

5—(1) The registration of—

(a) a cinema; or

(b) a person as—

(i) an exhibitor; or

(ii) a distributor,

being a registration that is in force on the day on which this Act commences, shall expire on the thirty-first day of December 1972, but may be renewed as provided in section ten A of the Principal Act.

(2) A licence or limited licence under section ten of the Principal Act that is in force on the day on which this Act commences shall expire on the thirty-first day of December 1972, but may be renewed as provided in section ten A of that Act.

Transitory provisions.

TOBACCO.

No. 29 of 1972.

AN ACT for the imposition of a tax on the consumption of tobacco and the licensing of retail traders in tobacco, and for purposes incidental thereto. [16 November 1972.]

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—(1) This Act may be cited as the *Tobacco Act 1972*.

(2) This Act shall commence on the first day of January 1973.

Short title and commencement.

Inter-
pre-
tation.**2**—(1) In this Act, unless the context otherwise requires—

“collector” means a collector appointed under section seven;

“Commissioner” means the Commissioner of Taxes appointed under the *Land and Income Taxation Act 1910*;

“inspector” means an inspector appointed under section twenty-two;

“licence” means a licence granted under section ten;

“licensed premises” means premises on which tobacco may for the time being be sold under the authority of a licence;

“licensee” means the holder of a licence;

“occasional licence” has the meaning assigned to that expression by subsection (6) of section ten;

“ordinary retailer’s licence” means an ordinary retailer’s licence granted under section ten;

“premises” includes a part of any premises;

“quarter”, when used in relation to a year, means a period of three months;

“quarter day” means the first day of July, the first day of October, the first day of January, or the first day of April;

“retail tobacco business” means a business of selling tobacco by retail, either alone or in conjunction with any other merchandise, and includes such a business carried on as part of, or in conjunction with, any other business;

“sale” includes delivery for valuable consideration;

“tax” means the tax imposed under Part II;

“tobacco” means tobacco prepared for consumption, and includes any article that contains tobacco and is intended to be consumed;

“vending machine” means any machine, device, or contrivance that is constructed to contain articles that may be obtained therefrom by an operation that involves the insertion in the machine of a coin, token, or similar object;

“vending machine licence” means a vending machine licence granted under section ten.

(2) For the purposes of this Act the consumption of tobacco means the smoking or chewing of tobacco by any person.

(3) References in this Act to premises shall be construed as including references to any building or structure, including a building or structure that is of a temporary nature or that is capable of being moved or transported, whether on wheels or otherwise, and to any vehicle, vessel, or aircraft.

(4) A reference in this Act to the occupier of any premises shall be construed as including a reference to any person who has possession of those premises.

(5) The presence on any premises of a vending machine from which tobacco may be obtained by an operation that involves the insertion in the machine of a coin, token, or similar object shall be deemed to constitute the carrying on on those premises of the business of selling tobacco by retail.

(6) Paragraphs (a) and (b) of subsection (2) of section six of the *Land and Income Taxation Act 1910* apply in relation to the functions of the Commissioner under this Act as they apply in relation to his functions under that Act.

(7) A reference in this Act to a Part thereof includes a reference to the regulations made under any provision in that Part.

PART II.

TAX ON THE CONSUMPTION OF TOBACCO.

3—(1) In accordance with this Part a tax is imposed on the consumption of tobacco. Tobacco consumption tax.

(2) The amount of the tax imposed on the consumption of any tobacco is seven and one half per cent of the value of that tobacco.

(3) Where tobacco has been consumed any tax payable in respect of that consumption that has not been paid in accordance with this Part may be recovered by the Commissioner in any court of competent jurisdiction as a debt due to the Crown incurred by the person by whom the tobacco was consumed.

(4) If tobacco is consumed by a person, and the tax payable in respect of that consumption is not paid in accordance with this Part before the expiration of a period of seven days after the consumption takes place, that person is guilty of an offence and is liable to a penalty of one hundred dollars, and on convicting him of that offence, the court may, in addition to or in lieu of exercising any other power, order him to pay to the Commissioner the amount of that tax.

