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**TOBACCO BUSINESS FRANCHISE LICENCES AMENDMENT  
ACT 1989**

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**No. 61 of 1989**

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**AN ACT to amend the *Tobacco Business Franchise Licences Act 1980***

**[Royal Assent 11 January 1990]**

**B**E 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 1989*.

**Commencement**

**2**—This Act commences on 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 “tobacco” the following definition:—

“sell” includes—

- (a) offer, display or expose for sale; and
- (b) keep or have in possession for sale; and
- (c) barter or exchange; and
- (d) agree to sell; and
- (e) supply, send, forward or deliver for sale; and
- (f) authorize, direct, cause, attempt or permit any act referred to in paragraphs (a), (b), (c), (d) or (e);

(b) by omitting from subsection (1) “the course of intrastate trade” from the definition of “tobacco retailing” and substituting “Tasmania”;

(c) by omitting from subsection (1) “in the course of intrastate trade” from the definition of “tobacco wholesaling”;

(d) by omitting subsections (3) and (4) and substituting the following subsections:—

(3) A reference in this Act to the sale of tobacco is a reference to the sale of tobacco in Tasmania.

(4) For the purposes of this Act—

- (a) a person who acts as an agent for another person who carries on tobacco wholesaling is deemed to carry on tobacco wholesaling; and
- (b) a person who acts as an agent for another person who carries on tobacco retailing is deemed to carry on tobacco retailing.

(e) by omitting from subsection (5) “in the course of intrastate trade”.

\* No. 89 of 1980. Amended by No. 66 of 1981, No. 9 of 1982, No. 58 of 1983, Nos. 29 and 67 of 1984 and No. 76 of 1987.

**Section 13 amended (Powers, &c., of inspectors)**

5—Section 13 of the Principal Act is amended as follows:—

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

(a) enter and remain in any premises which are, or which the inspector reasonably suspects are, used in connection with—

(i) the processing, packaging, distribution, sale or purchase of tobacco; or

(ii) the storage or custody of any record relating to the processing, packaging, distribution, sale or purchase of tobacco;

(b) by omitting from subsection (1) (b) “found in or on any premises which, or which he reasonably suspects, are or have been used for the processing, packaging, distribution, sale, or purchase of tobacco or for the storage or custody of any record relating to the processing, packaging, distribution, sale, or purchase of tobacco or in or on which, or in or on which he reasonably suspects tobacco is or has been stored for sale”;

(c) by omitting subsection (1) (c) and substituting the following paragraph:—

(c) take and retain possession of any record or statement referred to in this subsection for such periods as is necessary to enable the record or statement to be inspected and copies of, or extracts from, the record or statement to be made or taken by or on behalf of the Registrar.

(d) by inserting the following subsection after subsection (2):—

(2A) Where an inspector takes away any record or statement pursuant to subsection (1) (c), the inspector shall—

(a) give a receipt to the person from whom it is so taken; and

(b) permit a person who would be entitled to inspect the record or statement if any of them were not in the possession of the inspector to inspect or take copies of any of them at any reasonable time.

(e) by inserting in subsection (3) (b) “, or fails to provide reasonable assistance to,” after “obstructs”;

(f) by omitting from subsection (3) “penalty not exceeding \$250” and “penalty not exceeding \$50” and substituting “fine not exceeding 100 penalty units” and “fine not exceeding 2.5 penalty units” respectively.

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

6—Section 14 of the Principal Act is amended by omitting subsections (2) and (3) and substituting the following subsections:—

(2) The Registrar may serve on any person an instrument in writing requiring that person to provide the Registrar, within such period as is specified in the instrument—

- (a) with a statement of such particulars relating to dealing with tobacco as may be specified; and
- (b) if the Registrar thinks fit, with a certificate signed by a person registered or qualified to be registered under the *Companies (Tasmania) Code* as a company auditor certifying that the statement is correct.

(2A) The Registrar may require a person engaged in tobacco wholesaling to provide the Registrar with a statement at the end of each month of particulars relating to the sale of tobacco during that month.

(3) Any person who fails to comply with a requirement made under subsection (2) or (2A) is guilty of an offence and is liable on summary conviction to a fine not exceeding 100 penalty units.

