This PUBLIC BILL *originated in the* LEGISLATIVE ASSEMBLY, *and, having this day passed, is now ready for presentation to the* LEGISLATIVE COUNCIL *for its concurrence.*

R. E. WARD,
Clerk of the Legislative Assembly.

Legislative Assembly Chamber,
Sydney, 15 *October,* 1975.

New South Wales

ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

* *

Act No. , 1975.

An Act to make provision for the issue of licences to be called "Business Franchise Licences (Tobacco)"; to prohibit the sale of tobacco except by a person who is enfranchised to sell tobacco by such a licence; and to enact consequential or ancillary provisions.

BE

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Business Franchise Licences (Tobacco) Act, 1975". Short title.

2. This Act is divided as follows :— Division of Act.

PART I.—PRELIMINARY—*ss.* 1–4.

PART II.—ADMINISTRATION—*ss.* 5–9.

PART III.—LICENCES—*ss.* 10–18.

PART IV.—APPEALS AND OBJECTIONS—*ss.* 19–22.

PART V.—MISCELLANEOUS—*ss.* 23–31.

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires— Interpretation.

"Assistant Commissioner" means the Assistant Commissioner for Business Franchise Licences (Tobacco) referred to in section 5;

"Commissioner" means the Commissioner for Business Franchise Licences (Tobacco) referred to in section 5;

"inspector"

"inspector" means—

(a) an inspector referred to in section 7 (1); or

(b) an inspector referred to in section 18 (1) of the Business Franchise Licences (Petroleum) Act, 1974;

"licence" means a Business Franchise Licence (Tobacco) granted under section 11 and in force under this Act;

"licensee" means the holder for the time being of a licence;

"premises" includes any place, vehicle, vessel or aircraft;

"record" includes book, account, deed, writing or document and any other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means;

"regulations" means regulations under this Act;

"relevant period", in relation to an applicant for a licence or renewal of a licence, means the period of one year ended on the thirtieth day of June that last preceded the twenty-seventh day of August that last preceded the day on and from which the licence or the renewal, if granted, would be in force;

"retail tobacconist's licence" means a licence referred to in section 11 (2) (b) and in force under this Act;

"tobacco" means tobacco prepared for consumption, and includes any mixture that contains tobacco and is intended to be consumed;

"tobacco

"tobacco retailing" means the business of selling tobacco by retail in the course of intrastate trade either alone or in conjunction with any other merchandise, and includes that business carried on as part of or in conjunction with any other business;

"tobacco wholesaling" means the business of selling tobacco in the course of intrastate trade for the purposes of resale either alone or in conjunction with any other merchandise, and includes that business carried on as part of or in conjunction with any other business;

"Tribunal" means the Business Franchise Licence Fees (Tobacco) Appeals Tribunal referred to in section 6;

"value", in relation to any tobacco sold, means the value attributed to that tobacco pursuant to section 15;

"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, device or contrivance of a coin, token or similar object;

"wholesale tobacco merchant's licence" means a licence referred to in section 11 (2) (a) and in force under this Act.

(2) The presence on any premises of a vending machine from which tobacco may be obtained shall be deemed to constitute the carrying on of tobacco retailing on those premises by the occupier thereof, unless a licensee is carrying on tobacco retailing by means of that machine in accordance with his licence.

(3) A reference in this Act to—

(a) a person who sells tobacco; or

(b) a person who carries on the business of selling tobacco,

5 does not extend to a person who, as an agent or employee of a person referred to in paragraph (a) or (b), sells tobacco or carries on such a business.

(4) A reference in this Act to intrastate trade is a reference to trade carried on in the State which is not trade 10 or commerce among the States within the meaning of section 92 of the Constitution of the Commonwealth.

(5) A reference in this Act to tobacco includes a reference to any wrapping, package or container in which the tobacco is sold, purchased, received or handled.

15 (6) A reference in this Act to a licensee or the holder of a licence includes a reference to a person to whom the licence is transferred in accordance with section 18.

(7) Where pursuant to a sale made outside the State tobacco is delivered in the course of intrastate trade within 20 the State, that sale shall, for the purposes of this Act, be deemed to have been made within the State.

4. This Act binds the Crown. Crown bound.

PART

PART II.

ADMINISTRATION.

5. (1) There shall be a Commissioner for Business Franchise Licences (Tobacco) and an Assistant Commissioner for Business Franchise Licences (Tobacco), each of whom shall be appointed under, and shall hold office subject to, the Public Service Act, 1902.

Commissioner and Assistant Commissioner for Business Franchise Licences (Tobacco).

(2) The Assistant Commissioner shall have and may exercise or perform—

(a) where the Commissioner is absent from office or the office of the Commissioner is vacant, all the powers, authorities, duties and functions conferred or imposed on the Commissioner by this Act or the regulations; or

(b) where the Commissioner has directed the Assistant Commissioner to exercise or perform any of those powers, authorities, duties or functions, such of those powers, authorities, duties or functions as are specified in the direction.

(3) No person shall be concerned to inquire whether the Assistant Commissioner is entitled to exercise or perform the powers, authorities, duties and functions conferred or imposed on the Commissioner by this Act or the regulations.

(4) Until a person is appointed as Commissioner, the person for the time being holding office as Commissioner for Business Franchise Licences (Petroleum) shall also hold office as Commissioner for Business Franchise Licences (Tobacco).

(5) Until a person is appointed as Assistant Commissioner, the person for the time being holding office as Assistant Commissioner for Business Franchise Licences (Petroleum) shall also hold office as Assistant Commissioner for Business Franchise Licences (Tobacco).

6. (1) There shall be a tribunal to be called the "Business Franchise Licence Fees (Tobacco) Appeals Tribunal" which shall consist of a person appointed by the Governor on the recommendation of the Minister.

Business Franchise Licence Fees (Tobacco) Appeals Tribunal.

(2) A person shall not be appointed under subsection (1) unless he is under the age of 70 years.

(3) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment of a person referred to in subsection (1) or to such a person in his capacity as the Tribunal.

(4) Subject to section 30 (b) of the Interpretation Act, 1897, the person appointed under subsection (1) shall hold office for such period not exceeding 3 years as is specified in the instrument of his appointment or until he attains the age of 70 years whichever first happens.

(5) The person so appointed is entitled to be paid such fees and allowances as the Minister may from time to time determine.

(6) Until a person is so appointed, the person for the time being holding office as the Business Franchise Licence Fees (Petroleum) Appeals Tribunal shall also hold office as the Business Franchise Licence Fees (Tobacco) Appeals Tribunal.

7. (1) The Governor may, under and subject to the Public Service Act, 1902, appoint inspectors for the purposes of this Act. Inspectors.

(2) For the purposes of this Act, an inspector, on production of written evidence of his appointment as an inspector, may at any reasonable time and with such assistants as he considers necessary—

(a) enter and remain in any premises at which, or at which he reasonably suspects, the business of processing, packaging, distributing, selling or purchasing tobacco is carried on or which is, or which he reasonably suspects is, being used for the storage or custody of any record relating to the processing, packaging, distribution, sale or purchase of tobacco;

(b) request any person found in or on any premises which, or which he reasonably suspects, are used for the processing, packaging, distribution, sale or purchase of tobacco or in or on which, or in or on which he reasonably suspects, tobacco is stored for sale—

(i) to produce any record which relates to, or which the inspector reasonably suspects relates to, the processing, packaging, distribution, sale or purchase of tobacco and which at the time of the request is in the possession or under the control of that person;

(ii) to produce a statement, written in the English language, setting out the particulars contained in any such record that are not written or not written in the English language; and

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(iii) to answer any question with respect to any such record or statement or the processing, packaging, distribution, sale or purchase of any tobacco; or

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(c) inspect, or take copies of, or extracts or notes from, any record or statement referred to in this subsection.

(3) A person shall not—

(a) prevent or attempt to prevent an inspector from exercising any power conferred on him by subsection (2);

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(b) hinder or obstruct any inspector in the exercise of any such power; or

(c) fail to comply with a request of an inspector under subsection (2) (b).

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Penalty: $250 or imprisonment for 3 months, or both, and in the case of any offence under paragraph (c) an additional penalty not exceeding $50 for every day on which the offence continues.

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(4) A person is not guilty of an offence under subsection (3) (c) by reason of his failure to answer any question referred to in subsection (2) (b) (iii) if he proves to the satisfaction of the court that he did not know, and could not with reasonable diligence ascertain, the answer to the question.

(5)

(5) A person is not excused from answering any question if required to do so under subsection (2) (b) on the ground that the answer might tend to criminate him or make him liable to a penalty but the information furnished by him shall not be admissible against him in any proceedings, civil or criminal, except in proceedings for an offence under subsection (3) or section 25.

(6) Where an answer to a question referred to in subsection (2) (b) (iii) or any information whatever is given to an inspector by an officer of a corporation within the meaning of the Companies Act, 1961, which is carrying on or has carried on the business of selling tobacco, the answer and information are, for the purposes of any proceedings against the corporation under any of the provisions of this Act, binding upon and admissible in evidence against the corporation unless it is proved that the answer or information was given in relation to a matter in respect of which the officer had no authority to bind the corporation.

(7) The provisions of subsection (6) are in addition to and not in derogation of any rule of law relating to the binding effect and admissibility in evidence of statements made by any officer or employee of a corporation.

Particulars of dealings with tobacco.

8. (1) In this section, a reference to dealing with tobacco includes a reference to processing, packaging, distributing, selling and purchasing tobacco.

(2) The Commissioner may, by instrument in writing, require—

(a) a person who is carrying on, or has carried on, or is or was concerned in, a business of dealing with tobacco; or

(b)

(b) a person who, as agent or employee of a person referred to in paragraph (a), has or has had duties or provides or has provided services in connection with a business so referred to,

5 to furnish to the Commissioner in writing, within such period as is specified in the instrument or such further period as the Commissioner may allow—

(c) a statement of such particulars with respect to that tobacco, or any of it, as are so specified, not being
10 particulars relating to any period after the date of the requirement; and

(d) if the Commissioner thinks fit, a certificate signed by a person registered as a public accountant under the Public Accountants Registration Act, 1945,
15 certifying that the statement is correct.

(3) A person shall not fail to comply with any requirement made of him under subsection (2).

Penalty : $2,500.

(4) A person is not guilty of an offence under sub-
20 section (3) if the court hearing the charge is satisfied—

(a) that the defendant could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates; or

(b) that the defendant complied with that requirement
25 to the extent of his ability to do so.

9. Any matter or thing done by the Commissioner, the Assistant Commissioner, an inspector or any other person bona fide for the purpose or purported purpose of administering or executing this Act shall not subject him personally to any action, liability, claim or demand.

Protection for Commissioner, etc.

PART III.

LICENCES.

10. (1) On or after 28th November, 1975, a person shall not carry on tobacco wholesaling unless he is the holder of a wholesale tobacco merchant's licence.

Offences relating to sale of tobacco.

Penalty : $500 for every day on which the person carries on the business.

(2) On or after 28th August, 1976, a person shall not carry on tobacco retailing unless he is the holder of a retail tobacconist's licence.

Penalty : $250 for every day on which the person carries on the business.

(3) On or after 28th August, 1976, a person shall not sell tobacco in the course of intrastate trade unless he is the holder of a licence.

Penalty : $250.

(4) A licensee shall not carry on the business of selling tobacco on premises that are not specified in the licence as premises to be used for that business.

Penalty : $250.

5 (5) Where tobacco is sold on any premises otherwise than by a licensee, the occupier of the premises shall be deemed to have sold the tobacco unless it is shown—

(a) that the sale took place without his knowledge or connivance; and

10 (b) that he took all such steps as are reasonable in the circumstances to prevent the sale being made.

11. (1) The Commissioner shall— Issue of licence.

(a) upon application made therefor in a form approved by him;

15 (b) on receipt of the particulars, if any, required by him to be furnished by the applicant under section 8; and

(c) upon payment of—

(i) the fee assessed by the Commissioner in
20 accordance with section 12; or

(ii) where the applicant has made an election under section 13, the first instalment of that fee,

grant

grant to the applicant a Business Franchise Licence (Tobacco) or refuse to grant to the applicant such a licence.

(2) A licence shall be either—

(a) a wholesale tobacco merchant's licence, which authorises the licensee to carry on tobacco wholesaling at the premises specified in the licence; or

(b) a retail tobacconist's licence, which authorises the licensee to carry on tobacco retailing at the premises specified in the licence.

(3) The Commissioner shall, on the grant of a licence, cause the premises which are to be used for, or in connection with, the business in respect of which the licence is granted to be specified in the licence and shall, upon receipt at any time of a request in a form approved by him and payment of the prescribed fee (if any) by the holder of the licence, in accordance with the request, add to, substitute for, or delete from, premises so specified, such premises as are specified in the request.

(4) A licence shall be in force on and from the date specified in the licence as the date on which the licence shall come into force.

(5) Where the Commissioner refuses to grant a licence, he shall, in writing, inform the applicant of the reasons for the refusal and refund to the applicant any fee paid by the applicant and referred to in subsection (1) (c).

12. (1) The fees to be paid for licences shall be as follows :— Fees.

(a) for a wholesale tobacco merchant's licence—

(i) which is in force for any period before 28th August, 1976—a fee of $100 together with an amount equal to 10 per centum of the value of tobacco sold by the applicant in the course of tobacco wholesaling during the relevant period (other than tobacco sold to a person who was in the opinion of the Commissioner engaged principally in tobacco wholesaling); or

(ii) which is in force for any period after 27th August, 1976—a fee of $100 together with an amount equal to 10 per centum of the value of tobacco sold by the applicant in the course of tobacco wholesaling during the relevant period (other than tobacco sold to the holder of a wholesale tobacco merchant's licence);

(b) for a retail tobacconist's licence—a fee of $10 together with an amount equal to 10 per centum of the value of tobacco sold by the applicant in the course of tobacco retailing during the relevant period (other than tobacco purchased in the course of intrastate trade from the holder of a wholesale tobacco merchant's licence).

(2) Where an application is made for a licence and the applicant did not carry on the business in respect of which the application for the licence was made during the whole of the relevant period, the fee payable by the applicant in respect

of

of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard to the tobacco that in the opinion of the Commissioner would have been sold by the applicant had he been carrying on that business during the whole of that period, and the relevant principles of determining fees under subsection (1).

(3) Where an application is made for a licence and the applicant carried on the business in respect of which the application for the licence was made during the whole of the relevant period and the Commissioner is of the opinion that he is unable for any reason accurately to assess the fee payable by the applicant under subsection (1), the fee payable by the applicant in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard to the tobacco that in the opinion of the Commissioner was sold by the applicant during that period, and the relevant principles of determining fees under subsection (1).

(4) The value of any tobacco sold for delivery and consumption outside the State shall be disregarded in determining fees payable under this section.

(5) For the purposes of this section, a person who holds a wholesale tobacco merchant's licence from any day (referred to in this subsection as "the effective day") on or after 28th November, 1975, to 27th August, 1976, shall be deemed to have been the holder of such a licence from 1st July, 1975, to the effective day.

(6) Notwithstanding any other provision of this section, where a licence is to be in force for a period of 11 months or less, the amount of the fee that, but for this subsection, would be payable shall be reduced, where the licence is to be in force for a period of—

(a) 11 months or less but more than 10 months—by one-twelfth;

(b) 10 months or less but more than 9 months—by two-twelfths;

(c) 9 months or less but more than 8 months—by three-twelfths;

(d) 8 months or less but more than 7 months—by four-twelfths;

(e) 7 months or less but more than 6 months—by five-twelfths;

(f) 6 months or less but more than 5 months—by six-twelfths;

(g) 5 months or less but more than 4 months—by seven-twelfths;

(h) 4 months or less but more than 3 months—by eight-twelfths;

(i) 3 months or less but more than 2 months—by nine-twelfths;

(j) 2 months or less but more than 1 month—by ten-twelfths; or

(k) 1 month or less—by eleven-twelfths.