(5) Where the tax has been paid in respect of the consumption of any tobacco and, on application being made to him within three months of that tax being paid, the Commissioner is satisfied that that tobacco has not been, and will not be, consumed, he shall refund the amount of that tax to the person by whom it was paid or, if he has died, his legal personal representatives.

4—(1) The tax is not payable on the consumption of tobacco that a traveller brings with him into the State for his own consumption or for disposal by way of gift so long as it is consumed within twenty-eight days after it is brought by him into the State. Exemption for travellers.

(2) For the purposes of this section a traveller is a person who either—

- (a) being ordinarily resident in this State, is returning thereto after temporary absence therefrom;
- (b) being ordinarily resident in a place outside this State, is travelling to this State during a temporary absence from that place; or
- (c) is travelling to this State to take up residence therein.

Exemption for scientific purposes, &c.

5—(1) Where the Treasurer is satisfied that any tobacco is required to be consumed for an educational or scientific purpose or for the purpose of any research or other investigation he may, by a certificate in writing, exempt from the payment of tax the consumption of the tobacco specified in the certificate in the manner or for the purposes so specified.

(2) A certificate issued under this section shall specify the person to whom it is issued and may prescribe the requirements to be observed in relation to the consumption of the tobacco to which it relates.

(3) A person to whom a certificate is issued under this section shall ensure that the requirements prescribed in the certificate pursuant to subsection (2) of this section are complied with.

Penalty: One hundred dollars.

Ascertainment of value of tobacco and amount of tax.

6—(1) The value of any tobacco shall, for the purposes of this Act, be taken to be the price at which tobacco of that kind (together with any package or container in which it is ordinarily contained) is ordinarily sold by retail.

(2) Where tobacco is of a kind that is not ordinarily sold by retail its value for the purposes of this Act shall be assessed by the Commissioner at such amount as he considers just having regard to the prices at which tobacco is sold by retail.

(3) For the purposes of this section sales made conditional on the purchase of any article other than the tobacco and the package or container in which it is contained or on the acceptance of any service shall be disregarded.

(4) Where, if any tobacco were consumed, the amount of the tax payable in respect thereof would be a fractional part of a cent or a whole number of cents and a fractional part of a cent, then for the purpose of the discharge of the liability for the payment of that tax, that fractional part of a cent shall be treated as one cent.

Collection of the tax.

7 The Governor may make regulations providing for any convenient method for the collection of the tax and, without prejudice to the foregoing provisions of this section, any such regulations may—

- (a) prescribe the persons to whom, and the manner in which, the tax is to be paid;
- (b) make provision for the appointment of collectors and their remuneration, either out of sums paid by way of payment of the tax or otherwise;
- (c) authorize or require the Commissioner to make arrangements with other persons with respect to the collection of the tax, including arrangements regulating or affecting the matters referred to in paragraph (b) of this section;
- (d) make provision for the termination of any such arrangements;
- (e) make provision for the prohibition or restriction of the carrying on of a retail tobacco business unless arrange-

ments made under the regulations are in force in respect of that business or the premises on which it is carried on;

- (f) impose duties on collectors and other persons with respect to the retention, and payment to the Commissioner, of sums paid by way of payments of the tax, and with respect to the keeping and production of accounts and other records, the making of returns, and the giving of notifications, in relation to those payments;
- (g) make provision for the recovery of the sums paid by way of payments of the tax; and
- (h) impose penalties, not exceeding in any case one thousand dollars with a daily penalty of one hundred dollars, for contraventions of any of the provisions of the regulations.

8 Except as otherwise provided in this Part, all sums received by the Commissioner by way of tax shall be paid into the Consolidated Revenue. Payment of tax into Consolidated Revenue.

PART III.

LICENSING OF RETAILERS OF TOBACCO.

9—(1) No person shall carry on on any premises a retail tobacco business except in so far as a licence authorizes the sale of tobacco on those premises. Prohibition on retail selling of tobacco except under licence.

(2) No person shall cause or allow any premises to be used for the sale of tobacco by retail unless that sale is authorized by a licence.

(3) No person shall sell any tobacco by retail unless that sale is authorized by a licence.