**Sections 14B, 14C, 14D, 14E and 14F inserted**

7—After section 14A of the Principal Act, the following sections are inserted:—

**Warrant to enter and search premises**

14B—(1) If a magistrate is satisfied, on an application made by the Registrar, that there is reasonable ground for suspecting that there are in certain premises records or tobacco that are relevant to the assessment of any fee payable in respect of a licence, the magistrate may issue a warrant authorizing an inspector together with any other person named in the warrant—

- (a) to enter those premises by such force as may be necessary for the purpose; and
- (b) to search the premises and to break open and search anything in the premises in which records or tobacco may be stored or concealed; and

- (c) to take possession of, and secure against interference, any records or tobacco that appear to be relevant to the assessment of any fee payable in respect of a licence; and
- (d) to deliver any records or tobacco so taken into the possession of the Registrar.

(2) Where a person delivers any records to the Registrar under this section, the Registrar—

- (a) may retain possession of the records for such period as is necessary to enable them to be inspected, and copies of, or extracts from, them to be made or taken by or on behalf of the Registrar; and
- (b) while any such record is in the possession of the Registrar, shall permit a person who would be entitled to inspect the record if it were not in the possession of the Registrar to inspect and take copies of the record at any reasonable time; and
- (c) after inspecting and making copies of or taking extracts from the records, shall return the records to the premises from which they were taken.

(3) Where a person has a lien on records or tobacco to which this section applies, nothing done under this section in relation to the records or tobacco prejudices the lien.

(4) A person shall not—

- (a) prevent or attempt to prevent any person acting or assisting in the execution of a warrant under subsection (1); or
- (b) hinder, obstruct or fail to provide reasonable assistance to, any person acting or assisting in the execution of such a warrant.

Penalty: Fine not exceeding 100 penalty units.

(5) Where a person takes possession of any records or tobacco under subsection (1), that person shall give a receipt to the person from whom it was so taken.

(6) The powers conferred by this section are in addition to, and not in derogation of, any other powers conferred by law.

### **Seizure of tobacco**

14C—(1) The Registrar may take and keep in custody any tobacco which the Registrar reasonably believes is evidence of an offence by any person.

(2) Where the Registrar takes and keeps any tobacco pursuant to subsection (1), the Registrar shall give a receipt to the person from whom it is taken.

(3) Where the Registrar takes and keeps in custody any tobacco pursuant to subsection (1), the Registrar shall, within 3 days of the taking, obtain an order from a magistrate to permit the Registrar to keep the tobacco until proceedings for the offence have been heard and dealt with.

(4) In deciding whether or not to grant an order referred to in subsection (3), the magistrate shall take into account—

- (a) whether any hardship may be incurred by any person as a result of the Registrar taking and keeping tobacco pursuant to subsection (1); and
- (b) any other factors the magistrate considers appropriate.

(5) Where the magistrate does not grant an order under subsection (3), the Registrar shall, within 3 days of the decision not to grant the order, return any tobacco taken pursuant to subsection (1) to the person from whom it was so taken.

#### **Realization of value of seized tobacco**

14D—(1) The Registrar may apply to a magistrate for an order to sell any tobacco taken and kept under this Act.

(2) The Registrar shall cause a copy of any application made under subsection (1) to be sent to any person whom the Registrar has reason to believe has an interest in the tobacco to which the application relates.

(3) A person who has an interest in any tobacco which is the subject of an application for an order under this section, is entitled to appear and to present evidence at the hearing of the application.

(4) If, at the hearing of the application, evidence is given that the tobacco was in the possession of a person for sale in the course of carrying on tobacco retailing, the magistrate—

- (a) may, by order, direct the Registrar to sell the tobacco in such manner and subject to such directions as the magistrate may specify, and to pay the proceeds of sale into the court; or
- (b) at the request of any person appearing to the magistrate to have an interest in the tobacco, may—
  - (i) fix the value of the person's interest in the tobacco for the purposes of an order under subparagraph (ii); and



- (ii) order the Registrar, on payment into the court by that person of an amount equal to the value of the interest so fixed, to deliver tobacco which has a value equal to that amount to that person.

### **Forfeiture of tobacco**

14E—(1) The court may, by order, declare that tobacco or its value paid into the court under section 14D be forfeited to the Crown where in proceedings brought before it for an offence under this Act the court finds the offence proven.

(2) The Minister may, on behalf of the Crown, dispose of any tobacco forfeited under subsection (1) in such manner as the Minister thinks fit.

### **Return of seized tobacco**

14F—Where in proceedings for an offence under this Act the court finds the offence not proven, the court may, by order, declare that—

- (a) any tobacco seized under section 14C be returned to the person from whom it was seized; or
- (b) any amount paid into the court by a person under section 14D be refunded to that person together with interest at a rate determined by the court.

