



TASMANIA

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**TOBACCO BUSINESS FRANCHISE  
LICENCES AMENDMENT ACT 1996**

**No. 53 of 1996**

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# **TOBACCO BUSINESS FRANCHISE LICENCES AMENDMENT ACT 1996**

**No. 53 of 1996**

**An Act to amend the *Tobacco Business Franchise  
Licences Act 1980***

**[Royal Assent 16 December 1996]**

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:

## **Short title**

1. This Act may be cited as the *Tobacco Business  
Franchise Licences Amendment Act 1996*.

## **Commencement**

2. This Act commences on the day after the day on which  
it receives the Royal Assent.

**Principal Act**

3. In this Act, the *Tobacco Business Franchise Licences Act 1980\** is referred to as the Principal Act.

**Section 2 amended (Interpretation)**

4. Section 2 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) before the definition of "consumption" the following definition:

**"associate"** has the meaning, in relation to a person, it would have under Division 2 of Part 1.2 of the Corporations Law as if –

- (a) for paragraphs (b) and (c) of section 12(1) of that Law, there were substituted –

"or

- (b) whether the primary person is in a position to exercise certain powers in relation to a body corporate;" and

- (b) sections 13, 14, 16(2) and 17 of that Law were repealed;

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\* No. 89 of 1980. Amended by No. 66 of 1981, No. 9 of 1982, No. 58 of 1983, Nos. 29 and 67 of 1984, No. 76 of 1987, No. 61 of 1989, No. 5 of 1990, No. 43 of 1991 and No. 30 of 1993.

- (b) by inserting in subsection (1) after the definition of "consumption" the following definitions:

**"corporation"** has the same meaning as in section 9 of the Corporations Law;

**"corresponding law"** has the same meaning as in the *Taxation (Reciprocal Powers) Act 1993*;

**"director"**, in relation to a corporation, has the same meaning as in section 9 of the Corporations Law;

**"distribution"** includes storage and transportation;

- (c) by inserting in subsection (1) after the definition of "inspector" the following definition:

**"police officer"** has the same meaning as in the *Police Regulation Act 1898*;

- (d) by inserting in subsection (1) after the definition of "premises" the following definition:

**"prescribed quantity"**, in relation to –

- (a) tobacco in the form of cigarettes, means 3 500 cigarettes or, if another amount is prescribed, that other amount; or
- (b) tobacco in any other form, means 5 kilograms or, if

another amount is  
prescribed, that other  
amount;

- (e) by omitting from the definition of "relevant period" in subsection (1) ", a group wholesale tobacco merchant's licence, or a retail tobacconist's monthly licence" and substituting "or a group wholesale tobacco merchant's licence";
- (f) by omitting from the definition of "retail tobacconist's licence" in subsection (1) "monthly or";
- (g) by omitting from subsection (1) the definition of "retail tobacconist's monthly licence";
- (h) by inserting in subsection (1) after the definition of "sell" the following definition:

**"State Taxation Act"** has the same meaning as in the *Taxation (Reciprocal Powers) Act 1993*;

- (i) by inserting in subsection (1) after the definition of "tobacco wholesaling" the following definition:

**"transportation record"** means a record in relation to the transportation of tobacco required to be completed or kept under section 14BA;

- (j) by inserting in subsection (5) "or contemplated to be delivered" after "delivered";
- (k) by omitting from subsection (7) "section 18(8), specified in" and substituting "section 18E(2)(b), endorsed on";



- (1) by omitting subsection (9).

**Section 14 amended (Special powers of Registrar with respect to dealings with tobacco)**

5. Section 14 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) of subsection (2) "correct." and substituting "correct; and";
- (b) by inserting after paragraph (b) of subsection (2) the following paragraph:
  - (c) records relating to the processing, packaging, distribution, sale or purchase of tobacco in the possession or under the control of that person.
- (c) by inserting after subsection (2A) the following subsection:

**(2B)** The Registrar, by notice in writing served on a person, may require that person to attend and give evidence before the Registrar or before a person nominated by the Registrar and employed in the administration and execution of this Act and authorised by the Registrar.