(7) The Commissioner shall not, in assessing a fee under subsection (2), have regard to any particulars furnished pursuant to a requirement under section 8.

13. (1) In this section, "prescribed date" means 28th September, 28th October, 28th November, 28th December, 28th January, 28th February, 28th March, 28th April, 28th May, 28th June or 28th July. Payment of fees by instalments.

(2) An applicant for a licence which is to be in force for more than one month, or a renewal of a licence, may, in his application, if the licence fee payable in respect of that licence is in excess of $120, elect to pay the licence fee by instalments in accordance with this section.

(3) Where the licence—

(a) is to be in force for a period of more than 11 months —the licence fee may be paid by 12 equal instalments, the first instalment being due and payable before the grant or renewal of the licence and each of the remaining 11 instalments being due and payable respectively on the following 11 prescribed dates (commencing with 28th September) next following the date of issue or renewal of the licence;

(b) is to be in force for a period of more than 10 months but not more than 11 months—the licence fee may be paid by 11 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 10 instalments being due and payable respectively on the following 10 prescribed dates (commencing with 28th October) next following the date of issue of the licence;

(c) is to be in force for a period of more than 9 months but not more than 10 months—the licence fee may be paid by 10 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 9 instalments being due and payable respectively on the following 9 prescribed dates (commencing with 28th November) next following the date of issue of the licence;

(d) is to be in force for a period of more than 8 months but not more than 9 months—the licence fee may be paid by 9 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 8 instalments being due and payable respectively on the following 8 prescribed dates (commencing with 28th December) next following the date of issue of the licence;

(e) is to be in force for a period of more than 7 months but not more than 8 months—the licence fee may be paid by 8 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 7 instalments being due and payable respectively on the following 7 prescribed dates (commencing with 28th January) next following the date of issue of the licence;

(f) is to be in force for a period of more than 6 months but not more than 7 months—the licence fee may be paid by 7 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 6 instalments being due and payable respectively on the following 6 prescribed dates (commencing with 28th February) next following the date of issue of the licence;

(g) is to be in force for a period of more than 5 months but not more than 6 months—the licence fee may be paid by 6 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 5 instalments being due and payable respectively on the following 5 prescribed dates (commencing with 28th March) next following the date of issue of the licence;

(h) is to be in force for a period of more than 4 months but not more than 5 months—the licence fee may be paid by 5 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 4 instalments being due and payable respectively on the following 4 prescribed dates (commencing with 28th April) next following the date of issue of the licence;

(i) is to be in force for a period of more than 3 months but not more than 4 months—the licence fee may be paid by 4 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 3 instalments being due and payable respectively on the following 3 prescribed dates (commencing with 28th May) next following the date of issue of the licence;

(j) is to be in force for a period of more than 2 months but not more than 3 months—the licence fee may be paid by 3 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 2 instalments being due and payable respectively on the following 2 prescribed dates (commencing with 28th June) next following the date of issue of the licence; or

(k) is to be in force for a period of more than 1 month but not more than 2 months—the licence fee may be paid by 2 equal instalments, the first instalment being due and payable before the grant of the licence and the remaining instalment being due and payable on 28th July next following the date of issue of the licence.

(4) For the purpose of calculating the amount of instalments under subsection (3), where the quotient obtained by dividing the licence fee by the appropriate number of instalments results in a remaining fraction of a cent, that fraction shall be ignored.

(5) If an instalment payable in respect of a licence is not paid on or before the day on which it is due and payable under subsection (3), the balance of the licence fee becomes due and payable immediately.

(6) The balance of the licence fee in respect of a licence becomes due and payable upon the surrender of the licence.

(7) The whole or any part of an amount which is due and payable by any person under this section and which is unpaid may be recovered by the Commissioner, as a debt, in any court of competent jurisdiction.

Adjustment of fee.

14. (1) Where, in the opinion of the Commissioner, the fee assessed in respect of any licence was assessed incorrectly, the Commissioner may at any time reassess the fee in accordance with the principles of assessing fees under section 12.

(2)

(2) Where on a reassessment of a fee under subsection (1) the fee is reduced, the amount overpaid shall be refunded by the Commissioner in accordance with the provisions of subsections (3) and (4).

5 (3) Where—

(a) during the whole of the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held 10 by one person, the amount to be refunded shall be refunded to that person; or

(b) during the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has 15 been or was in force, it was held by two or more persons, the amount to be refunded shall be refunded to those persons in proportion to the periods, in days, for which they held the licence.

(4) Notwithstanding subsection (3), in a case 20 where—

(a) the licence has not ceased to be in force;

(b) in the application for the licence the applicant made an election under section 13;

(c) any instalment payable by virtue of that election has 25 not become due and payable; and

(d) the instalments paid do not exceed the amount of the fee as reassessed,

a refund shall not be made to the holder of the licence in accordance with subsection (3) (a) or (b) but in that case each of the remaining instalments payable in respect of the licence shall be reduced by an amount that bears to the amount that but for this subsection would be required to be refunded to that holder under subsection (3) the same proportion as one bears to the number of those remaining instalments.

(5) Where on a reassessment of a fee under subsection (1) the fee is increased, the additional amount payable by virtue of the reassessment shall be due and payable in accordance with the provisions of subsections (6) and (7).

(6) For the purpose of subsection (5), where—

(a) during the whole of the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by one person, the additional amount shall be due and payable within 14 days after notice of the reassessment is served on that person; or

(b) during the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by two or more persons, the additional amount shall be due and payable, within 14 days after notice of the reassessment is served on them, by those persons in proportion to the periods, in days, for which they held the licence,

unless,

unless, in respect of that additional amount or any part of that additional amount so due and payable by that person or any of those persons, approval has been given under subsection (7) for the payment of that amount or part by instalments.

(7) A person by whom any additional amount or part is payable under subsection (6) may, within 14 days after the service on him of notice of the reassessment by virtue of which the additional amount or part became so payable by him, apply to the Commissioner for approval to pay that amount or part by instalments, and if the Commissioner approves of the amount or part being so paid, it shall be due and payable by that person by such instalments payable at such times as are specified in the instrument of the Commissioner's approval.

(8) For the purposes of making the apportionment referred to in subsection (3) (b) or subsection (6) (b), where the licence has not ceased to be in force the period, in days, for which the licensee who was the holder of the licence at the time of the reassessment has held the licence together with the unexpired period, in days, of the licence shall be deemed to be the period for which that licensee held the licence.

(9) Any amount which is due and payable by any person under subsection (6) or (7) and which is unpaid may be recovered by the Commissioner, as a debt, in any court of competent jurisdiction.

Value of tobacco.

15. The Minister may from time to time determine the basis upon which and the means by which a value shall be attributed to tobacco sold during any period and for the purposes of this Act the value of that tobacco shall be the value so attributed

16.

16. (1) A licence shall expire, subject to this Act, on the twenty-seventh day of August next following the day on which the licence comes into force and may, from time to time, upon— Renewal of licences.

5 (a) application made to the Commissioner in a form approved by him;

(b) receipt by the Commissioner of the particulars, if any, required by him to be furnished under section 8; and

10 (c) payment of—

(i) the fee assessed by the Commissioner in accordance with section 12; or

(ii) where the applicant has made an election under section 13, the first instalment of that

15 fee,

be renewed for successive periods of one year expiring, subject to this Act, on the twenty-seventh day of August.

(2) Where the Commissioner refuses to renew a licence, he shall, in writing, inform the applicant of the reasons

20 for the refusal and refund to the applicant any fee paid by the applicant and referred to in subsection (1) (c).

17. (1) A licensee may, at any time, by notice in writing to the Commissioner, surrender his licence, and the licence shall thereupon cease to be in force. Surrender and termination of licences.

25 (2) A licence shall cease to be in force if—

(a) the applicant for the licence or renewal of the licence made an election under section 13 and an instalment that is due and payable under that section is unpaid; or

(b)

(b) any additional amount that is due and payable under section 14 is unpaid.

Transfer of licences.

18. (1) The holder of a licence and any person to whom that holder proposes to transfer the licence may, by application made in a form approved by the Commissioner and accompanied by a fee of $10, jointly request the Commissioner to enter in his records the transfer of the licence from the holder to that person on and from such day as may be specified in the application.

(2) The Commissioner shall comply with the request or refuse to comply with the request and, where he complies with the request, shall notify the persons making the request that he has made an entry in his records in accordance with the request.

(3) A transfer of a licence in accordance with a request made under subsection (1) shall, after the transfer is recorded in accordance with the request, take effect on and from the day specified in the request as the day upon which the licence is transferred.

(4) Any person who has made a request under subsection (1) may without fee inspect in the office of the Commissioner the entry in the records of the Commissioner of the transfer.

(5) Where the Commissioner refuses to comply with a request made under subsection (1) he shall, in writing, inform the persons making the request of the reasons for the refusal.

PART

PART IV.

APPEALS AND OBJECTIONS.

Appeal against refusal to grant licence.

19. (1) Where the Commissioner refuses to grant a licence to any person, that person may, in accordance with this section, appeal against the refusal to the District Court and, if the Court is satisfied that in all the circumstances of the case the licence ought to be granted, it may direct that, on payment of the licence fee or, where he has made an election under section 13, the first instalment of that fee, a licence be granted to that person to be in force on and from such day as is specified in the direction.

(2) The Commissioner shall give effect to any direction given by the District Court under subsection (1).

(3) Subject to this section, an appeal under this section shall be instituted, heard and determined in accordance with rules of court.

(4) The determination of the District Court on the hearing of an appeal under this section is final and without appeal.

Appeal against refusal to renew or transfer licence.

20. (1) Where the Commissioner refuses to renew a licence, the applicant for renewal may appeal against the refusal to the District Court.

(2) Where the Commissioner refuses to comply with a request made under section 18 (1), either of the persons making the request may appeal against the refusal to the District Court.

(3) The provisions of section 19 apply to and in respect of an appeal under this section as if it were an appeal against a refusal to grant a licence.

Objection to and appeal against assessment.

21. (1) A licensee who has paid the fee assessed in respect of his licence or, where he has made an election under section 13, the first instalment of that fee, may within one month after the grant or renewal of the licence object to the Commissioner against the assessment of the fee on the ground that the fee is excessive by reason that it was incorrectly assessed by the Commissioner under section 12 and on no other ground.

(2) The Commissioner shall, as soon as practicable, determine the objection and serve on the licensee notice of his determination.

(3) If the licensee is not satisfied with the determination of the Commissioner on his objection or if within one month after the objection was lodged the Commissioner has not given a determination with respect to the objection, the licensee may appeal to the Tribunal against the assessment of the fee on the ground referred to in subsection (1) and on no other ground.

(4) An appeal under subsection (3) may be lodged—

(a) where the licensee is not satisfied with the determination of the Commissioner on his objection, within one month after his being notified by the Commissioner of that determination; or

(b) where the Commissioner has not, within one month after the objection was lodged, given a determination with respect to the objection, within 2 months after the objection was lodged.

(5)

(5) The Tribunal shall hear and determine the appeal and assess the fee payable and the provisions of section 12 apply to the Tribunal's assessment of that fee in the same way as that section applies to the assessment of fees by the Commissioner.

(6) The decision of the Tribunal on any such appeal shall be conclusive.

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

(8) Where on an objection or appeal made under this section, the Commissioner or Tribunal upholds the objection or appeal, in whole or in part—

(a) the Commissioner shall, where the whole of the fee as determined on the objection or appeal has been paid, refund any amount overpaid to the person who paid the whole of the fee as originally assessed or the first instalment of the fee as originally assessed; or

(b) if in the application for the licence the applicant made an election under section 13 any instalment payable by virtue of that election has not become due and payable and—

(i) the applicant is, when the appeal is determined, the holder of the licence, each of the remaining instalments payable in respect of the licence shall be reduced by an amount that bears to the difference between the fee as originally assessed and the fee as determined on the objection or appeal the same proportion as one bears to the number of those remaining instalments; or

(ii)

(ii) during the period between the date on which the licence commenced to be in force and the date on which the objection or appeal was determined the licence was held by two or more persons, the Commissioner shall refund to that applicant an amount that bears to the difference between the fee as originally assessed and the fee as determined on the objection or appeal the same proportion as the period, in days, for which the licence was in force up to the date on which the objection or appeal was determined bears to the period, in days, from the date on which the licence commenced to be in force until (but not including) the twenty-eighth day of August next following and each of the remaining instalments payable in respect of the licence shall be reduced by an amount that bears to the balance of that difference the same proportion as one bears to the number of those remaining instalments.

(9) Section 13 (4) applies to the calculation of reductions under subsection (8) in the same way as it applies to the calculation of instalments under section 13 (3).

Objection to and appeal against reassessment.

22. A person on whom notice of the reassessment of a licence fee is served may, within 14 days after service of the notice, object to and appeal against the reassessment as if the reassessment were an assessment to or against which an objection or appeal may be made under section 21, and the provisions of section 21 apply accordingly.

PART

PART V.

MISCELLANEOUS.

Records to be kept.

23. (1) A person who carries on the business of selling tobacco shall keep such accounts, records, books and documents as may be prescribed containing such particulars as may be prescribed relating to tobacco and shall preserve each of those accounts, records, books and documents for a period of 5 years after the last entry was made in it.

Penalty : $1,000.

(2) This section does not apply so as to require the preservation of any accounts, records, books or documents—

(a) in respect of which the Commissioner has notified the person carrying on the business that preservation is not required; or

(b) of a company which has gone into liquidation and which has been finally dissolved.

Disclosure of information.

24. (1) Except as provided by subsection (2), a person shall not disclose any information or publish any record or part of any record obtained by him in connection with the administration or execution of this Act or the regulations, unless the disclosure or publication is made—

(a) with the consent of the person from whom the information or document was obtained;

(b) in connection with the administration or execution of this Act or the regulations; or

(c)

(c) for the purpose of any legal proceedings arising out of this Act or the regulations or of any report of any such proceedings.

Penalty : $2,500.

5 (2) The Commissioner may communicate any matter which comes to his knowledge in the exercise or performance of his powers, authorities, duties or functions under this Act or the regulations to an officer or authority engaged in administering or executing a law of another State 10 or a Territory of the Commonwealth relating to the licensing of persons to carry on the business of selling any tobacco.

(3) Nothing in subsection (1) prevents the disclosure of information or the publication of a document in accordance with any lawful requirement of the Commonwealth 15 Statistician.

25. (1) A person shall not—

False or misleading statements.

(a) make an application under this Act; or

(b) make an answer whether orally or in writing to a question put to him pursuant to this Act by the 20 Commissioner or by or before the Tribunal,

that is false or misleading in a material particular.

Penalty: $250 or imprisonment for 3 months, or both.

(2) A person shall not—

(a) in furnishing any information;

(b)

(b) in giving any notification; or

(c) in keeping any record,

pursuant to this Act, make any statement or representation that is false or misleading in a material particular.

5 Penalty: $250 or imprisonment for 3 months, or both.

(3) It is a defence to a charge under subsection (1) or (2) if it is proved that, at the time the application, answer, statement or representation was made, the defendant believed on reasonable grounds that it was neither false nor misleading.

