the Supreme Court may make an order confirming, varying, or quashing the determination or reassessment appealed against, and, in making an order varying that determination or reassessment, the Court shall have regard to the provisions of section 20.

(6) The Supreme Court may make such ancillary orders for the purpose of giving effect to an order under subsection (5) as it considers just and equitable.

(7) The decision of the Supreme Court on an appeal under subsection (3) is conclusive.

(8) Subject to this section, an appeal under subsection (3) shall be instituted, heard, and determined in accordance with rules of court of the Supreme Court.

(9) This section applies to and in respect of an assessment under section 27 as if a reference in this section to a reassessment under section 22 were a reference to an assessment under section 27.

Objection to
and appeal
against
assessment of
unlicensed
persons.

35—(1) A person on whom a notice of assessment is served under section 29 (3) may, within 1 month after service of the notice, lodge an objection in writing with the Registrar against the assessment on the ground that the fee was incorrectly assessed by the Registrar in terms of section 20 or that he was not a person required to hold a licence in respect of the period to which the assessment relates.

(2) As soon as practicable after an objection is lodged with him under subsection (1), the Registrar shall determine the objection, either by confirming the assessment of the fee to which the objection relates or by quashing or varying it, and serve on the person who lodged the objection a notice of the determination in writing.

(3) If—

(a) a person on whom a notice is served under subsection (2) is not satisfied with the determination as set out on the notice; or

(b) a person has not, within 1 month after lodging an objection under subsection (1), been served under subsection (2) with a notice setting out the Registrar's determination of the objection,

that person may, on a ground referred to in subsection (1), appeal to the Supreme Court against the Registrar's determination, or, where paragraph (b) applies, against the assessment of the fee to which the objection relates.

(4) An appeal under subsection (3) may be lodged—

(a) where the person concerned is not satisfied with the determination of his objection as set out in the notice served on him under subsection (2)—within 1 month after being served with the notice; or

(b) where the person concerned has not, within 1 month after lodging the objection under subsection (1), been served with a notice of determination in respect of the objection within 2 months after lodging the objection,

and such an appeal may be lodged in the circumstances specified in paragraph (a) notwithstanding that the appellant could have previously lodged such an appeal in the circumstances specified in paragraph (b).

(5) On the hearing of an appeal under subsection (3), the Supreme Court may make an order confirming, quashing, or varying the determination or assessment appealed against, and, in making an order varying that determination or assessment, the Court shall have regard to the provisions of section 20 as if the appellant had at the relevant time been the holder of a licence.

(6) The Supreme Court may make such ancillary orders for the purpose of giving effect to an order under subsection (5) as it considers just and equitable.

(7) The decision of the Supreme Court on an appeal under subsection (3) is conclusive.

(8) Subject to this section, an appeal under subsection (3) shall be instituted, heard, and determined in accordance with rules of court of the Supreme Court.

PART V

MISCELLANEOUS

36—(1) A person who carries on the business of selling tobacco shall— Records to be kept.

(a) keep at a place within Tasmania such records as may be prescribed containing such particulars as may be prescribed relating to tobacco that is acquired, held, or sold for the purposes of or in the course of that business; and

(b) preserve each of those records for a period of 6 years after the last entry was made in it.

(2) A person referred to in subsection (1) who fails to comply with that subsection is guilty of an offence and is liable on conviction to a penalty not exceeding \$1 000.

(3) This section does not apply so as to require the preservation of records—

(a) in respect of which the Registrar has notified the person carrying on the business that preservation is not required; or

(b) of a company which has gone into liquidation and which has been finally dissolved,

and does not apply to an invoice to which section 37 applies.

Invoices to
be issued, &c.

37—(1) Every person who is the holder of a wholesale tobacco merchant's licence or a member of a group that is the holder of a group wholesale tobacco merchant's licence shall—

(a) issue to every person to whom he sells tobacco in the course of intrastate trade an invoice in respect of the sale of that tobacco specifying—

(i) the name and address of the purchaser of the tobacco;

(ii) the quantity of tobacco sold; and

(iii) the total consideration for the sale of the tobacco; and

(b) endorse or cause to be endorsed on every such invoice the words "SOLD BY LICENSED WHOLESALER—LICENCE NO. " followed by the number of his licence.

(2) If the holder of a wholesale tobacco merchant's licence or a member of a group that is the holder of a group wholesale tobacco merchant's licence fails to comply with subsection (1), he is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$500.

(3) A person shall not issue an invoice which bears—

(a) the words "SOLD BY LICENSED WHOLESALER" (or words of similar import) unless he is the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence; or

(b) the matter "LICENCE NO. " (or matter of similar import) followed by a number unless he is the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence bearing that number.

(4) Any person who contravenes subsection (3) is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$500.

(5) Every person who is the holder of a wholesale tobacco merchant's licence or a member of a group that is the holder of a group wholesale tobacco merchant's licence shall keep at a place in Tasmania a copy of every invoice issued by him under subsection (1) for a period of not less than 6 years from the date of issue.

(6) If the holder of a wholesale tobacco merchant's licence or a member of a group that is the holder of a group wholesale tobacco merchant's licence fails to comply with subsection (5), he is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$500.

(7) If, within the period specified in subsection (5), a person ceases to be the holder of a wholesale tobacco merchant's licence or to be a member of a group that is the holder of a group wholesale tobacco merchant's licence or a group of which he is a member ceases to be the holder of a group wholesale tobacco merchant's licence, that subsection shall continue to apply to him for the remainder of the period as if he were the holder of a wholesale tobacco merchant's licence or, as the case may be, a member of a group that is the holder of a group wholesale tobacco merchant's licence and shall be construed accordingly.