**Sections 14BA and 14BB inserted**

6. After section 14B of the Principal Act, the following sections are inserted:

**Transportation records**

**14BA.** (1) If a quantity of tobacco exceeding the prescribed quantity is to be transported in Tasmania, the person on whose behalf the tobacco is to be transported must complete a transportation record in respect of the tobacco and give the record to the carrier at or before the commencement of the transportation.

Penalty: Fine not exceeding 20 penalty units.

(2) The transportation record must be in a form approved by the Registrar and must contain –

- (a) the date on and address at which the transportation is to commence; and
- (b) the class and quantity of the tobacco; and
- (c) the name and address of the person on whose behalf the tobacco is to be transported; and
- (d) if the person on whose behalf the tobacco is to be transported is not the owner of the tobacco, the name and address of the owner; and
- (e) the name of the person (if any) to whom the carrier is to transport the tobacco; and
- (f) the address to which the carrier is to transport the tobacco; and
- (g) the name and address of the person (if any) who has agreed to purchase the tobacco.

(3) At all times while a quantity of tobacco exceeding the prescribed quantity is in transit in Tasmania, the carrier must ensure that the transportation record relating to the tobacco is kept with the tobacco.

Penalty: Fine not exceeding 20 penalty units.

(4) In this section, "**transit**", in relation to tobacco, means the period commencing at the time a carrier takes possession of the tobacco and ending at the time the carrier delivers the tobacco to its final destination.

### **Production of transportation record**

**14BB.** (1) If an inspector reasonably suspects that a quantity of tobacco exceeding the prescribed quantity is being transported in a vehicle, vessel or aircraft, the inspector may request the driver of the vehicle or the person in charge of the vessel or aircraft to produce the transportation record relating to the tobacco for inspection.

(2) The driver of the vehicle or person in charge of the vessel or aircraft must comply with a request under subsection (1).

Penalty: Fine not exceeding 100 penalty units.

(3) For the purposes of subsection (1), a police officer, at the request of an inspector, may request the driver of the vehicle to stop the vehicle or the person in charge of the vessel or aircraft to stop the vessel or aircraft.

(4) If the driver of the vehicle does not produce a transportation record or produces a transportation record that the inspector is unable to verify, the

inspector may request the driver to drive the vehicle to a police station or other place within a reasonable distance, as determined by the inspector, where the tobacco can be unloaded.

(5) If the driver does not comply with a request under subsection (4), a police officer, at the request of the inspector, may take charge of the vehicle for the purpose of driving it, or causing it to be driven, to the police station or other place.

(6) As soon as practicable after arrival at the police station or other place, the inspector may cause the tobacco to be unloaded.

(7) If the person in charge of the vessel or aircraft does not produce a transportation record or produces a transportation record that the inspector is unable to verify, the inspector may request the person in charge of the vessel or aircraft to unload any tobacco found on the vessel or aircraft.

(8) If the person in charge of the vessel or aircraft does not comply with a request under subsection (7), a police officer, at the request of the inspector, may take charge of the vessel or aircraft and may cause any tobacco found on the vessel or aircraft to be unloaded.

### **Section 14C amended (Seizure of tobacco)**

7. Section 14C of the Principal Act is amended as follows:

(a) by omitting subsection (1) and substituting the following subsection:

(1) The Registrar may take and keep in custody any tobacco –

- (a) which the Registrar reasonably believes is evidence of an offence by any person; or
  - (b) in respect of which the Registrar is unable to determine ownership.
- (b) by inserting in subsection (2) "(a)" after "subsection (1)";
  - (c) by inserting in subsection (3) "(a)" after "subsection (1)";
  - (d) by inserting in subsection (4)(a) "(a)" after "subsection (1)";
  - (e) by inserting in subsection (5) "(a)" after "subsection (1)".

**Section 14D amended (Realisation of value of seized tobacco)**

8. Section 14D of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) "under this Act" and substituting "under section 14C(1)(a)";
- (b) by inserting in subsection (4) "or tobacco wholesaling" after "tobacco retailing".

**Section 14E amended (Forfeiture of tobacco)**

9. Section 14E of the Principal Act is amended as follows:

- (a) by inserting after subsection (1) the following subsection:

(1A) If, within a period of 30 days from the day on which any tobacco is taken and kept under section 14C(1)(b), a claim is not made in respect of the tobacco, the tobacco is forfeited to, and becomes the property of, the Crown.