10 **26.** A certificate signed by the Commissioner or the Assistant Commissioner certifying any one or more of the following matters, that is to say— Evidence.

(a) that a person specified therein was or was not an inspector at a time or during a period so specified;
15 or

(b) that a person so specified was or was not the holder of a licence at a time or during a period so specified,

is admissible in any proceedings under this Act and shall be prima facie evidence of the matters so certified.

20 **27.** (1) Proceedings for an offence against this Act or the regulations may only be taken in a summary manner before a stipendiary magistrate sitting in petty sessions. Proceedings on prosecutions.

(2) An information for an offence against this Act or the regulations may not be laid without the approval in
25 writing of the Minister.

(3) An information laid for an offence against this Act or the regulations shall, in the absence of evidence to the contrary, be deemed to have been laid with the approval in writing of the Minister.

Institution of prosecutions.

28. (1) An information for an offence against this Act or the regulations may be laid in the name of the Commissioner by any officer of the Public Service employed in the administration or execution of this Act and authorised to lay informations on behalf of the Commissioner, and any prosecution instituted in the name of the Commissioner shall, in the absence of evidence to the contrary, be deemed to have been instituted by his authority.

(2) An officer referred to in subsection (1) may appear on behalf of the Commissioner in any proceedings for an offence against this Act or the regulations.

Offences by bodies corporate.

29. Where a person convicted of an offence against this Act or the regulations is a body corporate, every person concerned in the management of that body corporate may be convicted of the like offence unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

Service of documents by the Commissioner.

30. (1) Any notice or other document required or authorised by this Act or the regulations to be served or given by the Commissioner shall be deemed to have been duly served or given—

(a) if delivered personally to, or if left at the last known place of abode or business in or out of the State of the person, on or to whom the notice or document is to be served or given; or

(b)

(b) if sent by prepaid letter post, addressed to the person on or to whom the notice or document is to be served or given at his last known place of business or abode in or out of the State.

5 (2) Service of a notice or document in accordance with subsection (1) (b) shall prima facie be deemed to have been effected at the time when it would be delivered in the ordinary course of post.

(3) The provisions of this section are in addition to 10 and not in derogation of the provisions of section 362 of the Companies Act, 1961.

31. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that is necessary or convenient to be prescribed for carrying 15 out or giving effect to this Act and, in particular, for or with respect to requiring persons, or persons belonging to classes of persons, specified in the regulations to make returns in such form and manner and containing such information relating to sales, purchases or stocks of, or dealings with, tobacco, as 20 is indicated by the regulations and to furnish the returns to the Commissioner within such time as may be so specified. Regulations.

(2) The regulations may impose a penalty not exceeding $500 for an offence arising under the regulations.

(3) Regulations may be made so as to apply dif- 25 ferently to or in respect of different classes of persons or different classes of tobacco or according to such other different factors as may be specified in the regulations.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1975
[40c]

PROOF

BUSINESS FRANCHISE LICENCES (TOBACCO) BILL, 1975

EXPLANATORY NOTE

THE object of this Bill is to prohibit any person from carrying on the business of selling, or selling, tobacco unless he is the holder of a licence, called a Business Franchise Licence (Tobacco), authorising him to do so.

The Bill contains the following provisions:—

Clause 1. Short title.

Clause 2. Division of the Bill into Parts.

Clause 3. Interpretation. "Relevant period" is defined as the period of one year ended on the 30th June preceding the 27th August preceding the day on which a licence takes effect.

Clause 4 provides that the proposed Act binds the Crown.

Clause 5 provides for the appointment of a Commissioner for Business Franchise Licences (Tobacco) and an Assistant Commissioner for Business Franchise Licences (Tobacco).

Clause 6 provides for the appointment of a Business Franchise Licence Fees (Tobacco) Appeals Tribunal.

Clause 7 provides for the appointment of inspectors, and confers on them, and inspectors under the Business Franchise Licences (Petroleum) Act, 1974, powers, authorities, duties and functions with respect to the administration and execution of the proposed Act, including a power of entry.

Clause 8 authorises the Commissioner to require a person dealing in tobacco to furnish particulars in relation to his dealings with tobacco.

Clause 9 protects the Commissioner and other persons from personal liability for things done bona fide in the administration of the proposed Act.

Clause 10 requires persons selling tobacco to hold a licence granted under the proposed Act.

Clause 11 provides for the grant of licences, and specifies the 2 classes of licences, namely, a wholesale tobacco merchant's licence and a retail tobacconist's licence.

Clause 12 sets out the basis on which licence fees are calculated.

Clause 12 (1) (a) provides that the fee for a wholesale tobacco merchant's licence is $100 plus 10 per centum of the value of tobacco sold by the applicant for the licence during the relevant period (defined in clause 3) in the course of tobacco wholesaling (other than tobacco sold to certain wholesale tobacco merchants).

Clause 12 (1) (b) provides that the fee for a retail tobacconist's licence is $10 plus 10 per centum of the value of tobacco sold by the applicant for the licence during the relevant period (defined in clause 3) in the course of tobacco retailing (other than tobacco purchased from the holder of a wholesale tobacco merchant's licence).

Clause 13 authorises the applicant for a licence to pay the licence fee by instalments if he so elects.

Clause 14 empowers the Commissioner to reassess a licence fee in certain circumstances.

Clause 15 enables the Minister to determine the basis on which the value of tobacco is to be determined.

Clause 16 provides for the renewal of licences.

Clause 17 (1) provides that a licence may be surrendered.

Clause 17 (2) provides that a licence ceases to be in force if any part of the licence fee due and payable is not paid.

Clause 18 relates to the transfer of licences.

Clauses 19 and 20 provide for a right of appeal to the District Court against the Commissioner's refusal to grant, renew or transfer a licence.

Clauses 21 and 22 provide for the making of objections to the Commissioner, and appeals to the Tribunal, concerning the incorrect assessment or reassessment of licence fees.

Clause 23 requires sellers of tobacco to keep records as required by the regulations.

Clause 24 prohibits a person gaining information during the administration of the proposed Act from disclosing the information, except in certain circumstances.

Clause 25 makes it an offence to make false or misleading statements for the purposes of the proposed Act.

Clause 26. Evidentiary provisions.

Clauses 27 and 28. Proceedings for offences.

Clause 29 makes a person concerned in the management of a body corporate liable to be convicted of the same offence as the body corporate.

Clause 30 relates to the service of documents by the Commissioner.

Clause 31. Regulations.

PROOF

No. , 1975.

A BILL

To make provision for the issue of licences to be called "Business Franchise Licences (Tobacco)"; to prohibit the sale of tobacco except by a person who is enfranchised to sell tobacco by such a licence; and to enact consequential or ancillary provisions.

[MR RUDDOCK—9 *October*, 1975.]

BE

99069 455—A

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Business Franchise Licences (Tobacco) Act, 1975". Short title.

2. This Act is divided as follows :— Division of Act.

PART I.—PRELIMINARY—*ss.* 1–4.

PART II.—ADMINISTRATION—*ss.* 5–9.

PART III.—LICENCES—*ss.* 10–18.

PART IV.—APPEALS AND OBJECTIONS—*ss.* 19–22.

PART V.—MISCELLANEOUS—*ss.* 23–31.

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires— Interpretation.

"Assistant Commissioner" means the Assistant Commissioner for Business Franchise Licences (Tobacco) referred to in section 5;

"Commissioner" means the Commissioner for Business Franchise Licences (Tobacco) referred to in section 5;

"inspector"

"inspector" means—

(a) an inspector referred to in section 7 (1); or

(b) an inspector referred to in section 18 (1) of the Business Franchise Licences (Petroleum) Act, 1974;

5

"licence" means a Business Franchise Licence (Tobacco) granted under section 11 and in force under this Act;

"licensee" means the holder for the time being of a licence;

10

"premises" includes any place, vehicle, vessel or aircraft;

"record" includes book, account, deed, writing or document and any other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means;

15

"regulations" means regulations under this Act;

"relevant period", in relation to an applicant for a licence or renewal of a licence, means the period of one year ended on the thirtieth day of June that last preceded the twenty-seventh day of August that last preceded the day on and from which the licence or the renewal, if granted, would be in force;

20

25

"retail tobacconist's licence" means a licence referred to in section 11 (2) (b) and in force under this Act;

"tobacco" means tobacco prepared for consumption, and includes any mixture that contains tobacco and is intended to be consumed;

"tobacco

"tobacco retailing" means the business of selling tobacco by retail in the course of intrastate trade either alone or in conjunction with any other merchandise, and includes that business carried on as part of or in conjunction with any other business;

"tobacco wholesaling" means the business of selling tobacco in the course of intrastate trade for the purposes of resale either alone or in conjunction with any other merchandise, and includes that business carried on as part of or in conjunction with any other business;

"Tribunal" means the Business Franchise Licence Fees (Tobacco) Appeals Tribunal referred to in section 6;

"value", in relation to any tobacco sold, means the value attributed to that tobacco pursuant to section 15;

"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, device or contrivance of a coin, token or similar object;

"wholesale tobacco merchant's licence" means a licence referred to in section 11 (2) (a) and in force under this Act.

(2) The presence on any premises of a vending machine from which tobacco may be obtained shall be deemed to constitute the carrying on of tobacco retailing on those premises by the occupier thereof, unless a licensee is carrying on tobacco retailing by means of that machine in accordance with his licence.

(3) A reference in this Act to—

(a) a person who sells tobacco; or

(b) a person who carries on the business of selling tobacco,

5 does not extend to a person who, as an agent or employee of a person referred to in paragraph (a) or (b), sells tobacco or carries on such a business.

(4) A reference in this Act to intrastate trade is a reference to trade carried on in the State which is not trade 10 or commerce among the States within the meaning of section 92 of the Constitution of the Commonwealth.

(5) A reference in this Act to tobacco includes a reference to any wrapping, package or container in which the tobacco is sold, purchased, received or handled.

15 (6) A reference in this Act to a licensee or the holder of a licence includes a reference to a person to whom the licence is transferred in accordance with section 18.

(7) Where pursuant to a sale made outside the State tobacco is delivered in the course of intrastate trade within 20 the State, that sale shall, for the purposes of this Act, be deemed to have been made within the State.

4. This Act binds the Crown. Crown bound.

PART

PART II.

ADMINISTRATION.

5. (1) There shall be a Commissioner for Business Franchise Licences (Tobacco) and an Assistant Commissioner for Business Franchise Licences (Tobacco), each of whom shall be appointed under, and shall hold office subject to, the Public Service Act, 1902.

Commissioner and Assistant Commissioner for Business Franchise Licences (Tobacco).

(2) The Assistant Commissioner shall have and may exercise or perform—

(a) where the Commissioner is absent from office or the office of the Commissioner is vacant, all the powers, authorities, duties and functions conferred or imposed on the Commissioner by this Act or the regulations; or

(b) where the Commissioner has directed the Assistant Commissioner to exercise or perform any of those powers, authorities, duties or functions, such of those powers, authorities, duties or functions as are specified in the direction.

(3) No person shall be concerned to inquire whether the Assistant Commissioner is entitled to exercise or perform the powers, authorities, duties and functions conferred or imposed on the Commissioner by this Act or the regulations.

(4) Until a person is appointed as Commissioner, the person for the time being holding office as Commissioner for Business Franchise Licences (Petroleum) shall also hold office as Commissioner for Business Franchise Licences (Tobacco).

(5) Until a person is appointed as Assistant Commissioner, the person for the time being holding office as Assistant Commissioner for Business Franchise Licences (Petroleum) shall also hold office as Assistant Commissioner for Business Franchise Licences (Tobacco).

Business Franchise Licence Fees (Tobacco) Appeals Tribunal.

6. (1) There shall be a tribunal to be called the "Business Franchise Licence Fees (Tobacco) Appeals Tribunal" which shall consist of a person appointed by the Governor on the recommendation of the Minister.

(2) A person shall not be appointed under subsection (1) unless he is under the age of 70 years.

(3) The provisions of the Public Service Act, 1902, do not apply to or in respect of a person referred to in subsection (1) or to such a person in his capacity as the Tribunal.

(4) Subject to section 30 (b) of the Interpretation Act, 1897, the person appointed under subsection (1) shall hold office for such period not exceeding 3 years as is specified in the instrument of his appointment or until he attains the age of 70 years whichever first happens.

(5) The person so appointed is entitled to be paid such fees and allowances as the Minister may from time to time determine.

(6) Until a person is so appointed, the person for the time being holding office as the Business Franchise Licence Fees (Petroleum) Appeals Tribunal shall also hold office as the Business Franchise Licence Fees (Tobacco) Appeals Tribunal.

7. (1) The Governor may, under and subject to the Public Service Act, 1902, appoint inspectors for the purposes of this Act. Inspectors.

(2) For the purposes of this Act, an inspector, on production of written evidence of his appointment as an inspector, may at any reasonable time and with such assistants as he considers necessary—

(a) enter and remain in any premises at which, or at which he reasonably suspects, the business of processing, packaging, distributing, selling or purchasing tobacco is carried on or which is, or which he reasonably suspects is, being used for the storage or custody of any record relating to the processing, packaging, distribution, sale or purchase of tobacco;

(b) request any person found in or on any premises which, or which he reasonably suspects, are used for the processing, packaging, distribution, sale or purchase of tobacco or in or on which, or in or on which he reasonably suspects, tobacco is stored for sale—

(i) to produce any record which relates to, or which the inspector reasonably suspects relates to, the processing, packaging, distribution, sale or purchase of tobacco and which at the time of the request is in the possession or under the control of that person;

(ii) to produce a statement, written in the English language, setting out the particulars contained in any such record that are not written or not written in the English language; and

(iii) to answer any question with respect to any such record or statement or the processing, packaging, distribution, sale or purchase of any tobacco; or

(c) inspect, or take copies of, or extracts or notes from, any record or statement referred to in this subsection.

(3) A person shall not—

(a) prevent or attempt to prevent an inspector from exercising any power conferred on him by subsection (2);

(b) hinder or obstruct any inspector in the exercise of any such power; or

(c) fail to comply with a request of an inspector under subsection (2) (b).

Penalty: $250 or imprisonment for 3 months, or both, and in the case of any offence under paragraph (c) an additional penalty not exceeding $50 for every day on which the offence continues.

(4) A person is not guilty of an offence under subsection (3) (c) by reason of his failure to answer any question referred to in subsection (2) (b) (iii) if he proves to the satisfaction of the court that he did not know, and could not with reasonable diligence ascertain, the answer to the question.

(5)

(5) A person is not excused from answering any question if required to do so under subsection (2) (b) on the ground that the answer might tend to criminate him or make him liable to a penalty but the information furnished by him shall not be admissible against him in any proceedings, civil or criminal, except in proceedings for an offence under subsection (3) or section 25.

(6) Where an answer to a question referred to in subsection (2) (b) (iii) or any information whatever is given to an inspector by an officer of a corporation within the meaning of the Companies Act, 1961, which is carrying on or has carried on the business of selling tobacco, the answer and information are, for the purposes of any proceedings against the corporation under any of the provisions of this Act, binding upon and admissible in evidence against the corporation unless it is proved that the answer or information was given in relation to a matter in respect of which the officer had no authority to bind the corporation.

(7) The provisions of subsection (6) are in addition to and not in derogation of any rule of law relating to the binding effect and admissibility of statements made by any officer or employee of a corporation.

8. (1) In this section, a reference to dealing with tobacco includes a reference to processing, packaging, distributing, selling and purchasing tobacco

Particulars of dealings with tobacco.