(4) Where tobacco is sold on any premises otherwise than by the occupier thereof the occupier shall be deemed to have allowed those premises to be used for that sale unless it is shown—

- (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.

(5) A person who contravenes any provision of this section is guilty of an offence and is liable to a penalty of one thousand dollars and, in the case of an offence under subsection (1) or subsection (2) of this section, to a further daily penalty of one hundred dollars.

10—(1) The Treasurer may grant the following licences, namely:— Licences for retail sales of tobacco.

- (a) Ordinary retailer's licences; and
- (b) Vending machine licences.

(2) An ordinary retailer's licence is a licence authorizing the holder thereof to sell tobacco (otherwise than by means of a vending machine) on the premises specified in the licence during the annual period, or on the days, so specified.

(3) A vending machine licence is a licence authorizing the sale of tobacco during the annual period, or on the days, specified in the licence from the vending machines so specified installed on the premises so specified.

(4) A vending machine licence may specify the vending machines to which it relates by reference to their number, their capacity to hold tobacco, or to any other prescribed matter; and, on the application of the holder thereof, the Treasurer may vary a vending machine licence with respect to the vending machines specified therein.

(5) For the purposes of this section an annual period means—

(a) a period of twelve months commencing on the first day of July next following the grant of the licence; or

(b) a period commencing on a day specified in the licence and ending on the thirtieth day of June next following the grant thereof.

(6) A licence granted otherwise than in respect of an annual period is referred to in this Act as an occasional licence.

(7) On the application of the holder of a licence (other than an occasional licence) and a person to whom it is desired that the licence be transferred the Treasurer may transfer the licence to that other person.

(8) If the fee or all the instalments of the fee payable in respect of the grant of a licence that have become due to be paid have been paid, the holder of that licence may surrender it to the Treasurer and, on being so surrendered, the licence ceases to be of further effect and any further instalments of that fee cease to be payable.

(9) In exercising his powers under this section the Treasurer shall have regard to public necessity, convenience, and welfare.

Fees for
ordinary
retailer's
licences
(other than
occasional
licences).

11—(1) A fee is payable to the Treasurer by the holder of an ordinary retailer's licence (not being an occasional licence) in respect of the grant thereof.

(2) Subject to this section, the amount of the fee referred to in subsection (1) of this section payable in respect of a licence granted in respect of any premises is an amount, determined in accordance with the first schedule, by reference to the monthly stock value for those premises for the relevant assessment period.

(3) For the purposes of this section, in relation to a licence granted in respect of any premises—

(a) the monthly stock value for those premises for the relevant assessment period is the average value, over that period, of the tobacco handled in a month in the course of the retail tobacco businesses carried on on those premises during that period; and

(b) the relevant assessment period is the period of twelve months ending six months before the commencement of the annual period in respect of which the licence is granted.

(4) For the purposes of this section the sale of tobacco by means of a vending machine shall be deemed not to be, nor form part of, a retail tobacco business.

(5) For the purposes of this section the value of tobacco at any time shall be taken to be the price at which at that time it (together with any package or container in which it is contained) would ordinarily be expected to be sold by retail.

(6) The monthly stock value for any premises for a relevant assessment period shall be determined by the Treasurer, and where no retail tobacco business was carried on on the premises during that period, or during any part thereof, or the Treasurer is satisfied that, for any reason, it is not practicable for that monthly stock value to be determined in accordance with paragraph (a) of subsection (3) of this section he shall determine that monthly stock value at such amount as he considers, having regard to the provisions of that subsection, to be just and reasonable in the circumstances of the case.

(7) Subject to section sixteen, a determination made by the Treasurer for the purposes of this section of a monthly stock value is conclusive thereof.

(8) Where a licence is granted in respect of an annual period not exceeding three quarters of a year in length the amount of the fee payable under this section in respect of the grant thereof shall be the amount of the fee that would otherwise be payable reduced by one-quarter thereof for each whole quarter of a year by which the length of that annual period is less than a year.

12—(1) A fee, determined in accordance with the second schedule, is payable to the Treasurer by the holder of a vending machine licence (not being an occasional licence) in respect of the grant thereof.