- (b) by inserting in subsection (2) "or (1A)" after "subsection (1)".

**Section 16 amended (Offences relating to sale of tobacco)**

10. Section 16 of the Principal Act is amended as follows:

- (a) by inserting before subsection (2) the following subsection:

(1) On or after the commencement of the *Tobacco Business Franchise Licences Amendment Act 1996*, a person must not carry on tobacco wholesaling unless that person is the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence.

Penalty: Fine not exceeding 10 penalty units for every day on which the person carries on the business.

- (b) by omitting subsection (4) and substituting the following subsection:

(4) The holder of a licence issued under this Act must not carry on the business of selling or storing tobacco on premises that are not specified in the licence as premises to be used for that purpose.

Penalty: Fine not exceeding 10 penalty units for every day on which the person carries on the business.

- (c) by inserting in subsection (5) "tobacco wholesaling or" before "tobacco retailing".

### **Sections 16A and 16B inserted**

11. After section 16 of the Principal Act, the following sections are inserted:

#### **Sales to and purchases from unlicensed persons**

**16A.** (1) The holder of a wholesale tobacco merchant's licence or group wholesale tobacco merchant's licence must not, in the course of tobacco wholesaling, sell tobacco to a person who is not the holder of a licence.

Penalty: Fine not exceeding 50 penalty units.

(2) The holder of a retail tobacconist's licence must not, in the course of tobacco retailing, purchase tobacco from a person who is not the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence.

Penalty: Fine not exceeding 50 penalty units.

(3) Subsections (1) and (2) do not apply to a sale or purchase of tobacco outside Tasmania in the course of tobacco wholesaling or tobacco retailing unless the terms (whether express or implied) of the sale or purchase or of any contract for the sale or purchase –

- (a) require either party to deliver, or arrange delivery of, the tobacco into or within Tasmania; or
- (b) contemplate delivery of the tobacco into or within Tasmania.

(4) It is a defence to a prosecution under subsection (1) or (2) to prove that the defendant believed on reasonable grounds that the person making the sale or purchase was a holder of a licence at the time of the sale or purchase.

#### **Possession or control of tobacco**

**16B.** (1) Subject to subsection (2), a person other than the holder of a licence must not have in his or her custody, possession or control more than the prescribed quantity of tobacco.

Penalty: Fine not exceeding 100 penalty units.

(2) Subsection (1) does not apply if a person is able to prove to the satisfaction of the Registrar that the tobacco is in the custody, possession or control of that person as a result of that person –

- (a) purchasing the tobacco from the holder of a licence; or
- (b) storing the tobacco on behalf of the holder of a licence; or
- (c) being in possession of the tobacco pursuant to the person's duties as an agent or employee of the holder of a licence.



**Sections 17, 18 and 18A substituted and sections 18B, 18C, 18D, 18E, 18F, 18G and 18H inserted**

**12.** Sections 17, 18 and 18A of the Principal Act are repealed and the following sections are substituted:

**Applications for retail tobacconists' licences**

**17. (1)** Subject to this Act, a person may apply to the Registrar, in a form approved by the Registrar, for a retail tobacconist's licence.

**(2)** If the Registrar is satisfied that the application is in order and that the applicant has complied with any requirement under section 14 in relation to the application and paid the licence fee as required under section 20, the Registrar is to issue a licence to the applicant.

**(3)** The holder of a retail tobacconist's licence who has –

- (a)** ceased carrying on the business of tobacco retailing or has ceased to carry on that business on any premises; or
- (b)** acquired additional premises on which to carry on that business –

must, by notice in writing, notify the Registrar that he or she has done so.

Penalty: Fine not exceeding one penalty unit.

**(4)** The holder of a retail tobacconist's licence who has ceased carrying on the business of tobacco retailing must upon notifying the Registrar pursuant to subsection (3) surrender his or her licence to the Registrar.

Penalty: Fine not exceeding one penalty unit.

(5) The holder of a retail tobacconist's licence must, at any time before the expiry of the licence, apply to the Registrar for a licence for a further period of 12 months if the holder wishes to continue to undertake tobacco retailing.

(6) A licence issued under this section may be subject to such terms and conditions the Registrar thinks fit.