(2) The Commissioner may, by instrument in writing, require—

(a) a person who is carrying on, or has carried on, or is or was concerned in, a business of dealing with tobacco; or

(b)

(b) a person who, as agent or employee of a person referred to in paragraph (a), has or has had duties or provides or has provided services in connection with a business so referred to,

5 to furnish to the Commissioner in writing, within such period as is specified in the instrument or such further period as the Commissioner may allow—

(c) a statement of such particulars with respect to that tobacco, or any of it, as are so specified, not being
10 particulars relating to any period after the date of the requirement; and

(d) if the Commissioner thinks fit, a certificate signed by a person registered as a public accountant under the Public Accountants Registration Act, 1945,
15 certifying that the statement is correct.

(3) A person shall not fail to comply with any requirement made of him under subsection (2).

Penalty : $2,500.

(4) A person is not guilty of an offence under sub-
20 section (3) if the court hearing the charge is satisfied—

(a) that the defendant could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates; or

(b) that the defendant complied with that requirement
25 to the extent of his ability to do so.

9. Any matter or thing done by the Commissioner, the Assistant Commissioner, an inspector or any other person bona fide for the purpose or purported purpose of administering or executing this Act shall not subject him personally to any action, liability, claim or demand.

Protection for Commissioner, etc.

PART III.

LICENCES.

10. (1) On or after 28th November, 1975, a person shall not carry on tobacco wholesaling unless he is the holder of a wholesale tobacco merchant's licence.

Offences relating to sale of tobacco.

Penalty : $500 for every day on which the person carries on the business.

(2) On or after 28th August, 1976, a person shall not carry on tobacco retailing unless he is the holder of a retail tobacconist's licence.

Penalty : $250 for every day on which the person carries on the business.

(3) On or after 28th August, 1976, a person shall not sell tobacco in the course of intrastate trade unless he is the holder of a licence.

Penalty : $250.

(4) A licensee shall not carry on the business of selling tobacco on premises that are not specified in the licence as premises to be used for that business.

Penalty : $250.

5 (5) Where tobacco is sold on any premises otherwise than by a licensee, the occupier of the premises shall be deemed to have sold the tobacco unless it is shown—

(a) that the sale took place without his knowledge or connivance; and

10 (b) that he took all such steps as are reasonable in the circumstances to prevent the sale being made.

11. (1) The Commissioner shall— Issue of licence.

(a) upon application made therefor in a form approved by him;

15 (b) on receipt of the particulars, if any, required by him to be furnished by the applicant under section 8; and

(c) upon payment of—

(i) the fee assessed by the Commissioner in
20 accordance with section 12; or

(ii) where the applicant has made an election under section 13, the first instalment of that fee,

grant

grant to the applicant a Business Franchise Licence (Tobacco) or refuse to grant to the applicant such a licence.

(2) A licence shall be either—

(a) a wholesale tobacco merchant's licence, which authorises the licensee to carry on tobacco wholesaling at the premises specified in the licence; or

(b) a retail tobacconist's licence, which authorises the licensee to carry on tobacco retailing at the premises specified in the licence.

(3) The Commissioner shall, on the grant of a licence, cause the premises which are to be used for, or in connection with, the business in respect of which the licence is granted to be specified in the licence and shall, upon receipt at any time of a request in a form approved by him and payment of the prescribed fee (if any) by the holder of the licence, in accordance with the request, add to, substitute for, or delete from, premises so specified, such premises as are specified in the request.

(4) A licence shall be in force on and from the date specified in the licence as the date on which the licence shall come into force.

(5) Where the Commissioner refuses to grant a licence, he shall, in writing, inform the applicant of the reasons for the refusal and refund to the applicant any fee paid by the applicant and referred to in subsection (1) (c).

12. (1) The fees to be paid for licences shall be as follows :— Fees.

(a) for a wholesale tobacco merchant's licence—

(i) which is in force for any period before 28th August, 1976—a fee of $100 together with an amount equal to 10 per centum of the value of tobacco sold by the applicant in the course of tobacco wholesaling during the relevant period (other than tobacco sold to a person who was in the opinion of the Commissioner engaged principally in tobacco wholesaling) ; or

(ii) which is in force for any period after 27th August, 1976—a fee of $100 together with an amount equal to 10 per centum of the value of tobacco sold by the applicant in the course of tobacco wholesaling during the relevant period (other than tobacco sold to the holder of a wholesale tobacco merchant's licence) ;

(b) for a retail tobacconist's licence—a fee of $10 together with an amount equal to 10 per centum of the value of tobacco sold by the applicant in the course of tobacco retailing during the relevant period (other than tobacco purchased in the course of intrastate trade from the holder of a wholesale tobacco merchant's licence).

(2) Where an application is made for a licence and the applicant did not carry on the business in respect of which the application for the licence was made during the whole of the relevant period, the fee payable by the applicant in respect

of

of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard to the tobacco that in the opinion of the Commissioner would have been sold by the applicant had he been carrying on that business during the whole of that period, and the relevant principles of determining fees under subsection (1).

(3) Where an application is made for a licence and the applicant carried on the business in respect of which the application for the licence was made during the whole of the relevant period and the Commissioner is of the opinion that he is unable for any reason accurately to assess the fee payable by the applicant under subsection (1), the fee payable by the applicant in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard to the tobacco that in the opinion of the Commissioner was sold by the applicant during that period, and the relevant principles of determining fees under subsection (1).

(4) The value of any tobacco sold for delivery and consumption outside the State shall be disregarded in determining fees payable under this section.

(5) For the purposes of this section, a person who holds a wholesale tobacco merchant's licence from any day (referred to in this subsection as "the effective day") on or after 28th November, 1975, to 27th August, 1976, shall be deemed to have been the holder of such a licence from 1st July, 1975, to the effective day.

(6) Notwithstanding any other provision of this section, where a licence is to be in force for a period of 11 months or less, the amount of the fee that, but for this subsection, would be payable shall be reduced, where the licence is to be in force for a period of—

(a) 11 months or less but more than 10 months—by one-twelfth;

(b) 10 months or less but more than 9 months—by two-twelfths;

(c) 9 months or less but more than 8 months—by three-twelfths;

(d) 8 months or less but more than 7 months—by four-twelfths;

(e) 7 months or less but more than 6 months—by five-twelfths;

(f) 6 months or less but more than 5 months—by six-twelfths;

(g) 5 months or less but more than 4 months—by seven-twelfths;

(h) 4 months or less but more than 3 months—by eight-twelfths;

(i) 3 months or less but more than 2 months—by nine-twelfths;

(j) 2 months or less but more than 1 month—by ten-twelfths; or

(k) 1 month or less—by eleven-twelfths.

(7) The Commissioner shall not, in assessing a fee under subsection (2), have regard to any particulars furnished pursuant to a requirement under section 8.

13. (1) In this section, "prescribed date" means 28th September, 28th October, 28th November, 28th December, 28th January, 28th February, 28th March, 28th April, 28th May, 28th June or 28th July.

Payment of fees by instalments.

5 (2) An applicant for a licence which is to be in force for more than 3 months, or a renewal of a licence, may, in his application, if the licence fee payable in respect of that licence is in excess of $120, elect to pay the licence fee by instalments in accordance with this section.

10 (3) Where the licence—

(a) is to be in force for a period of more than 11 months —the licence fee may be paid by 12 equal instalments, the first instalment being due and payable before the grant or renewal of the licence and each
15 of the remaining 11 instalments being due and payable respectively on the following 11 prescribed dates (commencing with 28th September) next following the date of issue or renewal of the licence;

(b) is to be in force for a period of more than 10
20 months but not more than 11 months—the licence fee may be paid by 11 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 10 instalments being due and payable respectively on the
25 following 10 prescribed dates (commencing with 28th October) next following the date of issue of the licence;

(c)

(c) is to be in force for a period of more than 9 months but not more than 10 months—the licence fee may be paid by 10 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 9 instalments being due and payable respectively on the following 9 prescribed dates (commencing with 28th November) next following the date of issue of the licence;

(d) is to be in force for a period of more than 8 months but not more than 9 months—the licence fee may be paid by 9 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 8 instalments being due and payable respectively on the following 8 prescribed dates (commencing with 28th December) next following the date of issue of the licence;

(e) is to be in force for a period of more than 7 months but not more than 8 months—the licence fee may be paid by 8 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 7 instalments being due and payable respectively on the following 7 prescribed dates (commencing with 28th January) next following the date of issue of the licence;

(f) is to be in force for a period of more than 6 months but not more than 7 months—the licence fee may be paid by 7 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 6 instalments being due and payable respectively on the following 6 prescribed dates (commencing with 28th February) next following the date of issue of the licence;

(g) is to be in force for a period of more than 5 months but not more than 6 months—the licence fee may be paid by 6 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 5 instalments being due and payable respectively on the following 5 prescribed dates (commencing with 28th March) next following the date of issue of the licence;

(h) is to be in force for a period of more than 4 months but not more than 5 months—the licence fee may be paid by 5 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 4 instalments being due and payable respectively on the following 4 prescribed dates (commencing with 28th April) next following the date of issue of the licence;

(i) is to be in force for a period of more than 3 months but not more than 4 months—the licence fee may be paid by 4 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 3 instalments being due and payable respectively on the following 3 prescribed dates (commencing with 28th May) next following the date of issue of the licence;

(j) is to be in force for a period of more than 2 months but not more than 3 months—the licence fee may be paid by 3 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 2 instalments being due and payable respectively on the following 2 prescribed dates (commencing with 28th June) next following the date of issue of the licence; or

(k) is to be in force for a period of more than 1 month but not more than 2 months—the licence fee may be paid by 2 equal instalments, the first instalment being due and payable before the grant of the licence and the remaining instalment being due and payable on 28th July next following the date of issue of the licence.

(4) For the purpose of calculating the amount of instalments under subsection (3), where the quotient obtained by dividing the licence fee by the appropriate number of instalments results in a remaining fraction of a cent, that fraction shall be ignored.

(5) If an instalment payable in respect of a licence is not paid on or before the day on which it is due and payable under subsection (3), the balance of the licence fee becomes due and payable immediately.

(6) The balance of the licence fee in respect of a licence becomes due and payable upon the surrender of the licence.

(7) The whole or any part of an amount which is due and payable by any person under this section and which is unpaid may be recovered by the Commissioner, as a debt, in any court of competent jurisdiction.

Adjustment of fee.

14. (1) Where, in the opinion of the Commissioner, the fee assessed in respect of any licence was assessed incorrectly, the Commissioner may at any time reassess the fee in accordance with the principles of assessing fees under section 12.

(2) Where on a reassessment of a fee under subsection (1) the fee is reduced, the amount overpaid shall be refunded by the Commissioner in accordance with the provisions of subsections (3) and (4).

5 (3) Where—

(a) during the whole of the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held
10 by one person, the amount to be refunded shall be refunded to that person; or

(b) during the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has
15 been or was in force, it was held by two or more persons, the amount to be refunded shall be refunded to those persons in proportion to the periods, in days, for which they held the licence.

(4) Notwithstanding subsection (3), in a case
20 where—

(a) the licence has not ceased to be in force;

(b) in the application for the licence the applicant made an election under section 13;

(c) any instalment payable by virtue of that election has
25 not become due and payable; and

(d) the instalments paid do not exceed the amount of the fee as reassessed,

a refund shall not be made to the holder of the licence in accordance with subsection (3) (a) or (b) but in that case each of the remaining instalments payable in respect of the licence shall be reduced by an amount that bears to the amount that but for this subsection would be required to be refunded to that holder under subsection (3) the same proportion as one bears to the number of those remaining instalments.

(5) Where on a reassessment of a fee under subsection (1) the fee is increased, the additional amount payable by virtue of the reassessment shall be due and payable in accordance with the provisions of subsections (6) and (7).

(6) For the purpose of subsection (5), where—

(a) during the whole of the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by one person, the additional amount shall be due and payable within 14 days after notice of the reassessment is served on that person; or

(b) during the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by two or more persons, the additional amount shall be due and payable, within 14 days after notice of the reassessment is served on them, by those persons in proportion to the periods, in days, for which they held the licence,

unless,

unless, in respect of that additional amount or any part of that additional amount so due and payable by that person or any of those persons, approval has been given under subsection (7) for the payment of that amount or part by instalments.

(7) A person by whom any additional amount or part is payable under subsection (6) may, within 14 days after the service on him of notice of the reassessment by virtue of which the additional amount or part became so payable by him, apply to the Commissioner for approval to pay that amount or part by instalments, and if the Commissioner approves of the amount or part being so paid, it shall be due and payable by that person by such instalments payable at such times as are specified in the instrument of the Commissioner's approval.

(8) For the purposes of making the apportionment referred to in subsection (3) (b) or subsection (6) (b), where the licence has not ceased to be in force the period, in days, for which the licensee who was the holder of the licence at the time of the reassessment has held the licence together with the unexpired period, in days, of the licence shall be deemed to be the period for which that licensee held the licence.

(9) Any amount which is due and payable by any person under subsection (6) or (7) and which is unpaid may be recovered by the Commissioner, as a debt, in any court of competent jurisdiction.

Value of tobacco.

15. The Minister may from time to time determine the basis upon which and the means by which a value shall be attributed to tobacco sold during any period and for the purposes of this Act the value of that tobacco shall be the value so attributed

16.

16. (1) A licence shall expire, subject to this Act, on the twenty-seventh day of August next following the day on which the licence comes into force and may, from time to time, upon— Renewal of licences.

5 (a) application made to the Commissioner in a form approved by him;

(b) receipt by the Commissioner of the particulars, if any, required by him to be furnished under section 8; and

10 (c) payment of—

(i) the fee assessed by the Commissioner in accordance with section 12; or

(ii) where the applicant has made an election under section 13, the first instalment of that

15 fee,

be renewed for successive periods of one year expiring, subject to this Act, on the twenty-seventh day of August.

(2) Where the Commissioner refuses to renew a licence, he shall, in writing, inform the applicant of the reasons

20 for the refusal and refund to the applicant any fee paid by the applicant and referred to in subsection (1) (c).

17. (1) A licensee may, at any time, by notice in writing to the Commissioner, surrender his licence, and the licence shall thereupon cease to be in force. Surrender and termination of licences.

25 (2) A licence shall cease to be in force if—

(a) the applicant for the licence or renewal of the licence made an election under section 13 and an instalment that is due and payable under that section is unpaid; or

(b)

(b) any additional amount that is due and payable under section 14 is unpaid.

18. (1) The holder of a licence and any person to whom that holder proposes to transfer the licence may, by application made in a form approved by the Commissioner and accompanied by a fee of $10, jointly request the Commissioner to enter in his records the transfer of the licence from the holder to that person on and from such day as may be specified in the application. Transfer of licences.

(2) The Commissioner shall comply with the request or refuse to comply with the request and, where he complies with the request, shall notify the persons making the request that he has made an entry in his records in accordance with the request.

(3) A transfer of a licence in accordance with a request made under subsection (1) shall, after the transfer is recorded in accordance with the request, take effect on and from the day specified in the request as the day upon which the licence is transferred.

(4) Any person who has made a request under subsection (1) may without fee inspect in the office of the Commissioner the entry in the records of the Commissioner of the transfer.

(5) Where the Commissioner refuses to comply with a request made under subsection (1) he shall, in writing, inform the persons making the request of the reasons for the refusal.

PART

PART IV.

APPEALS AND OBJECTIONS.

Appeal against refusal to grant licence.

19. (1) Where the Commissioner refuses to grant a licence to any person, that person may, in accordance with this section, appeal against the refusal to the District Court and, if the Court is satisfied that in all the circumstances of the case the licence ought to be granted, it may direct that, on payment of the licence fee or, where he has made an election under section 13, the first instalment of that fee, a licence be granted to that person to be in force on and from such day as is specified in the direction.