Fees for vending machine licences (other than occasional licences).

(2) If the person applying for such a licence as is referred to in subsection (1) of this section elects, within the time and in the manner prescribed, that the fee payable in respect of that licence shall be determined in accordance with Part II of the second schedule, that fee shall be so determined, but otherwise the fee shall be determined in accordance with Part I of that schedule.

(3) A person shall not make an election under subsection (2) of this section in respect of an application for a vending machine licence in respect of any premises unless throughout the period of nine months ending on the commencement of the annual period in respect of which the licence is to be granted a vending machine used for the sale of tobacco was installed on those premises.

(4) For the purpose of determining, in accordance with Part II of the second schedule, the fee payable in respect of the grant of a vending machine licence in respect of any premises in respect of an annual period, the monthly stock value referred to in that Part of that schedule shall be determined in like manner as if—

- (a) the vending machine licence were an ordinary retailer's licence in respect of those premises in respect of that annual period; and
- (b) the business of selling tobacco from the vending machines installed on those premises were the only retail tobacco business carried on on those premises,

and, subject to this section, the provisions of section eleven (other than subsection (4) thereof), apply to the determination of that monthly stock value accordingly.

(5) Where a vending machine licence is varied in such a manner that if it had been granted as varied a greater fee would have been payable in respect of the grant of the licence than that which, apart from this subsection, was in fact payable, an additional fee becomes payable in respect of the grant of the licence of an amount equal to the difference between those two fees.

(6) Where a vending machine licence is granted in respect of an annual period not exceeding three quarters of a year in length the amount of the fee payable under this section in respect of the grant thereof shall be the amount of the fee that would otherwise be payable reduced by one-quarter for each whole quarter of a year by which the length of that annual period is less than a year.

Payment and recovery of fees in respect of licences (other than occasional licences).

13—(1) Subject to subsection (2) of this section, a fee payable under this Part in respect of the grant of a licence (other than an occasional licence) is payable by equal instalments on each quarter day occurring during the annual period in respect of which the licence is granted and, if the licence is granted in respect of an annual period commencing otherwise than on a quarter day, the day on which that period commences.

(2) Where a licence is granted in respect of an annual period commencing on or after the first day of April the fee is payable in full at the commencement of that period.

(3) An instalment or the whole amount of a fee that has become payable under this section may be recovered by the Treasurer in any court of competent jurisdiction as a debt due to the Crown incurred by the person who was the holder of the licence at the time the instalment became payable.

(4) When a fee in respect of the grant of a licence, or an instalment thereof, has become payable and is not paid within thirty days of a demand therefor made by the Treasurer by a notice in writing served on the licensee, the Treasurer may cancel that licence, and, on being so cancelled, that licence ceases to be of any further effect.

(5) This section applies in respect of an additional fee payable under subsection (5) of section twelve on the variation of a licence as if that fee were the fee payable in respect of the grant of a licence in respect of an annual period commencing on the date on which the variation takes effect.

Fees on transfers of licences.

14—(1) A fee is payable to the Treasurer in respect of the transfer of a licence of an amount of—

(a) ten per cent of the last instalment of the fee payable in respect of the grant of that licence that became payable before the transfer or, in a case to which subsection (2) of section thirteen applies, of the whole of that fee; or

(b) one dollar,
whichever is the greater.

(2) No licence shall be transferred unless there has been paid to the Treasurer—

(a) so much of the amount of the fee payable in respect of the grant of the licence as became payable before the licence was transferred; and

(b) the fee payable under subsection (1) of this section in respect of the transfer of the licence.

15 A fee, determined in accordance with the third schedule, is payable to the Treasurer in respect of the grant of an occasional licence, and no occasional licence shall be granted unless the fee payable under this section in respect thereof has been paid to the Treasurer.

Fees for occasional licences.

16—(1) Where the Treasurer refuses to grant a licence to any person that person may appeal in accordance with this section and the tribunal hearing the appeal shall, if it is satisfied that, in all the circumstances of the case, the refusal was unreasonable, direct the grant to that person of such licence as it determines to be proper in the circumstances.

Appeals.