**Applications by new applicants for wholesale or group wholesale tobacco merchants' licences**

18. (1) A person who does not hold a wholesale tobacco merchant's licence (other than a person who is a member of a group of wholesale tobacco merchants) may apply to the Registrar, in accordance with this section, for a wholesale tobacco merchant's licence for the month that is the third month after the month in which the application is made.

(2) A person who is a member of a group of wholesale tobacco merchants that does not hold a group wholesale tobacco merchant's licence may apply, on behalf of any or all of the members of the group, to the Registrar, in accordance with this section, for a group wholesale tobacco merchant's licence for the month that is the third month after the month in which the application is made.

(3) An application under subsection (1) –

(a) is to be in a form approved by the Registrar; and

- (b) is to contain –
- (i) a full and true disclosure of all the material facts known to the applicant and, if the applicant is a corporation, each director of the applicant, that are necessary to enable the Registrar to determine the application and ascertain the licence fee payable by the applicant; and
  - (ii) if the applicant is a corporation, the name and address of each director of the applicant; and
  - (iii) a statutory declaration made by the applicant verifying the information in the application; and
- (c) is to be accompanied by such application fee, if any, as may be prescribed.

**(4) An application under subsection (2) –**

- (a) is to be in a form approved by the Registrar; and
- (b) is to name each member of the group on whose behalf the application is made; and
- (c) is to contain, in relation to the applicant and each member of the group on whose behalf the application is made –
  - (i) a full and true disclosure of all the material facts known to the applicant or member and, if the applicant or member is a corporation, each director of the

applicant or member, that are necessary to enable the Registrar to determine the application and ascertain the licence fee payable by the applicant; and

(ii) if the applicant or member is a corporation, the name and address of each director of the applicant or member; and

(iii) a statutory declaration made by the applicant verifying the information in the application; and

(d) is to be accompanied by such application fee, if any, as may be prescribed.

(5) If an applicant under this section is a corporation, the statutory declaration in the application may be made on behalf of the applicant by a director of the applicant.

### **Matters to be considered in determining applications under section 18**

**18A.** (1) The Registrar is not to grant an application under section 18 unless the Registrar is satisfied that –

(a) the applicant is an Australian resident or, if the applicant is a corporation, the applicant is incorporated in a State or Territory; and

(b) the applicant has, or is likely to have, access to sufficient financial resources to carry on tobacco wholesaling; and

- (c) the applicant has, or will have at the commencement of the licence, suitable facilities and equipment for safe storage and distribution of tobacco by the applicant; and
- (d) neither the applicant nor, if the applicant is a corporation, any director of the applicant has been convicted (within the period of 5 years immediately preceding the date of the application) of an offence under a State Taxation Act or a corresponding law punishable by a fine of \$1 000 or more.

(2) The Registrar may refuse an application under section 18 if the Registrar is satisfied that an applicant or an associate of the applicant –

- (a) held a wholesale tobacco merchant's licence or group wholesale tobacco merchant's licence under this Act at any time in the year preceding the month for which the licence is sought; or
- (b) has been refused, in any State or Territory, a licence to wholesale tobacco; or
- (c) has had, in any State or Territory, a licence to wholesale tobacco suspended or revoked.

(3) In determining whether or not the Registrar is satisfied as required by subsection (1), the Registrar may take into account –

- (a) whether the applicant has been convicted (within the period of 5 years immediately preceding the date of the

application) of an offence under the law of Tasmania, the Commonwealth, any other State or any Territory punishable by a fine of \$5 000 or more; and

- (b) if the applicant is a corporation, whether a director of the applicant has been convicted (within the period of 5 years immediately preceding the date of the application) of an offence under the law of Tasmania, the Commonwealth, any other State or any Territory punishable by a fine of \$5 000 or more; and
- (c) the reports received under section 18B.

(4) For the purposes of determining an application under section 18(2) for a group wholesale tobacco merchant's licence, a reference in this section to the applicant includes a reference to each member of the group on whose behalf the application is made.

### **Investigation of applications under section 18**

**18B. (1)** On receiving an application under section 18 for a licence, the Registrar must cause to be carried out all investigations and inquiries that the Registrar considers necessary to enable the Registrar to consider the application properly.

(2) The Registrar may request the Commissioner of Police to inquire into and report to the Registrar on any matter the Registrar requires relating to the application.