(2) The Commissioner shall give effect to any direction given by the District Court under subsection (1).

(3) Subject to this section, an appeal under this section shall be instituted, heard and determined in accordance with rules of court.

(4) The determination of the District Court on the hearing of an appeal under this section is final and without appeal.

Appeal against refusal to renew or transfer licence.

20. (1) Where the Commissioner refuses to renew a licence, the applicant for renewal may appeal against the refusal to the District Court.

(2) Where the Commissioner refuses to comply with a request made under section 18 (1), either of the persons making the request may appeal against the refusal to the District Court.

(3) The provisions of section 19 apply to and in respect of an appeal under this section as if it were an appeal against a refusal to grant a licence.

Objection to and appeal against assessment.

21. (1) A licensee who has paid the fee assessed in respect of his licence or, where he has made an election under section 13, the first instalment of that fee, may within one month after the grant or renewal of the licence object to the Commissioner against the assessment of the fee on the ground that the fee is excessive by reason that it was incorrectly assessed by the Commissioner under section 12 and on no other ground.

(2) The Commissioner shall, as soon as practicable, determine the objection and serve on the licensee notice of his determination.

(3) If the licensee is not satisfied with the determination of the Commissioner on his objection or if within one month after the objection was lodged the Commissioner has not given a determination with respect to the objection, the licensee may appeal to the Tribunal against the assessment of the fee on the ground referred to in subsection (1) and on no other ground.

(4) An appeal under subsection (3) may be lodged—

(a) where the licensee is not satisfied with the determination of the Commissioner on his objection, within one month after his being notified by the Commissioner of that determination; or

(b) where the Commissioner has not, within one month after the objection was lodged, given a determination with respect to the objection, within 2 months after the objection was lodged.

(5)

(5) The Tribunal shall hear and determine the appeal and assess the fee payable and the provisions of section 12 apply to the Tribunal's assessment of that fee in the same way as that section applies to the assessment of fees by the Commissioner.

(6) The decision of the Tribunal on any such appeal shall be conclusive.

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

(8) Where on an objection or appeal made under this section, the Commissioner or Tribunal upholds the objection or appeal, in whole or in part—

(a) the Commissioner shall, where the whole of the fee as determined on the objection or appeal has been paid, refund any amount overpaid to the person who paid the whole of the fee as originally assessed or the first instalment of the fee as originally assessed; or

(b) if in the application for the licence the applicant made an election under section 13 any instalment payable by virtue of that election has not become due and payable and—

(i) the applicant is, when the appeal is determined, the holder of the licence, each of the remaining instalments payable in respect of the licence shall be reduced by an amount that bears to the difference between the fee as originally assessed and the fee as determined on the objection or appeal the same proportion as one bears to the number of those remaining instalments; or

(ii)

(ii) during the period between the date on which the licence commenced to be in force and the date on which the objection or appeal was determined the licence was held by two or more persons, the Commissioner shall refund to that applicant an amount that bears to the difference between the fee as originally assessed and the fee as determined on the objection or appeal the same proportion as the period, in days, for which the licence was in force up to the date on which the objection or appeal was determined bears to the period, in days, from the date on which the licence commenced to be in force until (but not including) the twenty-eighth day of August next following and each of the remaining instalments payable in respect of the licence shall be reduced by an amount that bears to the balance of that difference the same proportion as one bears to the number of those remaining instalments.

(9) Section 13 (4) applies to the calculation of reductions under subsection (8) in the same way as it applies to the calculation of instalments under section 13 (3).

Objection to and appeal against reassessment.

22. A person on whom notice of the reassessment of a licence fee is served may, within 14 days after service of the notice, object to and appeal against the reassessment as if the reassessment were an assessment to or against which an objection or appeal may be made under section 21, and the provisions of section 21 apply accordingly.

PART

PART V.

MISCELLANEOUS.

Records to be kept.

23. (1) A person who carries on the business of selling tobacco shall keep such accounts, records, books and documents as may be prescribed containing such particulars as may be prescribed relating to tobacco and shall preserve each of those accounts, records, books and documents for a period of 5 years after the last entry was made in it.

Penalty : $1,000.

(2) This section does not apply so as to require the preservation of any accounts, records, books or documents—

(a) in respect of which the Commissioner has notified the person carrying on the business that preservation is not required; or

(b) of a company which has gone into liquidation and which has been finally dissolved.

Disclosure of information.

24. (1) Except as provided by subsection (2), a person shall not disclose any information or publish any record or part of any record obtained by him in connection with the administration or execution of this Act or the regulations, unless the disclosure or publication is made—

(a) with the consent of the person from whom the information or document was obtained;

(b) in connection with the administration or execution of this Act or the regulations; or

(c)

(c) for the purpose of any legal proceedings arising out of this Act or the regulations or of any report of any such proceedings.

Penalty : $2,500.

5 (2) The Commissioner may communicate any matter which comes to his knowledge in the exercise or performance of his powers, authorities, duties or functions under this Act or the regulations to an officer or authority engaged in administering or executing a law of another State 10 or a Territory of the Commonwealth relating to the licensing of persons to carry on the business of selling any tobacco.

(3) Nothing in subsection (1) prevents the disclosure of information or the publication of a document in accordance with any lawful requirement of the Commonwealth 15 Statistician.

25. (1) A person shall not—

False or misleading statements.

(a) make an application under this Act; or

(b) make an answer whether orally or in writing to a question put to him pursuant to this Act by the 20 Commissioner or by or before the Tribunal,

that is false or misleading in a material particular.

Penalty: $250 or imprisonment for 3 months, or both.

(2) A person shall not—

(a) in furnishing any information;

(b)

(b) in giving any notification; or

(c) in keeping any record,

pursuant to this Act, make any statement or representation that is false or misleading in a material particular.

5 Penalty: $250 or imprisonment for 3 months, or both.

(3) It is a defence to a charge under subsection (1) or (2) if it is proved that, at the time the application, answer, statement or representation was made, the defendant believed on reasonable grounds that it was neither false nor misleading.

10 **26.** A certificate signed by the Commissioner or the Assistant Commissioner certifying any one or more of the following matters, that is to say— Evidence.

(a) that a person specified therein was or was not an inspector at a time or during a period so specified;
15 or

(b) that a person so specified was or was not the holder of a licence at a time or during a period so specified,

is admissible in any proceedings under this Act and shall be prima facie evidence of the matters so certified.

20 **27.** (1) Proceedings for an offence against this Act or the regulations may only be taken in a summary manner before a stipendiary magistrate sitting in petty sessions. Proceedings on prosecutions.

(2) An information for an offence against this Act or the regulations may not be laid without the approval in
25 writing of the Minister.

(3) An information laid for an offence against this Act or the regulations shall, in the absence of evidence to the contrary, be deemed to have been laid with the approval in writing of the Minister.

Institution of prosecutions.

5 **28.** (1) An information for an offence against this Act or the regulations may be laid in the name of the Commissioner by any officer of the Public Service employed in the administration or execution of this Act and authorised to lay informations on behalf of the Commissioner, and any prosecu-
10 tion instituted in the name of the Commissioner shall, in the absence of evidence to the contrary, be deemed to have been instituted by his authority.

(2) An officer referred to in subsection (1) may appear on behalf of the Commissioner in any proceedings for
15 an offence against this Act or the regulations.

Offences by bodies corporate.

29. Where a person convicted of an offence against this Act or the regulations is a body corporate, every person concerned in the management of that body corporate may be convicted of the like offence unless he proves that the act or
20 omission constituting the offence took place without his knowledge or consent.

Service of documents by the Commissioner.

30. (1) Any notice or other document required or authorised by this Act or the regulations to be served or given by the Commissioner shall be deemed to have been duly
25 served or given—

(a) if delivered personally to, or if left at the last known place of abode or business in or out of the State of the person, on or to whom the notice or document is to be served or given; or

(b)

(b) if sent by prepaid letter post, addressed to the person on or to whom the notice or document is to be served or given at his last known place of business or abode in or out of the State.

5 (2) Service of a notice or document in accordance with subsection (1) (b) shall prima facie be deemed to have been effected at the time when it would be delivered in the ordinary course of post.

(3) The provisions of this section are in addition to 10 and not in derogation of the provisions of section 362 of the Companies Act, 1961.

31. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that is necessary or convenient to be prescribed for carrying 15 out or giving effect to this Act and, in particular, for or with respect to requiring persons, or persons belonging to classes of persons, specified in the regulations to make returns in such form and manner and containing such information relating to sales, purchases or stocks of, or dealings with, tobacco, as 20 is indicated by the regulations and to furnish the returns to the Commissioner within such time as may be so specified. Regulations.

(2) The regulations may impose a penalty not exceeding $500 for an offence arising under the regulations.

(3) Regulations may be made so as to apply dif- 25 ferently to or in respect of different classes of persons or different classes of tobacco or according to such other different factors as may be specified in the regulations.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1975

New South Wales

ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

* *

Act No. 63, 1975.

An Act to make provision for the issue of licences to be called "Business Franchise Licences (Tobacco)"; to prohibit the sale of tobacco except by a person who is enfranchised to sell tobacco by such a licence; and to enact consequential or ancillary provisions. [Assented to, 23rd October, 1975.]

BE

P 1755 [40c]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "Business Franchise Licences (Tobacco) Act, 1975".

Division of Act.

2. This Act is divided as follows :—

PART I.—PRELIMINARY—*ss.* 1–4.

PART II.—ADMINISTRATION—*ss.* 5–9.

PART III.—LICENCES—*ss.* 10–18.

PART IV.—APPEALS AND OBJECTIONS—*ss.* 19–22.

PART V.—MISCELLANEOUS—*ss.* 23–31.

Interpretation.

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Assistant Commissioner" means the Assistant Commissioner for Business Franchise Licences (Tobacco) referred to in section 5;

"Commissioner" means the Commissioner for Business Franchise Licences (Tobacco) referred to in section 5;

"inspector"

"inspector" means—

(a) an inspector referred to in section 7 (1); or

(b) an inspector referred to in section 18 (1) of the Business Franchise Licences (Petroleum) Act, 1974;

"licence" means a Business Franchise Licence (Tobacco) granted under section 11 and in force under this Act;

"licensee" means the holder for the time being of a licence;

"premises" includes any place, vehicle, vessel or aircraft;

"record" includes book, account, deed, writing or document and any other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means;

"regulations" means regulations under this Act;

"relevant period", in relation to an applicant for a licence or renewal of a licence, means the period of one year ended on the thirtieth day of June that last preceded the twenty-seventh day of August that last preceded the day on and from which the licence or the renewal, if granted, would be in force;

"retail tobacconist's licence" means a licence referred to in section 11 (2) (b) and in force under this Act;

"tobacco" means tobacco prepared for consumption, and includes any mixture that contains tobacco and is intended to be consumed;

"tobacco

"tobacco retailing" means the business of selling tobacco by retail in the course of intrastate trade either alone or in conjunction with any other merchandise, and includes that business carried on as part of or in conjunction with any other business;

"tobacco wholesaling" means the business of selling tobacco in the course of intrastate trade for the purposes of resale either alone or in conjunction with any other merchandise, and includes that business carried on as part of or in conjunction with any other business;

"Tribunal" means the Business Franchise Licence Fees (Tobacco) Appeals Tribunal referred to in section 6;

"value", in relation to any tobacco sold, means the value attributed to that tobacco pursuant to section 15;

"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, device or contrivance of a coin, token or similar object;

"wholesale tobacco merchant's licence" means a licence referred to in section 11 (2) (a) and in force under this Act.

(2) The presence on any premises of a vending machine from which tobacco may be obtained shall be deemed to constitute the carrying on of tobacco retailing on those premises by the occupier thereof, unless a licensee is carrying on tobacco retailing by means of that machine in accordance with his licence.

(3) A reference in this Act to—

(a) a person who sells tobacco; or

(b) a person who carries on the business of selling tobacco,

does not extend to a person who, as an agent or employee of a person referred to in paragraph (a) or (b), sells tobacco or carries on such a business.

(4) A reference in this Act to intrastate trade is a reference to trade carried on in the State which is not trade or commerce among the States within the meaning of section 92 of the Constitution of the Commonwealth.

(5) A reference in this Act to tobacco includes a reference to any wrapping, package or container in which the tobacco is sold, purchased, received or handled.

(6) A reference in this Act to a licensee or the holder of a licence includes a reference to a person to whom the licence is transferred in accordance with section 18.

(7) Where pursuant to a sale made outside the State tobacco is delivered in the course of intrastate trade within the State, that sale shall, for the purposes of this Act, be deemed to have been made within the State.

4. This Act binds the Crown. Crown bound.

PART

PART II.

ADMINISTRATION.

Commissioner and Assistant Commissioner for Business Franchise Licences (Tobacco).

5. (1) There shall be a Commissioner for Business Franchise Licences (Tobacco) and an Assistant Commissioner for Business Franchise Licences (Tobacco), each of whom shall be appointed under, and shall hold office subject to, the Public Service Act, 1902.

(2) The Assistant Commissioner shall have and may exercise or perform—

(a) where the Commissioner is absent from office or the office of the Commissioner is vacant, all the powers, authorities, duties and functions conferred or imposed on the Commissioner by this Act or the regulations; or

(b) where the Commissioner has directed the Assistant Commissioner to exercise or perform any of those powers, authorities, duties or functions, such of those powers, authorities, duties or functions as are specified in the direction.

(3) No person shall be concerned to inquire whether the Assistant Commissioner is entitled to exercise or perform the powers, authorities, duties and functions conferred or imposed on the Commissioner by this Act or the regulations.

(4) Until a person is appointed as Commissioner, the person for the time being holding office as Commissioner for Business Franchise Licences (Petroleum) shall also hold office as Commissioner for Business Franchise Licences (Tobacco).

(5) Until a person is appointed as Assistant Commissioner, the person for the time being holding office as Assistant Commissioner for Business Franchise Licences (Petroleum) shall also hold office as Assistant Commissioner for Business Franchise Licences (Tobacco).

6. (1) There shall be a tribunal to be called the "Business Franchise Licence Fees (Tobacco) Appeals Tribunal" which shall consist of a person appointed by the Governor on the recommendation of the Minister.

Business Franchise Licence Fees (Tobacco) Appeals Tribunal.

(2) A person shall not be appointed under subsection (1) unless he is under the age of 70 years.

(3) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment of a person referred to in subsection (1) or to such a person in his capacity as the Tribunal.

(4) Subject to section 30 (b) of the Interpretation Act, 1897, the person appointed under subsection (1) shall hold office for such period not exceeding 3 years as is specified in the instrument of his appointment or until he attains the age of 70 years whichever first happens.

(5) The person so appointed is entitled to be paid such fees and allowances as the Minister may from time to time determine.

(6) Until a person is so appointed, the person for the time being holding office as the Business Franchise Licence Fees (Petroleum) Appeals Tribunal shall also hold office as the Business Franchise Licence Fees (Tobacco) Appeals Tribunal.

Inspectors.

7. (1) The Governor may, under and subject to the Public Service Act, 1902, appoint inspectors for the purposes of this Act.