(2) Where the Treasurer refuses to vary a licence the holder of that licence may appeal in accordance with this section and the tribunal hearing the appeal shall, if it is satisfied that, in all the circumstances, the refusal was unreasonable, direct the variation of the licence in such manner as it determines to be proper in the circumstances.

(3) Where the holder of a licence is aggrieved by a determination of a monthly stock value made by the Treasurer in respect of that licence for the purposes of section eleven or section twelve, he may appeal in accordance with this section, and the tribunal hearing the appeal, if it is satisfied that, having regard to the matters laid before it, that the determination was wrongly made, shall substitute therefor the determination that it considers should be made in the case.

(4) The Treasurer shall give effect to any directions given by a tribunal under this section.

(5) A tribunal for the hearing of an appeal under this section shall be constituted of a person appointed by the Governor for the purpose of hearing appeals under this section.

(6) A person appointed by the Governor for the purpose of hearing appeals under this section shall be a person who is, or has held office as, a judge, a stipendiary magistrate, or a commissioner of a court of requests; but no person shall hear an appeal under this section who holds, or is acting in, any office in the Public Service within the meaning of the *Public Service Act 1923*.

(7) Subject to this section, an appeal under this section shall be instituted, heard, and determined as prescribed.

(8) Division II of Part II of the *Evidence Act 1910* applies in respect of an appeal under this section as if the tribunal hearing the appeal were a board of inquiry referred to in section fourteen of that Act appointed by its instrument of appointment to inquire into the subject matter of the appeal.

(9) The determination of a tribunal on the hearing of an appeal under this section is final and without appeal.

17—(1) Where a person is convicted of an offence under this Act the court may, by order, disqualify him for such period as it determines from holding a licence.

Disqualification of licensees on conviction.

(2) Where a person is disqualified from holding a licence any licence held by him ceases to have effect, but so much of any fee payable in respect of that licence that has not been paid thereupon becomes payable and may be recovered by the Treasurer as a debt due to the Crown.

(3) No licence shall be granted to any person who is disqualified from holding the same.

Payment of
fees into
Consolidated
Revenue.
Regulations
under
Part III.

18 All sums paid to the Treasurer under this Part by way of the payment of fees shall be paid into the Consolidated Revenue.

19 The Governor may make regulations for the purposes of this Part, and any such regulations may prescribe the time within which, and the manner in which, any application is to be made or given for the purposes of this Part, and the information to be furnished in relation to any such application, and may prescribe the manner in which any notice may be served under this Part.

PART IV.

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS.

Regulations
as to retail
premises.

20—(1) The Governor may make regulations—

- (a) requiring the display on any retail premises of notices containing statements or warnings with respect to the provisions of this Act, and prescribing the form of any such notice and the manner in which it is to be displayed;
- (b) imposing requirements with respect to the storage or keeping of tobacco on retail premises and the manner in which any such tobacco is to be stored or kept; and
- (c) imposing penalties, not exceeding one hundred dollars with a daily penalty of fifty dollars, for contraventions of any of the provisions of the regulations.

(2) For the purposes of this section “retail premises” means licensed premises or any premises on which tobacco is sold by retail.

Regulations
as to records
and returns.

21—(1) The Governor may make regulations—

- (a) requiring notifications to be given with respect to the carrying on of businesses of selling tobacco;
- (b) requiring records to be kept with respect to the possession, consumption, purchase, sale, or other dealings in tobacco;
- (c) requiring returns or notifications to be made with respect to any of the matters referred to in paragraph (b) of this subsection; and
- (d) imposing penalties, not exceeding one thousand dollars, in respect of contraventions of any of the provisions of the regulations.

(2) Regulations under this section do not apply in respect of the possession or consumption of tobacco that has been sold by retail and in respect of the consumption of which the tax has been paid.

Powers of
inspectors.

22—(1) The Treasurer may appoint inspectors for the purposes of this Act.

- (2) An inspector may enter and inspect—
 - (a) any licensed premises; and

(b) any premises on which he has reasonable grounds for believing that tobacco is sold or is kept for the purposes of sale.