(3) The Commissioner of Police must comply with the request of the Registrar within 30 days of receiving the request.

(4) The Registrar may require the applicant, at the applicant's expense, to provide the Registrar with a report by a registered auditor –

- (a) on the financial affairs of the applicant; and
- (b) if the applicant is a corporation, on the financial affairs of any director of the applicant; and
- (c) in the case of an application for a group wholesale tobacco merchant's licence, on the financial affairs of any member of the group on whose behalf the application is made; and
- (d) if any member of the group referred to in paragraph (c) is a corporation, on the financial affairs of any director of the member.

(5) In this section, "**registered auditor**" means an auditor registered under Part 9.2 of the Corporations Law.

**Applications by existing licensees for wholesale or group wholesale tobacco merchants' licences**

18C. (1) A person who, in any month, holds a wholesale tobacco merchant's licence may apply to the Registrar, in accordance with this section, for a wholesale tobacco merchant's licence for the following month.

(2) A person who, in any month, holds a group wholesale tobacco merchant's licence may apply, on behalf of any or all of the members of the group, to

the Registrar, in accordance with this section, for a group wholesale tobacco merchant's licence for the following month.

- (3) An application under subsection (1) or (2) –
- (a) is to be made at least 7 days before the current licence expires; and
  - (b) is to be in a form approved by the Registrar; and
  - (c) is to contain –
    - (i) a full and true disclosure of all the material facts known to the applicant that are necessary to enable the Registrar to ascertain the licence fee payable by the applicant; and
    - (ii) if the applicant is a corporation, the name and address of each director of the applicant; and
    - (iii) if the application is for a group wholesale tobacco merchant's licence, the name of each member of the group on whose behalf the application is made and, if a member is a corporation, the name and address of each director of that member; and
    - (iv) a statutory declaration made by the applicant verifying the information in the application; and
    - (v) a statement as to whether the applicant intends or does not intend to carry on tobacco



wholesaling in the 2 months following the month for which the licence is sought.

(4) If an applicant under this section is a corporation, the statutory declaration in the application may be made on behalf of the applicant by a director of the applicant.

**Matters to be considered in determining applications under section 18C**

**18D.** (1) Subject to section 18E, the Registrar is to grant an application under section 18C unless the Registrar is satisfied –

- (a) that the holder of the licence has failed to provide information (whether in an application for the licence or otherwise) to the Registrar that the holder was required by this Act to provide, or has provided information that is false or misleading in any material particular; or
- (b) that the holder of the licence has otherwise contravened this Act; or
- (c) that the holder of the licence is not an Australian resident or, if the holder of the licence is a corporation, the holder is not incorporated in a State or Territory; or
- (d) that the holder of the licence does not have sufficient financial resources to carry on tobacco wholesaling for the whole of the month for which the licence is sought and for any subsequent period in respect of which the holder has stated,

in an application under section 18C, an intention to carry on tobacco wholesaling; or

- (e) that the holder of the licence has been convicted (within the period of 5 years immediately preceding the date of the application) of an offence under a State Taxation Act or a corresponding law punishable by a fine of \$1 000 or more; or
- (f) if the holder of the licence is a corporation, that a director of the holder has been convicted (within the period of 5 years immediately preceding the date of the application) of an offence under a State Taxation Act or a corresponding law punishable by a fine of \$1 000 or more; or
- (g) that the holder of the licence does not have suitable facilities and equipment for safe storage and distribution of tobacco by the holder.

(2) The Registrar may refuse an application under section 18C if the Registrar is satisfied that the holder of the licence –

- (a) has been refused, in any State or Territory, a licence to wholesale tobacco; or
- (b) has had, in any State or Territory, a licence to wholesale tobacco revoked.

**Grant of applications for wholesale and group  
wholesale tobacco merchants' licences**

**18E.** (1) The Registrar must determine an application under section 18 or 18C for a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence by either granting or refusing the application and must notify the applicant in writing of the determination.

(2) If the Registrar grants the application the Registrar must –

- (a) issue the appropriate licence to the applicant; and
- (b) if the application is for a group wholesale tobacco merchant's licence, endorse on the licence the name of each member of the group to whom the licence is to apply.

(3) If the Registrar refuses the application, the notification under subsection (1) must include the reasons for the refusal.