(2) For the purposes of this Act, an inspector, on production of written evidence of his appointment as an inspector, may at any reasonable time and with such assistants as he considers necessary—

(a) enter and remain in any premises at which, or at which he reasonably suspects, the business of processing, packaging, distributing, selling or purchasing tobacco is carried on or which is, or which he reasonably suspects is, being used for the storage or custody of any record relating to the processing, packaging, distribution, sale or purchase of tobacco;

(b) request any person found in or on any premises which, or which he reasonably suspects, are used for the processing, packaging, distribution, sale or purchase of tobacco or in or on which, or in or on which he reasonably suspects, tobacco is stored for sale—

(i) to produce any record which relates to, or which the inspector reasonably suspects relates to, the processing, packaging, distribution, sale or purchase of tobacco and which at the time of the request is in the possession or under the control of that person;

(ii) to produce a statement, written in the English language, setting out the particulars contained in any such record that are not written or not written in the English language; and

(iii) to answer any question with respect to any such record or statement or the processing, packaging, distribution, sale or purchase of any tobacco; or

(c) inspect, or take copies of, or extracts or notes from, any record or statement referred to in this subsection.

(3) A person shall not—

(a) prevent or attempt to prevent an inspector from exercising any power conferred on him by subsection (2);

(b) hinder or obstruct any inspector in the exercise of any such power; or

(c) fail to comply with a request of an inspector under subsection (2) (b).

Penalty: $250 or imprisonment for 3 months, or both, and in the case of any offence under paragraph (c) an additional penalty not exceeding $50 for every day on which the offence continues.

(4) A person is not guilty of an offence under subsection (3) (c) by reason of his failure to answer any question referred to in subsection (2) (b) (iii) if he proves to the satisfaction of the court that he did not know, and could not with reasonable diligence ascertain, the answer to the question.

(5)

(5) A person is not excused from answering any question if required to do so under subsection (2) (b) on the ground that the answer might tend to criminate him or make him liable to a penalty but the information furnished by him shall not be admissible against him in any proceedings, civil or criminal, except in proceedings for an offence under subsection (3) or section 25.

(6) Where an answer to a question referred to in subsection (2) (b) (iii) or any information whatever is given to an inspector by an officer of a corporation within the meaning of the Companies Act, 1961, which is carrying on or has carried on the business of selling tobacco, the answer and information are, for the purposes of any proceedings against the corporation under any of the provisions of this Act, binding upon and admissible in evidence against the corporation unless it is proved that the answer or information was given in relation to a matter in respect of which the officer had no authority to bind the corporation.

(7) The provisions of subsection (6) are in addition to and not in derogation of any rule of law relating to the binding effect and admissibility in evidence of statements made by any officer or employee of a corporation.

Particulars of dealings with tobacco.

8. (1) In this section, a reference to dealing with tobacco includes a reference to processing, packaging, distributing, selling and purchasing tobacco.

(2) The Commissioner may, by instrument in writing, require—

(a) a person who is carrying on, or has carried on, or is or was concerned in, a business of dealing with tobacco; or

(b)

(b) a person who, as agent or employee of a person referred to in paragraph (a), has or has had duties or provides or has provided services in connection with a business so referred to,

to furnish to the Commissioner in writing, within such period as is specified in the instrument or such further period as the Commissioner may allow—

(c) a statement of such particulars with respect to that tobacco, or any of it, as are so specified, not being particulars relating to any period after the date of the requirement; and

(d) if the Commissioner thinks fit, a certificate signed by a person registered as a public accountant under the Public Accountants Registration Act, 1945, certifying that the statement is correct.

(3) A person shall not fail to comply with any requirement made of him under subsection (2).

Penalty : $2,500.

(4) A person is not guilty of an offence under subsection (3) if the court hearing the charge is satisfied—

(a) that the defendant could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates; or

(b) that the defendant complied with that requirement to the extent of his ability to do so.

Protection for Commissioner, etc.

9. Any matter or thing done by the Commissioner, the Assistant Commissioner, an inspector or any other person bona fide for the purpose or purported purpose of administering or executing this Act shall not subject him personally to any action, liability, claim or demand.

PART III.

LICENCES.

Offences relating to sale of tobacco.

10. (1) On or after 28th November, 1975, a person shall not carry on tobacco wholesaling unless he is the holder of a wholesale tobacco merchant's licence.

Penalty : $500 for every day on which the person carries on the business.

(2) On or after 28th August, 1976, a person shall not carry on tobacco retailing unless he is the holder of a retail tobacconist's licence.

Penalty : $250 for every day on which the person carries on the business.

(3) On or after 28th August, 1976, a person shall not sell tobacco in the course of intrastate trade unless he is the holder of a licence.

Penalty : $250.

(4) A licensee shall not carry on the business of selling tobacco on premises that are not specified in the licence as premises to be used for that business.

Penalty: $250.

(5) Where tobacco is sold on any premises otherwise than by a licensee, the occupier of the premises shall be deemed to have sold the tobacco 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.

11. (1) The Commissioner shall— Issue of licence.

(a) upon application made therefor in a form approved by him;

(b) on receipt of the particulars, if any, required by him to be furnished by the applicant under section 8; and

(c) upon payment of—

(i) the fee assessed by the Commissioner in accordance with section 12; or

(ii) where the applicant has made an election under section 13, the first instalment of that fee,

grant

grant to the applicant a Business Franchise Licence (Tobacco) or refuse to grant to the applicant such a licence.

(2) A licence shall be either—

(a) a wholesale tobacco merchant's licence, which authorises the licensee to carry on tobacco wholesaling at the premises specified in the licence; or

(b) a retail tobacconist's licence, which authorises the licensee to carry on tobacco retailing at the premises specified in the licence.

(3) The Commissioner shall, on the grant of a licence, cause the premises which are to be used for, or in connection with, the business in respect of which the licence is granted to be specified in the licence and shall, upon receipt at any time of a request in a form approved by him and payment of the prescribed fee (if any) by the holder of the licence, in accordance with the request, add to, substitute for, or delete from, premises so specified, such premises as are specified in the request.

(4) A licence shall be in force on and from the date specified in the licence as the date on which the licence shall come into force.

(5) Where the Commissioner refuses to grant a licence, he shall, in writing, inform the applicant of the reasons for the refusal and refund to the applicant any fee paid by the applicant and referred to in subsection (1) (c).

12. (1) The fees to be paid for licences shall be as follows :— Fees.

(a) for a wholesale tobacco merchant's licence—

(i) which is in force for any period before 28th August, 1976—a fee of $100 together with an amount equal to 10 per centum of the value of tobacco sold by the applicant in the course of tobacco wholesaling during the relevant period (other than tobacco sold to a person who was in the opinion of the Commissioner engaged principally in tobacco wholesaling); or

(ii) which is in force for any period after 27th August, 1976—a fee of $100 together with an amount equal to 10 per centum of the value of tobacco sold by the applicant in the course of tobacco wholesaling during the relevant period (other than tobacco sold to the holder of a wholesale tobacco merchant's licence);

(b) for a retail tobacconist's licence—a fee of $10 together with an amount equal to 10 per centum of the value of tobacco sold by the applicant in the course of tobacco retailing during the relevant period (other than tobacco purchased in the course of intrastate trade from the holder of a wholesale tobacco merchant's licence).

(2) Where an application is made for a licence and the applicant did not carry on the business in respect of which the application for the licence was made during the whole of the relevant period, the fee payable by the applicant in respect

of

of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard to the tobacco that in the opinion of the Commissioner would have been sold by the applicant had he been carrying on that business during the whole of that period, and the relevant principles of determining fees under subsection (1).

(3) Where an application is made for a licence and the applicant carried on the business in respect of which the application for the licence was made during the whole of the relevant period and the Commissioner is of the opinion that he is unable for any reason accurately to assess the fee payable by the applicant under subsection (1), the fee payable by the applicant in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard to the tobacco that in the opinion of the Commissioner was sold by the applicant during that period, and the relevant principles of determining fees under subsection (1).

(4) The value of any tobacco sold for delivery and consumption outside the State shall be disregarded in determining fees payable under this section.

(5) For the purposes of this section, a person who holds a wholesale tobacco merchant's licence from any day (referred to in this subsection as "the effective day") on or after 28th November, 1975, to 27th August, 1976, shall be deemed to have been the holder of such a licence from 1st July, 1975, to the effective day.

(6) Notwithstanding any other provision of this section, where a licence is to be in force for a period of 11 months or less, the amount of the fee that, but for this subsection, would be payable shall be reduced, where the licence is to be in force for a period of—

(a) 11 months or less but more than 10 months—by one-twelfth;

(b) 10 months or less but more than 9 months—by two-twelfths;

(c) 9 months or less but more than 8 months—by three-twelfths;

(d) 8 months or less but more than 7 months—by four-twelfths;

(e) 7 months or less but more than 6 months—by five-twelfths;

(f) 6 months or less but more than 5 months—by six-twelfths;

(g) 5 months or less but more than 4 months—by seven-twelfths;

(h) 4 months or less but more than 3 months—by eight-twelfths;

(i) 3 months or less but more than 2 months—by nine-twelfths;

(j) 2 months or less but more than 1 month—by ten-twelfths; or

(k) 1 month or less—by eleven-twelfths.

(7) The Commissioner shall not, in assessing a fee under subsection (2), have regard to any particulars furnished pursuant to a requirement under section 8.

Payment of fees by instalments.

13. (1) In this section, "prescribed date" means 28th September, 28th October, 28th November, 28th December, 28th January, 28th February, 28th March, 28th April, 28th May, 28th June or 28th July.

(2) An applicant for a licence which is to be in force for more than one month, or a renewal of a licence, may, in his application, if the licence fee payable in respect of that licence is in excess of $120, elect to pay the licence fee by instalments in accordance with this section.

(3) Where the licence—

(a) is to be in force for a period of more than 11 months —the licence fee may be paid by 12 equal instalments, the first instalment being due and payable before the grant or renewal of the licence and each of the remaining 11 instalments being due and payable respectively on the following 11 prescribed dates (commencing with 28th September) next following the date of issue or renewal of the licence;

(b) is to be in force for a period of more than 10 months but not more than 11 months—the licence fee may be paid by 11 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 10 instalments being due and payable respectively on the following 10 prescribed dates (commencing with 28th October) next following the date of issue of the licence;

(c) is to be in force for a period of more than 9 months but not more than 10 months—the licence fee may be paid by 10 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 9 instalments being due and payable respectively on the following 9 prescribed dates (commencing with 28th November) next following the date of issue of the licence;

(d) is to be in force for a period of more than 8 months but not more than 9 months—the licence fee may be paid by 9 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 8 instalments being due and payable respectively on the following 8 prescribed dates (commencing with 28th December) next following the date of issue of the licence;

(e) is to be in force for a period of more than 7 months but not more than 8 months—the licence fee may be paid by 8 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 7 instalments being due and payable respectively on the following 7 prescribed dates (commencing with 28th January) next following the date of issue of the licence;

(f) is to be in force for a period of more than 6 months but not more than 7 months—the licence fee may be paid by 7 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 6 instalments being due and payable respectively on the following 6 prescribed dates (commencing with 28th February) next following the date of issue of the licence;

(g) is to be in force for a period of more than 5 months but not more than 6 months—the licence fee may be paid by 6 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 5 instalments being due and payable respectively on the following 5 prescribed dates (commencing with 28th March) next following the date of issue of the licence;

(h) is to be in force for a period of more than 4 months but not more than 5 months—the licence fee may be paid by 5 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 4 instalments being due and payable respectively on the following 4 prescribed dates (commencing with 28th April) next following the date of issue of the licence;

(i) is to be in force for a period of more than 3 months but not more than 4 months—the licence fee may be paid by 4 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 3 instalments being due and payable respectively on the following 3 prescribed dates (commencing with 28th May) next following the date of issue of the licence;

(j) is to be in force for a period of more than 2 months but not more than 3 months—the licence fee may be paid by 3 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 2 instalments being due and payable respectively on the following 2 prescribed dates (commencing with 28th June) next following the date of issue of the licence; or

(k) is to be in force for a period of more than 1 month but not more than 2 months—the licence fee may be paid by 2 equal instalments, the first instalment being due and payable before the grant of the licence and the remaining instalment being due and payable on 28th July next following the date of issue of the licence.

(4) For the purpose of calculating the amount of instalments under subsection (3), where the quotient obtained by dividing the licence fee by the appropriate number of instalments results in a remaining fraction of a cent, that fraction shall be ignored.

(5) If an instalment payable in respect of a licence is not paid on or before the day on which it is due and payable under subsection (3), the balance of the licence fee becomes due and payable immediately.

(6) The balance of the licence fee in respect of a licence becomes due and payable upon the surrender of the licence.

(7) The whole or any part of an amount which is due and payable by any person under this section and which is unpaid may be recovered by the Commissioner, as a debt, in any court of competent jurisdiction.

Adjustment of fee.

14. (1) Where, in the opinion of the Commissioner, the fee assessed in respect of any licence was assessed incorrectly, the Commissioner may at any time reassess the fee in accordance with the principles of assessing fees under section 12.

(2) Where on a reassessment of a fee under subsection (1) the fee is reduced, the amount overpaid shall be refunded by the Commissioner in accordance with the provisions of subsections (3) and (4).

(3) Where—

(a) during the whole of the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by one person, the amount to be refunded shall be refunded to that person; or

(b) during the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by two or more persons, the amount to be refunded shall be refunded to those persons in proportion to the periods, in days, for which they held the licence.

(4) Notwithstanding subsection (3), in a case where—

(a) the licence has not ceased to be in force;

(b) in the application for the licence the applicant made an election under section 13;

(c) any instalment payable by virtue of that election has not become due and payable; and

(d) the instalments paid do not exceed the amount of the fee as reassessed,

a refund shall not be made to the holder of the licence in accordance with subsection (3) (a) or (b) but in that case each of the remaining instalments payable in respect of the licence shall be reduced by an amount that bears to the amount that but for this subsection would be required to be refunded to that holder under subsection (3) the same proportion as one bears to the number of those remaining instalments.

(5) Where on a reassessment of a fee under subsection (1) the fee is increased, the additional amount payable by virtue of the reassessment shall be due and payable in accordance with the provisions of subsections (6) and (7).

(6) For the purpose of subsection (5), where—

(a) during the whole of the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by one person, the additional amount shall be due and payable within 14 days after notice of the reassessment is served on that person; or

(b) during the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by two or more persons, the additional amount shall be due and payable, within 14 days after notice of the reassessment is served on them, by those persons in proportion to the periods, in days, for which they held the licence,

unless,

unless, in respect of that additional amount or any part of that additional amount so due and payable by that person or any of those persons, approval has been given under subsection (7) for the payment of that amount or part by instalments.

(7) A person by whom any additional amount or part is payable under subsection (6) may, within 14 days after the service on him of notice of the reassessment by virtue of which the additional amount or part became so payable by him, apply to the Commissioner for approval to pay that amount or part by instalments, and if the Commissioner approves of the amount or part being so paid, it shall be due and payable by that person by such instalments payable at such times as are specified in the instrument of the Commissioner's approval.

(8) For the purposes of making the apportionment referred to in subsection (3) (b) or subsection (6) (b), where the licence has not ceased to be in force the period, in days, for which the licensee who was the holder of the licence at the time of the reassessment has held the licence together with the unexpired period, in days, of the licence shall be deemed to be the period for which that licensee held the licence.

(9) Any amount which is due and payable by any person under subsection (6) or (7) and which is unpaid may be recovered by the Commissioner, as a debt, in any court of competent jurisdiction.

Value of tobacco.

15. The Minister may from time to time determine the basis upon which and the means by which a value shall be attributed to tobacco sold during any period and for the purposes of this Act the value of that tobacco shall be the value so attributed.

16.

16. (1) A licence shall expire, subject to this Act, on the twenty-seventh day of August next following the day on which the licence comes into force and may, from time to time, upon— Renewal of licences.

