

Business Franchise Acts (Amendment) Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

Clause 1 outlines the purposes of the Bill.

Clause 2 specifies the date on which the provisions of this Bill come into operation. Clauses 4, 5, 6 (2), 7, 8, 14, 15 (2) and 16 come into operation on 1 December 1994, with the remaining clauses commencing operation from Royal Assent.

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

Clause 3 provides that the **Business Franchise (Tobacco) Act 1974** is the Principal Act for the purposes of Part 2 of the Bill.

Clause 4 amends section 2 of the Principal Act to insert new definitions and amend existing definitions in the Principal Act as follows:

a definition of “person” is inserted into the Principal Act, consistent with the broad definition already found in the **Pay-roll Tax Act 1971** and the **Financial Institutions Duty Act 1982**;

the definitions of “tobacco retailing” and “tobacco wholesaling” in the Principal Act are amended to delete extraneous references, consequent upon the new definitions in sections 2 (6AA) and 2 (6AB) inserted by this Bill;

a provision is inserted defining any reference to the sale of tobacco in the Principal Act as a reference to the sale of tobacco in Victoria; and

a provision is inserted defining any sale outside Victoria under which tobacco is required or contemplated to be delivered into Victoria as having been made in Victoria for the purposes of the Principal Act.

Clause 5 amends section 2 of the Principal Act to insert a new provision, section 2AA. This provides that the provisions of the Principal Act are to be construed as having a valid application rather than invalid application unless that particular application is clearly contrary to the context, purposes or objects of the Principal Act.

Clause 6 amends sections 7 and 10 of the Principal Act as follows:

a new section 7 (1AA) is inserted. This provision enables applicants from outside Victoria to apply for a licence, ensuring that the Act does not discriminate in favour of applicants in Victoria, which would offend section 92 of the Commonwealth Constitution;

sections 10 (1) (a) and 10 (1) (b) are amended so that sales of tobacco by a licensed wholesaler which are alleged for re-sale or consumption interstate may only be excluded from the tobacco sales in the relevant period, (upon which the licence fee is calculated) if in the opinion of the Commissioner that tobacco was for re-sale or consumption outside Victoria. The former provision enabling the exclusion of such sales from licence fees on the basis that the wholesaler “knows

or reasonably believes" the tobacco is for re-sale or consumption interstate is repealed;

- section 7 (3B) is repealed as it would conflict with the operation of the amendments to sections 10 (1) (a) and 10 (1) (b).

Clause 7 amends section 11B (1) (a) of the Principal Act. The amendment extends the present requirement upon wholesalers, upon a delivery of tobacco, to provide invoices to both retailers and to other wholesalers. The amendment requires the invoices delivered by wholesalers to be in the prescribed form.

Clause 8 inserts a new section 11D into the Principal Act. This provision enables a rebate of fees paid in Victoria on tobacco which is subsequently resold interstate where suitable proof is provided to the Commissioner of licence fees having been paid in another jurisdiction.

Clause 9 amends the Commissioner's powers to obtain and utilise information in section 15 of the Principal Act as follows:

- the investigation powers in section 15 (1) are broadened so that they are not only confined to ascertain a person's liability, but extends to enable the conduct of general enquiries into the business of tobacco distribution and transport;
- the Commissioner's powers in section 15 (1) to require production of documents is complemented with the power to have copies taken of any documents produced to him.

Clause 10 amends the Principal Act by inserting a new section 15 (3BA) enabling the Commissioner to dispose of tobacco forfeited to the Crown in such manner as he thinks fit.

Clause 11 amends section 19 of the Principal Act by inserting the power for the Commissioner to mitigate or remit the penalty payable under that section. This is a broad power to be exercised at the discretion of the Commissioner and is consistent with the Commissioner's powers to remit penalties under section 32 (3E) of the **Stamps Act 1958**.

Clause 12 repeals section 19c of the Act. This amendment removes the right of the holder of a retail licence (tobacco or petroleum) to apply for a refund should the licence holder cease retailing during the period for which the licence was granted.

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

Clause 13 provides that the **Business Franchise (Petroleum Products) Act 1979** is the Principal Act for the purposes of Part 3 of the Bill.

Clause 14 amends section 2 of the Principal Act to insert new definitions and amend existing definitions in the Principal Act as follows:

- a definition of "person" is inserted into the Principal Act, consistent with the broad definition already found in the **Pay-roll Tax Act 1971** and **Financial Institutions Duty Act 1982**;
- the definitions of "petroleum retailing" and "petroleum wholesaling" in the Principal Act are amended to delete extraneous references, consequent upon the new definitions in sections 2 (1A) and 2 (1B) inserted by this Bill;

a provision is inserted defining any reference to the sale of petroleum products in the Principal Act as a reference to the sale of petroleum products in Victoria;

a provision is inserted defining any sale outside Victoria under which petroleum products is required or contemplated to be delivered into Victoria as having been made in Victoria for the purposes of the Principal Act.

Clause 15 amends sections 5 and 7 of the Principal Act as follows:

a new section 5 (1A) is inserted into the Principal Act. This provision enables applicants from outside Victoria to apply for a licence ensuring that the Act does not discriminate in favour of Victoria and offend section 92 of the Constitution;

sections 7 (1) (a) and 7 (1) (b) are amended so that sales of petroleum products by a licensed wholesaler which are alleged for re-sale or consumption interstate may only be excluded from the sales of petroleum products in the relevant period, upon which the licence fee is calculated, if in the opinion of the Commissioner those petroleum products were for re-sale or consumption outside Victoria. The former provision enabling the exclusion of such sales from licence fees on the basis that the wholesaler “knows or reasonably believes” the petroleum products is for re-sale or consumption interstate is repealed;

section 7 (8B) is repealed as it would conflict with the operation of the amendments to sections 7 (1) (a) and 7 (1) (b).

Clause 16 inserts a new section 11A into the Principal Act. This provision enables a rebate of fees paid in Victoria on petroleum product which is subsequently resold interstate where suitable proof is provided to the Commissioner of licence fees having been paid in another jurisdiction.