(4) If –

- (a) the applicant has not tendered the licence fee; or
- (b) the Registrar is of the opinion that the amount tendered by the applicant is less than is required to be paid under this Act –

the Registrar may refuse to issue the licence until the fee required to be paid has been paid.

(5) A licence issued under this section may be subject to such terms and conditions as the Registrar thinks fit.

**Licence must specify premises**

**18F.** (1) A licence issued under section 17 or 18E is to specify the premises to be used for, or in connection with, the business carried on under the licence.

(2) For the purposes of subsection (1), "**premises**" does not include vehicles, vessels or aircraft used solely for the transportation of tobacco by the holder of the licence.

**Change of particulars to be notified**

**18G.** (1) If a material change occurs in the information provided in, or in connection with, an application under section 18 or 18C (whether before or after a licence to which that application relates has been issued), the applicant or licence holder, within 14 days of becoming aware of the change, must give the Registrar written particulars of the change.

Penalty: Fine not exceeding 50 penalty units.

(2) When particulars of a change are given, those particulars are taken to have formed part of the original application.

(3) In this section, "**application**" includes any documents lodged with an application.

**Licence holder to notify Registrar of cessation of business**

**18H. (1)** A holder of a wholesale tobacco merchant's licence or group wholesale tobacco merchant's licence who has ceased carrying on tobacco wholesaling or has ceased to carry on tobacco wholesaling on any premises must notify the Registrar in writing within 14 days of so ceasing.

Penalty: Fine not exceeding 50 penalty units.

**(2)** A holder of a wholesale tobacco merchant's licence or group wholesale tobacco merchant's licence who has ceased carrying on tobacco wholesaling, upon notifying the Registrar under subsection (1), must surrender the licence to the Registrar.

Penalty: Fine not exceeding 50 penalty units.

**Section 19 amended (Effect of licence)**

**13.** Section 19 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) all words after "for which it is" and substituting "issued.";
- (b) by omitting subsection (2);
- (c) by omitting from subsection (3) all words after "January next" and substituting "following."

**Section 20 amended (Licence fees)**

**14.** Section 20 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) "or a renewal of the licence";
- (b) by omitting from subsection (1)(b) "or a renewal of the licence";
- (c) by omitting paragraph (c) of subsection (1);
- (d) by omitting from subsection (2) "or a renewal of such a licence";
- (e) by omitting from subsection (2) "or application for renewal";
- (f) by omitting from subsection (2) ", or a renewal of such a licence,";
- (g) by omitting from subsection (3)(a) "or a renewal of any such licence";
- (h) by omitting from subsection (3)(b) "or application for renewal";
- (i) by omitting from subsection (3) ", or a renewal of such a licence,";
- (j) by omitting subsection (4A);
- (k) by omitting subsection (8A) and substituting the following subsection:

**(8A)** Where the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence does not reapply for a licence and the Registrar is satisfied that the business authorised by the licence is no longer carried on by that holder or any other person, the licence fee payable in respect of that licence, in relation to the last month for which the licence was issued, is to be the sum of –

- (a) if the licence is a wholesale tobacco merchant's licence –
  - (i) a fee of \$12 and an amount equal to 100% of the value of tobacco sold by the holder of the licence in the course of tobacco wholesaling during the month immediately preceding that first-mentioned month; and
  - (ii) a further fee of an amount equal to 100% of the value of tobacco sold by the holder of the licence in the course of tobacco wholesaling during the first-mentioned month; or
- (b) if the licence is a group wholesale tobacco merchant's licence –
  - (i) a fee of \$12 and an amount equal to 100% of the value of tobacco sold by all persons who are members of the group of wholesale tobacco merchants of which the holder 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 month immediately

preceding that first-mentioned month; and

- (ii) a further fee of an amount equal to 100% of the value of tobacco sold by all persons who are members of the group of wholesale tobacco merchants of which the holder 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 first-mentioned month.