(a) application made to the Commissioner in a form approved by him;

(b) receipt by the Commissioner of the particulars, if any, required by him to be furnished under section 8; and

(c) payment of—

(i) the fee assessed by the Commissioner in accordance with section 12; or

(ii) where the applicant has made an election under section 13, the first instalment of that fee,

be renewed for successive periods of one year expiring, subject to this Act, on the twenty-seventh day of August.

(2) Where the Commissioner refuses to renew a licence, he shall, in writing, inform the applicant of the reasons for the refusal and refund to the applicant any fee paid by the applicant and referred to in subsection (1) (c).

17. (1) A licensee may, at any time, by notice in writing to the Commissioner, surrender his licence, and the licence shall thereupon cease to be in force. Surrender and termination of licences.

(2) A licence shall cease to be in force if—

(a) the applicant for the licence or renewal of the licence made an election under section 13 and an instalment that is due and payable under that section is unpaid; or

(b)

(b) any additional amount that is due and payable under section 14 is unpaid.

Transfer of licences.

18. (1) The holder of a licence and any person to whom that holder proposes to transfer the licence may, by application made in a form approved by the Commissioner and accompanied by a fee of $10, jointly request the Commissioner to enter in his records the transfer of the licence from the holder to that person on and from such day as may be specified in the application.

(2) The Commissioner shall comply with the request or refuse to comply with the request and, where he complies with the request, shall notify the persons making the request that he has made an entry in his records in accordance with the request.

(3) A transfer of a licence in accordance with a request made under subsection (1) shall, after the transfer is recorded in accordance with the request, take effect on and from the day specified in the request as the day upon which the licence is transferred.

(4) Any person who has made a request under subsection (1) may without fee inspect in the office of the Commissioner the entry in the records of the Commissioner of the transfer.

(5) Where the Commissioner refuses to comply with a request made under subsection (1) he shall, in writing, inform the persons making the request of the reasons for the refusal.

PART

PART IV.

APPEALS AND OBJECTIONS.

Appeal against refusal to grant licence.

19. (1) Where the Commissioner refuses to grant a licence to any person, that person may, in accordance with this section, appeal against the refusal to the District Court and, if the Court is satisfied that in all the circumstances of the case the licence ought to be granted, it may direct that, on payment of the licence fee or, where he has made an election under section 13, the first instalment of that fee, a licence be granted to that person to be in force on and from such day as is specified in the direction.

(2) The Commissioner shall give effect to any direction given by the District Court under subsection (1).

(3) Subject to this section, an appeal under this section shall be instituted, heard and determined in accordance with rules of court.

(4) The determination of the District Court on the hearing of an appeal under this section is final and without appeal.

Appeal against refusal to renew or transfer licence.

20. (1) Where the Commissioner refuses to renew a licence, the applicant for renewal may appeal against the refusal to the District Court.

(2) Where the Commissioner refuses to comply with a request made under section 18 (1), either of the persons making the request may appeal against the refusal to the District Court.

(3) The provisions of section 19 apply to and in respect of an appeal under this section as if it were an appeal against a refusal to grant a licence.

Objection to and appeal against assessment.

21. (1) A licensee who has paid the fee assessed in respect of his licence or, where he has made an election under section 13, the first instalment of that fee, may within one month after the grant or renewal of the licence object to the Commissioner against the assessment of the fee on the ground that the fee is excessive by reason that it was incorrectly assessed by the Commissioner under section 12 and on no other ground.

(2) The Commissioner shall, as soon as practicable, determine the objection and serve on the licensee notice of his determination.

(3) If the licensee is not satisfied with the determination of the Commissioner on his objection or if within one month after the objection was lodged the Commissioner has not given a determination with respect to the objection, the licensee may appeal to the Tribunal against the assessment of the fee on the ground referred to in subsection (1) and on no other ground.

(4) An appeal under subsection (3) may be lodged—

(a) where the licensee is not satisfied with the determination of the Commissioner on his objection, within one month after his being notified by the Commissioner of that determination; or

(b) where the Commissioner has not, within one month after the objection was lodged, given a determination with respect to the objection, within 2 months after the objection was lodged.

(5)

(5) The Tribunal shall hear and determine the appeal and assess the fee payable and the provisions of section 12 apply to the Tribunal's assessment of that fee in the same way as that section applies to the assessment of fees by the Commissioner.

(6) The decision of the Tribunal on any such appeal shall be conclusive.

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

(8) Where on an objection or appeal made under this section, the Commissioner or Tribunal upholds the objection or appeal, in whole or in part—

(a) the Commissioner shall, where the whole of the fee as determined on the objection or appeal has been paid, refund any amount overpaid to the person who paid the whole of the fee as originally assessed or the first instalment of the fee as originally assessed; or

(b) if in the application for the licence the applicant made an election under section 13 any instalment payable by virtue of that election has not become due and payable and—

(i) the applicant is, when the appeal is determined, the holder of the licence, each of the remaining instalments payable in respect of the licence shall be reduced by an amount that bears to the difference between the fee as originally assessed and the fee as determined on the objection or appeal the same proportion as one bears to the number of those remaining instalments; or

(ii)

(ii) during the period between the date on which the licence commenced to be in force and the date on which the objection or appeal was determined the licence was held by two or more persons, the Commissioner shall refund to that applicant an amount that bears to the difference between the fee as originally assessed and the fee as determined on the objection or appeal the same proportion as the period, in days, for which the licence was in force up to the date on which the objection or appeal was determined bears to the period, in days, from the date on which the licence commenced to be in force until (but not including) the twenty-eighth day of August next following and each of the remaining instalments payable in respect of the licence shall be reduced by an amount that bears to the balance of that difference the same proportion as one bears to the number of those remaining instalments.

(9) Section 13 (4) applies to the calculation of reductions under subsection (8) in the same way as it applies to the calculation of instalments under section 13 (3).

Objection to and appeal against reassessment.

22. A person on whom notice of the reassessment of a licence fee is served may, within 14 days after service of the notice, object to and appeal against the reassessment as if the reassessment were an assessment to or against which an objection or appeal may be made under section 21, and the provisions of section 21 apply accordingly.

PART

PART V.

MISCELLANEOUS.

23. (1) A person who carries on the business of selling tobacco shall keep such accounts, records, books and documents as may be prescribed containing such particulars as may be prescribed relating to tobacco and shall preserve each of those accounts, records, books and documents for a period of 5 years after the last entry was made in it. Records to be kept.

Penalty : $1,000.

(2) This section does not apply so as to require the preservation of any accounts, records, books or documents—

(a) in respect of which the Commissioner has notified the person carrying on the business that preservation is not required; or

(b) of a company which has gone into liquidation and which has been finally dissolved.

24. (1) Except as provided by subsection (2), a person shall not disclose any information or publish any record or part of any record obtained by him in connection with the administration or execution of this Act or the regulations, unless the disclosure or publication is made— Disclosure of information.

(a) with the consent of the person from whom the information or document was obtained;

(b) in connection with the administration or execution of this Act or the regulations; or

(c)

(c) for the purpose of any legal proceedings arising out of this Act or the regulations or of any report of any such proceedings.

Penalty : $2,500.

(2) The Commissioner may communicate any matter which comes to his knowledge in the exercise or performance of his powers, authorities, duties or functions under this Act or the regulations to an officer or authority engaged in administering or executing a law of another State or a Territory of the Commonwealth relating to the licensing of persons to carry on the business of selling any tobacco.

(3) Nothing in subsection (1) prevents the disclosure of information or the publication of a document in accordance with any lawful requirement of the Commonwealth Statistician.

False or misleading statements.

25. (1) A person shall not—

(a) make an application under this Act; or

(b) make an answer whether orally or in writing to a question put to him pursuant to this Act by the Commissioner or by or before the Tribunal,

that is false or misleading in a material particular.

Penalty: $250 or imprisonment for 3 months, or both.

(2) A person shall not—

(a) in furnishing any information;

(b)

(b) in giving any notification; or

(c) in keeping any record,

pursuant to this Act, make any statement or representation that is false or misleading in a material particular.

Penalty: $250 or imprisonment for 3 months, or both.

(3) It is a defence to a charge under subsection (1) or (2) if it is proved that, at the time the application, answer, statement or representation was made, the defendant believed on reasonable grounds that it was neither false nor misleading.

26. A certificate signed by the Commissioner or the Assistant Commissioner certifying any one or more of the following matters, that is to say— Evidence.

(a) that a person specified therein was or was not an inspector at a time or during a period so specified; or

(b) that a person so specified was or was not the holder of a licence at a time or during a period so specified,

is admissible in any proceedings under this Act and shall be prima facie evidence of the matters so certified.

27. (1) Proceedings for an offence against this Act or the regulations may only be taken in a summary manner before a stipendiary magistrate sitting in petty sessions. Proceedings on prosecutions.

(2) An information for an offence against this Act or the regulations may not be laid without the approval in writing of the Minister.

(3)

(3) An information laid for an offence against this Act or the regulations shall, in the absence of evidence to the contrary, be deemed to have been laid with the approval in writing of the Minister.

Institution of prosecutions.

28. (1) An information for an offence against this Act or the regulations may be laid in the name of the Commissioner by any officer of the Public Service employed in the administration or execution of this Act and authorised to lay informations on behalf of the Commissioner, and any prosecution instituted in the name of the Commissioner shall, in the absence of evidence to the contrary, be deemed to have been instituted by his authority.

(2) An officer referred to in subsection (1) may appear on behalf of the Commissioner in any proceedings for an offence against this Act or the regulations.

Offences by bodies corporate.

29. Where a person convicted of an offence against this Act or the regulations is a body corporate, every person concerned in the management of that body corporate may be convicted of the like offence unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

Service of documents by the Commissioner.

30. (1) Any notice or other document required or authorised by this Act or the regulations to be served or given by the Commissioner shall be deemed to have been duly served or given—

(a) if delivered personally to, or if left at the last known place of abode or business in or out of the State of the person, on or to whom the notice or document is to be served or given; or

(b)

(b) if sent by prepaid letter post, addressed to the person on or to whom the notice or document is to be served or given at his last known place of business or abode in or out of the State.

(2) Service of a notice or document in accordance with subsection (1) (b) shall prima facie be deemed to have been effected at the time when it would be delivered in the ordinary course of post.

(3) The provisions of this section are in addition to and not in derogation of the provisions of section 362 of the Companies Act, 1961.

31. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to requiring persons, or persons belonging to classes of persons, specified in the regulations to make returns in such form and manner and containing such information relating to sales, purchases or stocks of, or dealings with, tobacco, as is indicated by the regulations and to furnish the returns to the Commissioner within such time as may be so specified. Regulations.

(2) The regulations may impose a penalty not exceeding $500 for an offence arising under the regulations.

(3) Regulations may be made so as to apply differently to or in respect of different classes of persons or different classes of tobacco or according to such other different factors as may be specified in the regulations.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1975

I certify that this PUBLIC BILL, *which originated in the* LEGISLATIVE ASSEMBLY, *has finally passed the* LEGISLATIVE COUNCIL *and the* LEGISLATIVE ASSEMBLY *of* NEW SOUTH WALES.

R. E. WARD,
Clerk of the Legislative Assembly.

Legislative Assembly Chamber,
Sydney, 21 *October,* 1975.

New South Wales

ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

****

Act No. 63, 1975.

An Act to make provision for the issue of licences to be called "Business Franchise Licences (Tobacco)"; to prohibit the sale of tobacco except by a person who is enfranchised to sell tobacco by such a licence; and to enact consequential or ancillary provisions. [Assented to, 23rd October, 1975.]

BE

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

J. H. BROWN,
Chairman of Committees of the Legislative Assembly.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "Business Franchise Licences (Tobacco) Act, 1975".

Division of Act.

2. This Act is divided as follows :—

PART I.—PRELIMINARY—*ss.* 1–4.

PART II.—ADMINISTRATION—*ss.* 5–9.

PART III.—LICENCES—*ss.* 10–18.

PART IV.—APPEALS AND OBJECTIONS—*ss.* 19–22.

PART V.—MISCELLANEOUS—*ss.* 23–31.

Interpretation.

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Assistant Commissioner" means the Assistant Commissioner for Business Franchise Licences (Tobacco) referred to in section 5;

"Commissioner" means the Commissioner for Business Franchise Licences (Tobacco) referred to in section 5;

"inspector"

"inspector" means—

(a) an inspector referred to in section 7 (1); or

(b) an inspector referred to in section 18 (1) of the Business Franchise Licences (Petroleum) Act, 1974;

"licence" means a Business Franchise Licence (Tobacco) granted under section 11 and in force under this Act;

"licensee" means the holder for the time being of a licence;

"premises" includes any place, vehicle, vessel or aircraft;

"record" includes book, account, deed, writing or document and any other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means;

"regulations" means regulations under this Act;

"relevant period", in relation to an applicant for a licence or renewal of a licence, means the period of one year ended on the thirtieth day of June that last preceded the twenty-seventh day of August that last preceded the day on and from which the licence or the renewal, if granted, would be in force;

"retail tobacconist's licence" means a licence referred to in section 11 (2) (b) and in force under this Act;

"tobacco" means tobacco prepared for consumption, and includes any mixture that contains tobacco and is intended to be consumed;

"tobacco

"tobacco retailing" means the business of selling tobacco by retail in the course of intrastate trade either alone or in conjunction with any other merchandise, and includes that business carried on as part of or in conjunction with any other business;

"tobacco wholesaling" means the business of selling tobacco in the course of intrastate trade for the purposes of resale either alone or in conjunction with any other merchandise, and includes that business carried on as part of or in conjunction with any other business;

"Tribunal" means the Business Franchise Licence Fees (Tobacco) Appeals Tribunal referred to in section 6;

"value", in relation to any tobacco sold, means the value attributed to that tobacco pursuant to section 15;

"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, device or contrivance of a coin, token or similar object;

"wholesale tobacco merchant's licence" means a licence referred to in section 11 (2) (a) and in force under this Act.

(2) The presence on any premises of a vending machine from which tobacco may be obtained shall be deemed to constitute the carrying on of tobacco retailing on those premises by the occupier thereof, unless a licensee is carrying on tobacco retailing by means of that machine in accordance with his licence.

(3) A reference in this Act to—

(a) a person who sells tobacco; or

(b) a person who carries on the business of selling tobacco,

does not extend to a person who, as an agent or employee of a person referred to in paragraph (a) or (b), sells tobacco or carries on such a business.

(4) A reference in this Act to intrastate trade is a reference to trade carried on in the State which is not trade or commerce among the States within the meaning of section 92 of the Constitution of the Commonwealth.

(5) A reference in this Act to tobacco includes a reference to any wrapping, package or container in which the tobacco is sold, purchased, received or handled.

(6) A reference in this Act to a licensee or the holder of a licence includes a reference to a person to whom the licence is transferred in accordance with section 18.

(7) Where pursuant to a sale made outside the State tobacco is delivered in the course of intrastate trade within the State, that sale shall, for the purposes of this Act, be deemed to have been made within the State.

Crown bound.

4. This Act binds the Crown.

PART

PART II.

ADMINISTRATION.

Commissioner and Assistant Commissioner for Business Franchise Licences (Tobacco).

5. (1) There shall be a Commissioner for Business Franchise Licences (Tobacco) and an Assistant Commissioner for Business Franchise Licences (Tobacco), each of whom shall be appointed under, and shall hold office subject to, the Public Service Act, 1902.