(3) An inspector may require a person to produce, at such time and place as the inspector specifies, any record required to be kept by that person under this Act, and inspect or make a copy of, or an extract from, any such record.

(4) An inspector may require a licensee in respect of any premises or any person using any premises for the purpose of the sale of tobacco or of keeping tobacco for the purposes of sale or occupying any premises so used—

(a) to furnish that inspector with such information as he may require with respect to that tobacco or with respect to the tobacco purchased, sold, or held for the purposes of any business carried on on those premises; and

(b) to produce to him the invoices, receipts, and other documents relating to any such tobacco that are in his custody or control or in the custody or control of any other person acting on his behalf.

(5) Where a requirement may be made under this section of any body corporate that requirement may be made to any director, manager, or secretary of that body or any person appearing to have the management of the business carried on by that body or the business carried on by that body at the premises in relation to which the request is made.

(6) A person who—

(a) refuses or fails to comply with a requirement made under this section; or

(b) in response to a requirement made under this section to furnish any information, furnishes any information that he knows to be false or does not believe to be true,

is guilty of an offence and liable to a penalty of one thousand dollars.

23—(1) A person who makes, or causes to be made, to the Treasurer a statement or representation in respect of any matter of which account is taken by the Treasurer in making a determination for the purposes of section eleven or section twelve, being a statement or representation that is false or misleading in a material respect, is guilty of an offence. Offences in respect of false statements, &c.

(2) A person who, in furnishing any information, giving any notification, keeping any record, or making any return required of him under regulations made under this Act, makes or causes to be made any statement or representation that is false or misleading in a material respect is guilty of an offence.

(3) It is a defence in proceedings for an offence under this section in respect of any statement or representation for it to be shown that the defendant believed, on reasonable grounds, that the statement or representation was true and was not misleading.

(4) A person guilty of an offence under this section is liable to a penalty of one thousand dollars.

THE FIRST SCHEDULE.

(Section 11.)

FEEES FOR ORDINARY RETAILER'S LICENCES (OTHER THAN OCCASIONAL LICENCES).

1 References in this schedule to the monthly stock value shall be construed as references to the monthly stock value referred to in subsection (2) of section eleven by reference to which the amount of the fee is to be determined.

2 Where the monthly stock value does not exceed \$500 the amount of the fee is \$2.

3—(1) Where the monthly stock value exceeds \$500 the amount of the fee is—

(a) an amount equivalent to 30 per cent of the assessable stock value; or

(b) an amount of \$2,

whichever amount is the greater.

(2) For the purposes of this paragraph the assessable stock value is—

(a) in a case where the monthly stock value is less than \$600, the amount of that monthly stock value less an allowance equivalent to an amount of \$500 reduced by five times the amount by which that monthly stock value exceeds \$500; and

(b) in any other case, the monthly stock value.

THE SECOND SCHEDULE.

(Section 12.)

FEEES FOR VENDING MACHINE LICENCES (OTHER THAN OCCASIONAL LICENCES).

PART I.

1 For the purposes of this Part of this schedule—

(a) the capacity of a vending machine is the maximum number of packets of cigarettes, each containing twenty cigarettes, that may be contained in the machine; and

(b) the amount of the machine fee in respect of a vending machine is the amount determined, in accordance with the scale set forth in this Part of this schedule, by reference to the capacity of that machine.

2 The amount of the fee determined in accordance with this Part of this schedule is—

(a) where only one vending machine is specified in the vending machine licence, the amount of the machine fee in respect of that machine; and

(b) where two or more vending machines are so specified, the aggregate of the amounts of the machine fees in respect of each of those machines.

SCALE.

<i>Capacity of the vending machine.</i>	<i>Amount of machine fee.</i>
	\$
Not more than 100	20
More than 100 but not more than 200	50
More than 200 but not more than 350	75
More than 350 but not more than 500	150
More than 500	300

PART II.

The amount of the fee determined in accordance with this Part of the schedule is 30 per cent of the monthly stock value.

THE THIRD SCHEDULE.

(Section 15.)

FEEES FOR OCCASIONAL LICENCES.

The amount of the fee is \$1, together with a further \$1 for each day in respect of which the occasional licence is granted.