- (l) by inserting after subsection (12) the following subsections:

**(13) The sale of tobacco –**

- (a) to or by the proprietor of a duty-free store for direct sale by the proprietor or the proprietor's employee to any person travelling outside Australia if the Registrar is satisfied that the tobacco is for consumption outside Australia; or
- (b) to any airline or shipping company (or any supplier of an airline or shipping company) for direct sale by the airline or shipping company to its passengers or to employees who are crew members travelling



outside Australia if the Registrar is satisfied that the tobacco is for consumption outside Australia; or

- (c) to any exporter for direct export outside Australia if the Registrar is satisfied that the tobacco is for consumption outside Australia; or
- (d) to a member or an employee of the Defence Force for resale, on behalf of the Defence Force, by the member or employee to a member of the Defence Force serving outside Australia if the Registrar is satisfied that the tobacco is for consumption outside Australia –

is not to be taken into account in the calculation of the fee payable in respect of a licence.

(14) In subsection (13) –

**"Australia"** includes the territorial waters of Australia;

**"Defence Force"** has the same meaning as in section 30 of the *Defence Act 1903* of the Commonwealth.

### **Section 21 amended (Value of tobacco)**

**15.** Section 21 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:

- (1) For the purposes of this Act, the value of tobacco of any kind is to be taken to be –

- (a) the gross price at which tobacco of that kind is ordinarily purchased in Tasmania by persons engaged in tobacco retailing; or
- (b) the value determined for tobacco of that kind by order in force under subsection (1A) at the commencement of the calendar month during which the licence, if issued, would be in force.

(1A) The Minister, by order published in the *Gazette*, may determine a value for tobacco of any kind for the purposes of subsection (1).

**Section 22 amended (Adjustment of fee)**

16. Section 22 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

(2) Where an applicant for a licence has made a statement that is false or misleading in a material respect in or in relation to an application, and it appears to the Registrar that the statement resulted in the fee paid for the licence being less than the fee that should have been paid, the Registrar may, at any time, whether or not the licence is still in force, reassess the fee in respect of the licence in accordance with the principles set out in section 20.

**Section 22A inserted**

17. After section 22 of the Principal Act, the following section is inserted:

**Person to forward note or memorandum to Registrar**

**22A.** (1) Where a person carrying on tobacco retailing transacts or offers to transact business (which involves the acquisition of tobacco) with a person who is not the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence, the first-mentioned person must make a note or memorandum in writing of the transaction or offer and must forward that note or memorandum to the Registrar within 3 days of transacting or offering to transact the business.

(2) A person carrying on tobacco retailing to whom subsection (1) applies is guilty of an offence if that person –

- (a) fails to make the note or memorandum required by subsection (1); or
- (b) makes a false or misleading statement in the note or memorandum; or
- (c) fails to forward the note or memorandum as required by subsection (1) in the time specified.

(3) A person who is guilty of an offence under subsection (2) is liable in the case of a first offence to a fine not exceeding 10 penalty units and in the case of a second or subsequent offence to a fine not exceeding 20 penalty units.

**Sections 25, 26 and 26A substituted**

**18.** Sections 25, 26 and 26A of the Principal Act are repealed and the following sections are substituted:

**Suspension of licences**

**25.** (1) If the Registrar reasonably believes at any time –

- (a) that the holder of a licence has failed to provide information (whether in an application for a licence or otherwise) to the Registrar that the holder was required by this Act to provide, or has provided information that is false or misleading in any material particular; or
- (b) that the holder of a licence has otherwise contravened this Act; or
- (c) that the holder of a wholesale tobacco merchant's licence or group wholesale tobacco merchant's licence is not an Australian resident or, if a holder of such a licence is a corporation, the holder is not incorporated in a State or Territory; or
- (d) that the holder of a licence has been refused, in any State or Territory, a licence to wholesale or retail tobacco; or
- (e) that the holder of a licence has had, in any State or Territory, a licence to wholesale or retail tobacco suspended or revoked; or
- (f) that the holder of a licence does not have sufficient financial resources to carry on tobacco wholesaling for the remainder of the current month and for any subsequent period in respect of which the holder has stated, in an application

under section 18C, an intention to carry on tobacco wholesaling; or

- (g) that the holder of a licence has been convicted (within the period of 5 years immediately preceding the date of application for the current licence) of an offence under a State Taxation Act or a corresponding law punishable by a fine of \$1 000 or more; or
- (h) if the holder of a licence is a corporation, that a director of the holder has been convicted (within the period of 5 years immediately preceding the date of application for the current licence) of an offence under a State Taxation Act or a corresponding law punishable by a fine of \$1 000 or more; or
- (i) that the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence does not have suitable facilities and equipment for safe storage and distribution of tobacco by the holder; or
- (j) that the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence has failed to pay an additional amount payable under section 22(4) –

the Registrar may suspend the licence by giving written notice to the holder.