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

8—Section 16 of the Principal Act is amended as follows:—

- (a) by omitting subsection (1);
- (b) by omitting from subsection (2) “\$250” and substituting “Fine not exceeding 5 penalty units”;
- (c) by omitting subsection (3);
- (d) by omitting subsection (4) and substituting the following subsection:—

(4) The holder of a retail tobacconist’s licence shall not carry on tobacco retailing on premises that are not specified in the licence as premises to be used for that purpose.

Penalty: Fine not exceeding 10 penalty units.

- (e) by omitting from subsection (5) “is sold on any premises otherwise than by a licensee” and substituting “retailing is carried out on any premises”;

- (f) by omitting from subsection (6) “subsection (1), (2), or (3)” and substituting “subsection (2)”;
- (g) by omitting from subsection (6) “tobacco wholesaling or tobacco retailing, or to sell tobacco in the course of intrastate trade” and substituting “tobacco retailing”;
- (h) by adding the following subsection after subsection (6):—

(7) This section does not apply to a person who acts as an agent for another person who is carrying on tobacco retailing where that other person is the holder of a licence issued and in force under this Act.

### **Section 17 amended (Application for licence)**

**9**—Section 17 of the Principal Act is amended as follows:—

- (a) by omitting subsection (3) and substituting the following subsections:—

(3) Any person who carries on or proposes to carry on tobacco retailing and purchases or intends to purchase all tobacco for that purpose from the holder of a licence issued under this Act, may make an application for a retail tobacconist’s yearly licence.

(3A) Any person who carries on or proposes to carry on tobacco retailing and purchases or intends to purchase any tobacco for that purpose from a person who is not the holder of a licence issued under this Act, may make an application for a retail tobacconist’s monthly licence.

- (b) by adding the following subsection after subsection (5):—

(6) This section does not apply to a person who acts as an agent for another person who is carrying on tobacco wholesaling or tobacco retailing where that other person is the holder of a licence issued and in force under this Act.

### **Section 18 amended (Issue, &c., of licence)**

**10**—Section 18 of the Principal Act is amended as follows:—

- (a) by omitting subsection (3) and substituting the following subsection:—

(3) Where an application is made under section 17 for a retail tobacconist’s yearly licence, the Registrar shall issue that licence to the applicant if—

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

- (b) the applicant satisfies the Registrar of the intention to purchase all tobacco for the purpose of tobacco retailing from the holder of a licence issued under this Act; and
- (c) the applicant pays the fee referred to in section 20 (1) (d).
- (b) by omitting from subsection (5) (a) “for it;” and substituting “for it; and”;
- (c) by omitting subsection (5) (b);
- (d) by omitting subsection (6);
- (e) by omitting from subsection (7) “licence under this section” and substituting “retail tobacconist’s licence”;
- (f) by adding the following subsection after subsection (8):—
  - (9) A licence issued under this section may be subject to such conditions and terms as the Registrar thinks fit.

### Section 18A inserted

**11**—After section 18 of the Principal Act, the following section is inserted:—

#### **Conversion of retail tobacconist’s yearly licence to monthly licence**

18A—(1) Where the holder of a retail tobacconist’s yearly licence carries on tobacco retailing and purchases or offers to purchase any tobacco from a person who is not the holder of a licence issued under this Act, the holder of that licence shall, within 7 days of the purchase, lodge with the Registrar a notice in writing to that effect.

(2) On receipt of a notice lodged by a person under subsection (1), the Registrar shall—

- (a) revoke the retail tobacconist’s yearly licence held by that person; and
- (b) issue to that person a retail monthly tobacconist’s licence.

(3) A person who fails to lodge a notice under subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding 5 penalty units for every day on which the person carries on tobacco retailing without lodging such a notice.

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

**12**—Section 19 of the Principal Act is amended by omitting subsection (1) (a).

**Section 20 amended (Licence fees)**

**13**—Section 20 of the Principal Act is amended as follows:—

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

(c) where the licence is a retail tobacconist's monthly licence—a fee of \$1 and an amount equal to 50 per cent of the value of tobacco purchased by the applicant for the licence or a renewal in the course of tobacco retailing during the relevant period, other than tobacco purchased from the holder of a licence issued under this Act;

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

(4) For the purposes of subsections (1) (a) and (b), (2) and (3), tobacco sold to the holder of a wholesale tobacco merchant's licence or group wholesale tobacco merchant's licence shall be disregarded.

(4A) For the purposes of subsection (1) (c), where a person—

(a) carries on both tobacco wholesaling and tobacco retailing; and

(b) is not the holder of a wholesale tobacco merchant's licence—

tobacco sold by that person in the course of tobacco retailing is deemed to be purchased from a person who is not the holder of a wholesale tobacco merchant's licence.

