

Business Franchise Acts (Amendment) Bill

No.

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By Authority L. V. North, Government Printer Melbourne

LEGISLATIVE ASSEMBLY

Read 1° 20 October 1994

(Brought in by Mr Stockdale and Mr Smith (Polwarth))

A BILL

to amend the Business Franchise Acts and for other purposes.

Business Franchise Acts (Amendment) Act 1994

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

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The purpose of this Act is to make certain amendments to the Business Franchise Acts.

2. Commencement

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- (1) Subject to sub-section (2), this Act comes into operation on the day on which it receives the Royal Assent.
- (2) Sections 4, 5, 6 (2), 7, 8, 14, 15 (2) and 16 come into operation on 1 December 1994.

Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984.**)

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

No. 8597.
Reprinted t
No. 66/1988
and
subsequently
amended by
Nos 57/1989,
75/1989,
54/1990,
76/1992 and
104/1993.

3. *Principal Act*

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

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4. *Definitions*

(1) In section 2 (1) of the Principal Act—

(a) after the definition of “officer” **insert—**

“**person**” includes a body or association
(corporate or unincorporate) and a
partnership;”

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(b) in the definition of “tobacco retailing” **omit** “in
Victoria”;

(c) in the definition of “tobacco wholesaling” **omit**
“whether in or outside Victoria”.

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(2) After section 2 (6) of the Principal Act **insert—**

“(6AA) A reference in this Act to the sale of
tobacco is a reference to the sale of tobacco
in Victoria.

(6AB) A sale of tobacco made outside Victoria in
the course of tobacco wholesaling or
tobacco retailing shall for the purposes of
this Act be regarded as having been made
in Victoria if the terms (whether express or
implied) of the sale or of any contract for
the sale—

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(a) require either party to deliver, or
arrange delivery of, the tobacco into
or within Victoria; or

(b) contemplate delivery of the tobacco
into or within Victoria.”.

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5. New section 2AA inserted

After section 2 of the Principal Act insert—

‘2AA. Business Franchise Acts not to apply so as to exceed powers

(1) If a provision of the Business Franchise Acts—

(a) would, apart from this section, have an invalid application; but

(b) also has at least one valid application—

it is the Parliament’s intention that the provision is not to have the invalid application, but is to have every valid application.

(2) Despite sub-section (1), the provision is not to have a particular valid application if—

(a) apart from this section, it is clear, taking into account the provision’s context and the purposes or objects underlying the Business Franchise Acts, that the provision was intended to have that valid application only if every invalid application, or a particular invalid application, of the provision had also been within the legislative power of Victoria; or

(b) the provision’s operation in relation to that valid application would be different in a substantial respect from what would have been its operation in relation to that valid application if every invalid application of the provision had been within the legislative power of Victoria.

(3) Sub-section (2) does not limit the cases where a contrary intention may be taken

to appear for the purposes of sub-section (1).

(4) This section applies to a provision of the Business Franchise Acts, whether enacted before, at or after the commencement of section 5 of the **Business Franchise Acts (Amendment) Act 1994**. 5

(5) Nothing in this section affects the operation of section 6 of the **Interpretation of Legislation Act 1984**. 10

(6) In this section—

“**application**” means an application in relation to—

(a) one or more particular persons, things, matters, places, circumstances or cases; or 15

(b) one or more cases (however defined or determined) of persons, things, matters, places, circumstances or cases; 20

“**invalid application**”, in relation to a provision, means an application because of which the provision exceeds the legislative power of Victoria; 25

“**valid application**”, in relation to a provision, means an application that, if it were the provision’s only application, would be within the legislative power of Victoria.’. 30

6. Amendment of sections 7 and 10

(1) After section 7 (1) of the Principal Act insert—

“(1AA) A person may apply for a licence whether or not the person is resident, or carrying on business, in Victoria.”. 35

(2) In the Principal Act—

(a) in section 7, sub-section (3B) is **repealed**;

(b) in section 10 (1) (a), for sub-paragraph (i) **substitute—**

“(i) in the opinion of the Commissioner, is for re-sale or consumption outside Victoria; or”;

(c) in section 10 (1) (b), for sub-paragraph (i) **substitute—**

“(i) in the opinion of the Commissioner, is for re-sale or consumption outside Victoria; or”.

7. Invoices

In section 11B (1) (a) of the Principal Act, for “holder of a retail tobacconist’s licence an invoice” **substitute** “holder of a licence an invoice in the prescribed form”.