38—(1) Where a vending machine from which tobacco can be obtained is kept on any premises, the occupier of the premises shall, unless he is the holder of a retail tobacconist's licence, ensure that the owner of the machine is the holder of such a licence.

Tobacco
vending
machines.

(2) The occupier of premises on which there is kept a vending machine from which tobacco can be obtained shall ensure that there is affixed to the machine a plate specifying the prescribed particulars of the holder of the licence in respect of the machine.

(3) An occupier of premises who fails to comply with subsection (1) or (2) is guilty of an offence and is liable on conviction to a penalty not exceeding \$250.

(4) For the purposes of subsection (1), where a vending machine referred to in that subsection is leased or hired from the owner, the reference in that subsection to the owner shall be construed as a reference to the lessee or hirer of the machine.

39—(1) Except as provided by subsection (3) and subject to subsection (4), a person shall not disclose any information or publish any record or part of any record obtained by him in connection with the administration or execution of this Act, unless the disclosure or publication is made—

Disclosure of
information.

(a) with the consent of the person from whom the information or record was obtained (being a person entitled or authorized to give that consent);

(b) in connection with the administration or execution of this Act; or

(c) for the purpose of any legal proceedings arising out of this Act or of any report of any such proceedings.

(2) Any person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$2 500.

(3) The Registrar may communicate any matter which comes to his knowledge in the performance or exercise of his functions or duties under this Act to an officer or authority engaged in administering or executing a law of another State or a Territory of the Commonwealth relating to the licensing of persons to carry on the business of selling any tobacco.

(4) Subsection (1) does not prevent the disclosure of information or the publication of a record in accordance with any lawful requirement of the Commonwealth Statistician.

False or misleading statements.

40—(1) Subject to subsection (3), any person who—

(a) makes an application under this Act; or

(b) makes an answer whether orally or in writing to a question put to him pursuant to this Act by the Registrar or by or before the Supreme Court,

that is false or misleading in a material particular is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$1 000 or to imprisonment for a term not exceeding 3 months, or both.

(2) Subject to subsection (3), any person who—

(a) in providing any information;

(b) in giving any notification; or

(c) in keeping any record,

pursuant to this Act, makes any statement or representation that is false or misleading in a material particular is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$1 000 or to imprisonment for a term not exceeding 3 months, or both.

(3) It is a defence to a charge under subsection (1) or (2) if it is proved that, at the time the application, answer, statement, or representation was made, the defendant believed on reasonable grounds that it was neither false nor misleading.

41—A certificate signed by the Registrar certifying—

Evidence.

(a) that a person specified in the certificate was an inspector at a time or during a period so specified; or

(b) that a person so specified was or was not the holder of a licence at a time or during a period so specified,

is admissible in any proceedings under this Act and shall be evidence of the matters so certified.

42—(1) Proceedings for an offence against this Act may be commenced at any time within a period of 3 years after the time when the offence is alleged to have been committed.

Proceedings on prosecutions.

(2) A complaint in respect of an offence against this Act may be made in the name of the Registrar by any officer of the Public Service employed in the administration or execution of this Act and authorized to make complaints on behalf of the Registrar, and any prosecution instituted in the name of the Registrar shall, in the absence of evidence to the contrary, be deemed to have been instituted by his authority.

(3) An officer referred to in subsection (2) may appear on behalf of the Registrar in any proceedings for an offence against this Act.

43—(1) Where an offence against this Act is committed by a body corporate, every person concerned in the management of that body corporate shall be deemed also to have committed the offence and may be convicted of the offence, unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

Offences by bodies corporate.

(2) A person referred to in subsection (1) may be convicted of an offence under that subsection whether or not the body corporate is charged with or convicted of the offence.

44—(1) Any notice or other document required or authorized by this Act to be served or given by the Registrar shall be deemed to have been duly served or given—

Service of documents by the Registrar.

(a) if delivered personally to the person on or to whom the notice or document is to be served or given or if left at the place of residence or business of that person in or out of the State last known to the Registrar; or

(b) if sent by prepaid letter post, addressed to the person on or to whom the notice or document is to be served or given at his place of residence or business in or out of the State last known to the Registrar.

(2) Service of a notice or document in accordance with subsection (1) (b) shall, unless the contrary is established, be deemed to have been effected at the time when it would be delivered in the ordinary course of post.

(3) The provisions of this section are in addition to the provisions of section 362 of the *Companies Act* 1962.

Regulations.

45—(1) The Governor may make regulations for carrying out or giving effect to this Act and, in particular, may make regulations for or with respect to—

(a) requiring persons, or persons belonging to classes of persons, specified in the regulations—

(i) to make returns in such form and manner and containing such information relating to sales, purchases, or stocks of, or dealings with, tobacco, as is indicated by the regulations; and

(ii) to lodge the returns with the Registrar within such time as may be so specified; and

(b) the display and production of licences by the holders of the licences.

(2) The regulations may provide for a contravention of, or failure to comply with, any provision of the regulations to be an offence and for the imposition of a penalty not exceeding \$500 for such an offence.

(3) Regulations may be made so as to apply differently to or in respect of different classes of persons or different classes of tobacco or according to such other different factors as may be specified in the regulations.

SCHEDULE 1

Section 2 (1)

RELEVANT PERIODS FOR WHOLESALE TOBACCO MERCHANTS' LICENCES,
 GROUP WHOLESALE TOBACCO MERCHANTS' LICENCES, AND RETAIL
 TOBACCONISTS' MONTHLY LICENCES

Column 1	Column 2
February March April May June July August September October November December January	December January February March April May June July August September October November