(c) by omitting from subsection (8A) (c) “in the course of intrastate trade from the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence” and substituting “from the holder of a licence issued under this Act”;

(d) by omitting subsection (9) and substituting the following subsection:—

(9) Where—

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

(b) a person pays a fee in respect of that sale under a law of that State or Territory—

the Registrar shall refund to that person any fee paid under this Act in respect of the sale of the tobacco in Tasmania.

(e) by omitting subsection (13).

### Section 21 amended (Value of tobacco)

14—Section 21 (3) of the Principal Act is amended by inserting “, sales tax or other duty” after “duty”.

### Section 22 amended (Adjustment of fee)

15—Section 22 of the Principal Act is amended as follows:—

(a) by inserting in subsection (1) “due to an error in calculation or a mistake of fact” after “incorrectly”;

(b) by adding the following subsections after subsection (7):—

(8) The Registrar may, on application and subject to such terms and conditions as the Registrar may determine, allow a person on whom a notice of reassessment has been served under subsection (4) to pay by instalments the whole or part of the amount assessed as being payable under this section.

(9) Where the Registrar allows a person to pay by instalments, the Registrar may, where the Registrar considers it necessary or appropriate, require a partner or director in a business, firm, company or corporation of which that person is an employee, employer, partner or director to make a personal guarantee in respect of the payment of such an amount.

(10) A personal guarantee made pursuant to subsection (9) is exempt from the payment of any stamp duty payable under the *Stamp Duties Act 1931*.

(11) Where an amount or part of an amount is due and payable under this section and is unpaid, the Registrar may recover in a court of competent jurisdiction as a debt due to the Crown, any amount unpaid together with such interest, at a rate not exceeding 20 per cent per annum, on the amount unpaid as the Registrar may determine.

**Section 26 amended (Renewal of licence)**

**16**—Section 26 of the Principal Act is amended as follows:—

(a) by omitting subsection (6) and substituting the following subsection:—

(6) Where an application is made under subsection (2) for the renewal of a retail tobacconist's yearly licence, the Registrar shall renew the licence for a further period of 12 months expiring on 31st January next following if—

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

(b) the applicant satisfies the Registrar of the intention to purchase all tobacco for the purpose of tobacco retailing from the holder of a licence issued under this Act; and

(c) the applicant pays the fee referred to in section 20 (1) (d).

(b) by omitting from subsection (9) (a) "for it;" and substituting "for it; and";

(c) by omitting subsection (9) (b);

(d) by omitting subsection (10);

(e) by adding the following subsection after subsection (11):—

(12) The Registrar may renew a licence under this section subject to such conditions and terms as the Registrar thinks fit.

**Section 26A inserted**

**17**—After section 26 of the Principal Act, the following section is inserted:—

**Revocation of licence**

26A—(1) Subject to subsection (2), the Registrar may revoke a licence issued under this Part where it appears that the holder of that licence has—

(a) contravened or failed to comply with the conditions and terms of that licence; or

(b) failed to pay an additional amount payable under section 22 (4).

(2) The Registrar shall not revoke a licence unless the Registrar has previously given the holder of the licence an opportunity to make submissions and give evidence in relation to the matter.

(3) Where the Registrar revokes a licence, the Registrar shall cause a notice in writing to be served on the person who was the holder of the licence.

(4) The revocation of a licence takes effect on the date of service of the notice referred to in subsection (3).

### **Section 27 repealed**

18—Section 27 of the Principal Act is repealed.

### **Section 28 repealed**

19—Section 28 of the Principal Act is repealed.

### **Section 29 amended (Assessment and recovery of unpaid fee from unlicensed person)**

20—Section 29 of the Principal Act is amended by omitting subsections (4) and (5) and substituting the following subsections:—

(4) The Registrar may, on application and subject to such conditions as the Registrar may determine, allow a person on whom a notice of assessment has been served under subsection (3) to pay by instalments the whole or part of the amount assessed as being payable under this section.

(5) Where the Registrar allows a person to pay by instalments, the Registrar may, where the Registrar considers it necessary or appropriate, require a partner or director in a business, firm, company or corporation of which that person is an employee, employer, partner or director to make a personal guarantee in respect of the payment of such amount.

(6) A personal guarantee made pursuant to subsection (5) is exempt from the payment of any stamp duty payable under the *Stamp Duties Act 1931*.

(7) Where an amount or part of an amount assessed under this section is unpaid, the Registrar may recover in a court of competent jurisdiction as a debt due to the Crown any amount unpaid together with such interest at a rate, not exceeding 20 per cent per annum, on the amount unpaid as the Registrar may determine.