8. New section 11D inserted

After section 11C of the Principal Act **insert—**

“11D. Sales to interstate purchasers

If—

(a) tobacco sold in Victoria is subsequently resold in another State or in a Territory of the Commonwealth; and

(b) by virtue of the resale of that tobacco in that State or Territory, a person has paid a fee under a law of that State or Territory that corresponds to this Act—

the Commissioner must refund, to the person who paid the fee, an amount equal to the amount paid to the Commissioner under this Act as a fee, or part of a fee,

calculated by reference to the sale or purchase by that person of that tobacco.”.

9. Power to obtain information

(1) In section 15 of the Principal Act, for sub-section (1) **substitute—** 5

“(1) The Commissioner may, by notice in writing, require any person to do either or both of the following—

(a) to furnish to the Commissioner such information, in such form, as the Commissioner requires; 10

(b) to attend and give evidence before the Commissioner or before any officer of the public service employed in the administration or execution of the Business Franchise Acts and authorised by the Commissioner for the purposes of this section— 15

for the purpose of—

(c) inquiring into any business of distributing, transporting, selling, purchasing or otherwise dealing with tobacco or petroleum products; 20

(d) inquiring into or ascertaining that person’s (or any other person’s) liability or entitlement under any of the provisions of the Business Franchise Act— 25

and may by the same or a subsequent notice require that person to produce to the Commissioner, at a specified place and at or within a specified time, any records or documents of any specified kind relating to any such information.”. 30

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

“(2A) The Commissioner may take copies of, or extracts or notes from, any record or 35

document produced to the Commissioner under sub-section (1).”.

10. *Disposal of forfeited tobacco or petroleum products*

After section 15A (3B) of the Principal Act **insert—**

“(3BA) The Commissioner may on behalf of the Crown dispose of tobacco or petroleum products that have become the property of the Crown in such manner as the Commissioner thinks fit.”.

11. *Power to remit penalty*

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

“(3) The Commissioner may, if the Commissioner thinks fit, mitigate or remit any penalty payable under this section.”.

12. *Repeal of section 19c*

Section 19C of the Principal Act is **repealed**.

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

13. *Principal Act*

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

N . 9272.
Reprinted to
N . 66/1988
and
subsequently
amended by
Nos 75/1989,
54/1990,
76/1992,
79/1992 and
46/1993.

14. *Definitions*

(1) In section 2 (1) of the Principal Act—

(a) in the definition of “petroleum retailing” **omit** “in Victoria”;

- (b) in the definition of “petroleum wholesaling”
omit “whether in or outside Victoria” (wherever occurring).
- (2) After section (2) (1) of the Principal Act **insert—**
 - “(1A) A reference in this Act to the sale of petroleum products is a reference to the sale of petroleum products in Victoria. 5
 - (1B) A sale of petroleum products made outside Victoria in the course of petroleum wholesaling or petroleum retailing shall for the purposes of this Act be regarded as having been made in Victoria if the terms (whether express or implied) of the sale or of any contract for the sale— 10
 - (a) require either party to deliver, or arrange delivery of, the petroleum products into or within Victoria; or 15
 - (b) contemplate delivery of the petroleum products into or within Victoria.”.
- 15. Amendment of sections 5 and 7 20**
 - (1) After section 5 (1) of the Principal Act **insert—**
 - “(1A) A person may apply for a licence whether or not the person is resident, or carrying on business, in Victoria.”.
 - (2) In section 7 of the Principal Act— 25
 - (a) in sub-section (1) (a), for sub-paragraph (iii) **substitute—**
 - “(iii) in the opinion of the Commissioner, is for re-sale or consumption outside Victoria”; or”; 30
 - (b) in sub-section (1) (b), for sub-paragraph (iii) **substitute—**
 - “(iii) in the opinion of the Commissioner, is for re-sale or consumption outside Victoria; or”; 35
 - (c) sub-section (8B) is **repealed**.

16. New section 11A inserted

After section 11 of the Principal Act **insert—**

“11A. Sales to interstate purchasers

If—

5 (a) petroleum products sold in Victoria
are subsequently resold in another
State or in a Territory of the
Commonwealth; and

10 (b) by virtue of the resale of those
petroleum products in that State or
Territory, a person has paid a fee
under a law of that State or Territory
that corresponds to this Act—

15 the Commissioner must refund, to the
person who paid the fee, an amount equal
to the amount paid to the Commissioner
under this Act as a fee, or part of a fee,
calculated by reference to the sale or
20 purchase by that person of those
petroleum products.”.