(2) A suspension under subsection (1) takes effect on the date of service of the notice referred to in subsection (1).

**(3)** A notice of suspension is to –

- (a) set out the reasons for the suspension;  
and
- (b) require the holder of the licence, within 14 days of the date of the service of the notice, to show cause why the licence should not be revoked.

### **Effect of suspension**

**26.** For the purposes of sections 16 and 16A, a person whose licence is suspended under section 25 is taken not to hold that licence during the period of suspension.

### **Revocation of licences**

**26A.** (1) After the end of the period specified in section 25(3)(b), and having taken into account any written or oral submissions made by or on behalf of the holder of a licence, the Registrar, by written notice to the holder of the licence, may revoke the licence if –

- (a) the Registrar is satisfied as to any of the matters referred to in section 25(1); and
- (b) the Registrar considers that, had the Registrar known of that matter at the time of determining the application for the licence, the Registrar would not have granted the application.

**(2)** If a licence is revoked under subsection (1), the Registrar may determine the manner in which

any tobacco in the possession of the person whose licence has been revoked may be disposed of.

**Section 31 repealed**

19. Section 31 of the Principal Act is repealed.

**Section 36 amended (Records to be kept)**

20. Section 36 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) "A person who is the holder of a licence under this Act shall" and substituting "Any person who carries on tobacco retailing or tobacco wholesaling must, unless the Registrar otherwise determines";
- (b) by inserting after subsection (3) the following subsection:

(4) The Registrar may determine that records may be kept and maintained outside Tasmania subject to such conditions as the Registrar imposes.

**Section 40 amended (False or misleading statements)**

21. Section 40 of the Principal Act is amended by inserting after subsection (2) the following subsection:

(2A) If a person makes a false or misleading statement or representation which results in the person not paying a licence fee under this Act or paying a lesser licence fee under this Act than the person, were it not for the statement or

representation, would have been liable to pay is, in addition to any other penalty imposed under this section, liable to pay the licence fee or the difference between the licence fee which should have been paid by that person and the lesser licence fee.

**Sections 47 and 48 inserted**

**22.** After section 46 of the Principal Act, the following sections are inserted:

**Transitional provisions in respect of existing wholesale and group wholesale tobacco merchants' licences**

**47. (1)** Any person who is the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence for the month in which the *Tobacco Business Franchise Licences Amendment Act 1996* commences is deemed to have been granted a licence under section 18E.

**(2)** If the holder of a licence under subsection (1) wishes to continue to undertake tobacco wholesaling in the month following the month in which this Act commences, the holder must apply for a licence under section 18C and must provide the Registrar with any additional information required under section 18 which the holder of the licence has not previously provided.



**Transitional provisions in respect of retail  
monthly tobacconists' licences**

48. (1) Any retail tobacconists' monthly licences issued for the month in which the *Tobacco Business Franchise Licences Amendment Act 1996* commences are deemed to have been cancelled on the last day of that month.

(2) The fee payable for the last month in which a retail monthly tobacconist's licence which has been cancelled under subsection (1) was in effect is, in addition to the fee paid in respect of the licence, the sum of –

- (a) an amount equal to 100% of the value of tobacco purchased by the licence holder (other than tobacco purchased from the holder of a licence issued under this Act) in the month immediately before the month in which the licence is cancelled; and
- (b) an amount equal to 100% of the value of tobacco purchased by the licence holder (other than tobacco purchased from the holder of a licence issued under this Act) in the month in which the licence is cancelled.

**Schedule 1 amended (Relevant periods for wholesale tobacco merchants' licences and group wholesale tobacco merchants' licences)**

**23.** Schedule 1 to the Principal Act is amended by omitting from the heading ", GROUP WHOLESale TOBACCO MERCHANTS' LICENCES, AND RETAIL TOBACCONISTS' MONTHLY LICENCES" and substituting "AND GROUP WHOLESale TOBACCO MERCHANTS' LICENCES".

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