**Section 29A inserted**

**21**—After section 29 of the Principal Act, the following section is inserted in Part III:—

**Appeal or objection not to suspend payment or recovery of fees**

29A—(1) An obligation on a person to pay any fees or a right to recover any fees payable under this Act is not suspended or affected by any appeal made or objection lodged by that person under Part IV.

(2) Where, on an appeal or objection, an assessment or reassessment of any fee payable is varied to increase that fee, the amount of that increase becomes payable to the Registrar.

(3) Where, on an appeal or objection, an assessment or reassessment of any fee payable is varied to decrease that fee, the Registrar shall, if the fee has been paid, refund the amount of that decrease to the person who lodged that appeal or objection.

(4) Where, on an appeal or objection, an assessment or reassessment of any fee payable is quashed, the Registrar shall refund any fees paid by the person who made the appeal or objection.

**Section 32 amended (Appeal against revocation of licence)**

**22**—Section 32 (1) of the Principal Act is amended by omitting “retail tobacconist’s yearly licence” and substituting “licence issued under Part III”.

**Section 34 amended (Objection to an appeal against reassessment)**

**23**—Section 34 of the Principal Act is amended by omitting subsection (9).

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

**24**—Section 36 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “carries on the business of selling tobacco” and substituting “is the holder of a licence under this Act”;



- (b) by omitting from subsection (2) “conviction to a penalty not exceeding \$1 000” and substituting “summary conviction to a fine not exceeding 50 penalty units”.

### Section 37 amended (Invoices to be issued, &c.)

25—Section 37 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) (a) “in the course of intrastate trade”;
- (b) by omitting from subsection (2) “penalty not exceeding \$500” and substituting “fine not exceeding 10 penalty units”;
- (c) by omitting from subsection (4) “penalty not exceeding \$500” and substituting “fine not exceeding 10 penalty units”;
- (d) by omitting from subsection (6) “penalty not exceeding \$500” and substituting “fine not exceeding 50 penalty units”.

### Section 38 amended (Tobacco vending machines)

26—Section 38 (3) of the Principal Act is amended by omitting “conviction to a penalty not exceeding \$250” and substituting “summary conviction to a fine not exceeding 10 penalty units”.

### Section 39 amended (Disclosure of information)

27—Section 39 of the Principal Act is amended as follows:—

- (a) by inserting in subsection (1) the following paragraphs after paragraph (a):—
- (ab) to an officer of the Commonwealth, or of a State or Territory of the Commonwealth, employed in the administration of laws relating to taxation;
- (ac) to a police officer within the meaning of the *Police Regulation Act 1898*;
- (b) by omitting from subsection (2) “penalty not exceeding \$2 500” and substituting “fine not exceeding 25 penalty units”.

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

28—Section 40 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “penalty not exceeding \$1 000” and substituting “fine not exceeding 100 penalty units”;

- (b) by omitting from subsection (2) “penalty not exceeding \$1 000” and substituting “fine not exceeding 100 penalty units”.

### Section 40A inserted

29—After section 40 of the Principal Act, the following section is inserted:—

#### Power of Registrar to apply for injunction

40A—Where a person continues to contravene or persists in failing to comply with this Act, the Registrar may, whether or not proceedings are instituted in respect of the contravention or failure to comply, apply to the Supreme Court for an injunction.

### Section 41 amended (Evidence)

30—Section 41 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) (c) “Act; or” and substituting “Act;”;
- (b) by omitting from subsection (1) (d) “issued,” and substituting “issued;”;
- (c) by adding the following paragraphs after paragraph (d) of subsection (1):—
- (e) that a person specified in the certificate is liable to pay a specified fee in respect of a specified period;
- (f) that an application was or was not received from or on behalf of a specified person; or
- (g) that a person specified in the certificate was required to furnish specified information and failed or neglected to do so—

(d) by adding the following subsections after subsection (2):—

(3) The production of a document signed by the Registrar purporting to be a copy of or extract from a notice of assessment or reassessment, document, instrument, statement or licence is evidence, where applicable—

- (a) that an assessment or reassessment was made; and
- (b) that the notice of assessment or reassessment, document, instrument, statement or licence was issued by the Registrar; and

(c) of the matters specified in the notice of assessment or reassessment, document, instrument, statement or licence—

and is admissible in any proceedings under this Act without production of the original.

(4) A statement written or printed in or on any package or container to the effect or indicating that the package or container contains tobacco, is evidence that the package or container contains or has contained tobacco.

### **Section 45 amended (Regulations)**

**31**—Section 45 (2) of the Principal Act is amended by omitting “penalty not exceeding \$500” and substituting “fine not exceeding 10 penalty units”.