(2) The Assistant Commissioner shall have and may exercise or perform—

(a) where the Commissioner is absent from office or the office of the Commissioner is vacant, all the powers, authorities, duties and functions conferred or imposed on the Commissioner by this Act or the regulations; or

(b) where the Commissioner has directed the Assistant Commissioner to exercise or perform any of those powers, authorities, duties or functions, such of those powers, authorities, duties or functions as are specified in the direction.

(3) No person shall be concerned to inquire whether the Assistant Commissioner is entitled to exercise or perform the powers, authorities, duties and functions conferred or imposed on the Commissioner by this Act or the regulations.

(4) Until a person is appointed as Commissioner, the person for the time being holding office as Commissioner for Business Franchise Licences (Petroleum) shall also hold office as Commissioner for Business Franchise Licences (Tobacco).

(5) Until a person is appointed as Assistant Commissioner, the person for the time being holding office as Assistant Commissioner for Business Franchise Licences (Petroleum) shall also hold office as Assistant Commissioner for Business Franchise Licences (Tobacco).

Business Franchise Licence Fees (Tobacco) Appeals Tribunal.

6. (1) There shall be a tribunal to be called the "Business Franchise Licence Fees (Tobacco) Appeals Tribunal" which shall consist of a person appointed by the Governor on the recommendation of the Minister.

(2) A person shall not be appointed under subsection (1) unless he is under the age of 70 years.

(3) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment of a person referred to in subsection (1) or to such a person in his capacity as the Tribunal.

(4) Subject to section 30 (b) of the Interpretation Act, 1897, the person appointed under subsection (1) shall hold office for such period not exceeding 3 years as is specified in the instrument of his appointment or until he attains the age of 70 years whichever first happens.

(5) The person so appointed is entitled to be paid such fees and allowances as the Minister may from time to time determine.

(6) Until a person is so appointed, the person for the time being holding office as the Business Franchise Licence Fees (Petroleum) Appeals Tribunal shall also hold office as the Business Franchise Licence Fees (Tobacco) Appeals Tribunal.

Inspectors.

7. (1) The Governor may, under and subject to the Public Service Act, 1902, appoint inspectors for the purposes of this Act.

(2) For the purposes of this Act, an inspector, on production of written evidence of his appointment as an inspector, may at any reasonable time and with such assistants as he considers necessary—

(a) enter and remain in any premises at which, or at which he reasonably suspects, the business of processing, packaging, distributing, selling or purchasing tobacco is carried on or which is, or which he reasonably suspects is, being used for the storage or custody of any record relating to the processing, packaging, distribution, sale or purchase of tobacco;

(b) request any person found in or on any premises which, or which he reasonably suspects, are used for the processing, packaging, distribution, sale or purchase of tobacco or in or on which, or in or on which he reasonably suspects, tobacco is stored for sale—

(i) to produce any record which relates to, or which the inspector reasonably suspects relates to, the processing, packaging, distribution, sale or purchase of tobacco and which at the time of the request is in the possession or under the control of that person;

(ii) to produce a statement, written in the English language, setting out the particulars contained in any such record that are not written or not written in the English language; and

(iii) to answer any question with respect to any such record or statement or the processing, packaging, distribution, sale or purchase of any tobacco; or

(c) inspect, or take copies of, or extracts or notes from, any record or statement referred to in this subsection.

(3) A person shall not—

(a) prevent or attempt to prevent an inspector from exercising any power conferred on him by subsection (2);

(b) hinder or obstruct any inspector in the exercise of any such power; or

(c) fail to comply with a request of an inspector under subsection (2) (b).

Penalty: $250 or imprisonment for 3 months, or both, and in the case of any offence under paragraph (c) an additional penalty not exceeding $50 for every day on which the offence continues.

(4) A person is not guilty of an offence under subsection (3) (c) by reason of his failure to answer any question referred to in subsection (2) (b) (iii) if he proves to the satisfaction of the court that he did not know, and could not with reasonable diligence ascertain, the answer to the question.

(5)

(5) A person is not excused from answering any question if required to do so under subsection (2) (b) on the ground that the answer might tend to criminate him or make him liable to a penalty but the information furnished by him shall not be admissible against him in any proceedings, civil or criminal, except in proceedings for an offence under subsection (3) or section 25.

(6) Where an answer to a question referred to in subsection (2) (b) (iii) or any information whatever is given to an inspector by an officer of a corporation within the meaning of the Companies Act, 1961, which is carrying on or has carried on the business of selling tobacco, the answer and information are, for the purposes of any proceedings against the corporation under any of the provisions of this Act, binding upon and admissible in evidence against the corporation unless it is proved that the answer or information was given in relation to a matter in respect of which the officer had no authority to bind the corporation.

(7) The provisions of subsection (6) are in addition to and not in derogation of any rule of law relating to the binding effect and admissibility in evidence of statements made by any officer or employee of a corporation.

Particulars of dealings with tobacco.

8. (1) In this section, a reference to dealing with tobacco includes a reference to processing, packaging, distributing, selling and purchasing tobacco.

(2) The Commissioner may, by instrument in writing, require—

(a) a person who is carrying on, or has carried on, or is or was concerned in, a business of dealing with tobacco; or

(b)

(b) a person who, as agent or employee of a person referred to in paragraph (a), has or has had duties or provides or has provided services in connection with a business so referred to,

to furnish to the Commissioner in writing, within such period as is specified in the instrument or such further period as the Commissioner may allow—

(c) a statement of such particulars with respect to that tobacco, or any of it, as are so specified, not being particulars relating to any period after the date of the requirement; and

(d) if the Commissioner thinks fit, a certificate signed by a person registered as a public accountant under the Public Accountants Registration Act, 1945, certifying that the statement is correct.

(3) A person shall not fail to comply with any requirement made of him under subsection (2).

Penalty : $2,500.

(4) A person is not guilty of an offence under subsection (3) if the court hearing the charge is satisfied—

(a) that the defendant could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates; or

(b) that the defendant complied with that requirement to the extent of his ability to do so.

Protection for Commissioner, etc.

9. Any matter or thing done by the Commissioner, the Assistant Commissioner, an inspector or any other person bona fide for the purpose or purported purpose of administering or executing this Act shall not subject him personally to any action, liability, claim or demand.

PART III.

LICENCES.

Offences relating to sale of tobacco.

10. (1) On or after 28th November, 1975, a person shall not carry on tobacco wholesaling unless he is the holder of a wholesale tobacco merchant's licence.

Penalty : $500 for every day on which the person carries on the business.

(2) On or after 28th August, 1976, a person shall not carry on tobacco retailing unless he is the holder of a retail tobacconist's licence.

Penalty : $250 for every day on which the person carries on the business.

(3) On or after 28th August, 1976, a person shall not sell tobacco in the course of intrastate trade unless he is the holder of a licence.

Penalty : $250.

(4) A licensee shall not carry on the business of selling tobacco on premises that are not specified in the licence as premises to be used for that business.

Penalty: $250.

(5) Where tobacco is sold on any premises otherwise than by a licensee, the occupier of the premises shall be deemed to have sold the tobacco 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.

Issue of licence.

11. (1) The Commissioner shall—

(a) upon application made therefor in a form approved by him;

(b) on receipt of the particulars, if any, required by him to be furnished by the applicant under section 8; and

(c) upon payment of—

(i) the fee assessed by the Commissioner in accordance with section 12; or

(ii) where the applicant has made an election under section 13, the first instalment of that fee,

grant

grant to the applicant a Business Franchise Licence (Tobacco) or refuse to grant to the applicant such a licence.

(2) A licence shall be either—

(a) a wholesale tobacco merchant's licence, which authorises the licensee to carry on tobacco wholesaling at the premises specified in the licence; or

(b) a retail tobacconist's licence, which authorises the licensee to carry on tobacco retailing at the premises specified in the licence.

(3) The Commissioner shall, on the grant of a licence, cause the premises which are to be used for, or in connection with, the business in respect of which the licence is granted to be specified in the licence and shall, upon receipt at any time of a request in a form approved by him and payment of the prescribed fee (if any) by the holder of the licence, in accordance with the request, add to, substitute for, or delete from, premises so specified, such premises as are specified in the request.

(4) A licence shall be in force on and from the date specified in the licence as the date on which the licence shall come into force.

(5) Where the Commissioner refuses to grant a licence, he shall, in writing, inform the applicant of the reasons for the refusal and refund to the applicant any fee paid by the applicant and referred to in subsection (1) (c).

12. (1) The fees to be paid for licences shall be as follows :— **Fees.**

(a) for a wholesale tobacco merchant's licence—

(i) which is in force for any period before 28th August, 1976—a fee of $100 together with an amount equal to 10 per centum of the value of tobacco sold by the applicant in the course of tobacco wholesaling during the relevant period (other than tobacco sold to a person who was in the opinion of the Commissioner engaged principally in tobacco wholesaling) ; or

(ii) which is in force for any period after 27th August, 1976—a fee of $100 together with an amount equal to 10 per centum of the value of tobacco sold by the applicant in the course of tobacco wholesaling during the relevant period (other than tobacco sold to the holder of a wholesale tobacco merchant's licence) ;

(b) for a retail tobacconist's licence—a fee of $10 together with an amount equal to 10 per centum of the value of tobacco sold by the applicant in the course of tobacco retailing during the relevant period (other than tobacco purchased in the course of intrastate trade from the holder of a wholesale tobacco merchant's licence).

(2) Where an application is made for a licence and the applicant did not carry on the business in respect of which the application for the licence was made during the whole of the relevant period, the fee payable by the applicant in respect

of

of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard to the tobacco that in the opinion of the Commissioner would have been sold by the applicant had he been carrying on that business during the whole of that period, and the relevant principles of determining fees under subsection (1).

(3) Where an application is made for a licence and the applicant carried on the business in respect of which the application for the licence was made during the whole of the relevant period and the Commissioner is of the opinion that he is unable for any reason accurately to assess the fee payable by the applicant under subsection (1), the fee payable by the applicant in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard to the tobacco that in the opinion of the Commissioner was sold by the applicant during that period, and the relevant principles of determining fees under subsection (1).

(4) The value of any tobacco sold for delivery and consumption outside the State shall be disregarded in determining fees payable under this section.

(5) For the purposes of this section, a person who holds a wholesale tobacco merchant's licence from any day (referred to in this subsection as "the effective day") on or after 28th November, 1975, to 27th August, 1976, shall be deemed to have been the holder of such a licence from 1st July, 1975, to the effective day.

(6) Notwithstanding any other provision of this section, where a licence is to be in force for a period of 11 months or less, the amount of the fee that, but for this subsection, would be payable shall be reduced, where the licence is to be in force for a period of—

(a) 11 months or less but more than 10 months—by one-twelfth;

(b) 10 months or less but more than 9 months—by two-twelfths;

(c) 9 months or less but more than 8 months—by three-twelfths;

(d) 8 months or less but more than 7 months—by four-twelfths;

(e) 7 months or less but more than 6 months—by five-twelfths;

(f) 6 months or less but more than 5 months—by six-twelfths;

(g) 5 months or less but more than 4 months—by seven-twelfths;

(h) 4 months or less but more than 3 months—by eight-twelfths;

(i) 3 months or less but more than 2 months—by nine-twelfths;

(j) 2 months or less but more than 1 month—by ten-twelfths; or

(k) 1 month or less—by eleven-twelfths.

(7) The Commissioner shall not, in assessing a fee under subsection (2), have regard to any particulars furnished pursuant to a requirement under section 8.

Payment of fees by instalments.

13. (1) In this section, "prescribed date" means 28th September, 28th October, 28th November, 28th December, 28th January, 28th February, 28th March, 28th April, 28th May, 28th June or 28th July.

(2) An applicant for a licence which is to be in force for more than one month, or a renewal of a licence, may, in his application, if the licence fee payable in respect of that licence is in excess of $120, elect to pay the licence fee by instalments in accordance with this section.

(3) Where the licence—

(a) is to be in force for a period of more than 11 months —the licence fee may be paid by 12 equal instalments, the first instalment being due and payable before the grant or renewal of the licence and each of the remaining 11 instalments being due and payable respectively on the following 11 prescribed dates (commencing with 28th September) next following the date of issue or renewal of the licence;

(b) is to be in force for a period of more than 10 months but not more than 11 months—the licence fee may be paid by 11 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 10 instalments being due and payable respectively on the following 10 prescribed dates (commencing with 28th October) next following the date of issue of the licence;

(c)

(c) is to be in force for a period of more than 9 months but not more than 10 months—the licence fee may be paid by 10 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 9 instalments being due and payable respectively on the following 9 prescribed dates (commencing with 28th November) next following the date of issue of the licence;

(d) is to be in force for a period of more than 8 months but not more than 9 months—the licence fee may be paid by 9 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 8 instalments being due and payable respectively on the following 8 prescribed dates (commencing with 28th December) next following the date of issue of the licence;

(e) is to be in force for a period of more than 7 months but not more than 8 months—the licence fee may be paid by 8 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 7 instalments being due and payable respectively on the following 7 prescribed dates (commencing with 28th January) next following the date of issue of the licence;

(f) is to be in force for a period of more than 6 months but not more than 7 months—the licence fee may be paid by 7 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 6 instalments being due and payable respectively on the following 6 prescribed dates (commencing with 28th February) next following the date of issue of the licence;

(g) is to be in force for a period of more than 5 months but not more than 6 months—the licence fee may be paid by 6 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 5 instalments being due and payable respectively on the following 5 prescribed dates (commencing with 28th March) next following the date of issue of the licence;

(h) is to be in force for a period of more than 4 months but not more than 5 months—the licence fee may be paid by 5 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 4 instalments being due and payable respectively on the following 4 prescribed dates (commencing with 28th April) next following the date of issue of the licence;

(i) is to be in force for a period of more than 3 months but not more than 4 months—the licence fee may be paid by 4 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 3 instalments being due and payable respectively on the following 3 prescribed dates (commencing with 28th May) next following the date of issue of the licence;

(j) is to be in force for a period of more than 2 months but not more than 3 months—the licence fee may be paid by 3 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 2 instalments being due and payable respectively on the following 2 prescribed dates (commencing with 28th June) next following the date of issue of the licence; or

(k) is to be in force for a period of more than 1 month but not more than 2 months—the licence fee may be paid by 2 equal instalments, the first instalment being due and payable before the grant of the licence and the remaining instalment being due and payable on 28th July next following the date of issue of the licence.

(4) For the purpose of calculating the amount of instalments under subsection (3), where the quotient obtained by dividing the licence fee by the appropriate number of instalments results in a remaining fraction of a cent, that fraction shall be ignored.

(5) If an instalment payable in respect of a licence is not paid on or before the day on which it is due and payable under subsection (3), the balance of the licence fee becomes due and payable immediately.

(6) The balance of the licence fee in respect of a licence becomes due and payable upon the surrender of the licence.

(7) The whole or any part of an amount which is due and payable by any person under this section and which is unpaid may be recovered by the Commissioner, as a debt, in any court of competent jurisdiction.

Adjustment of fee.

14. (1) Where, in the opinion of the Commissioner, the fee assessed in respect of any licence was assessed incorrectly, the Commissioner may at any time reassess the fee in accordance with the principles of assessing fees under section 12.

(2) Where on a reassessment of a fee under subsection (1) the fee is reduced, the amount overpaid shall be refunded by the Commissioner in accordance with the provisions of subsections (3) and (4).

(3) Where—

(a) during the whole of the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by one person, the amount to be refunded shall be refunded to that person; or

(b) during the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by two or more persons, the amount to be refunded shall be refunded to those persons in proportion to the periods, in days, for which they held the licence.

(4) Notwithstanding subsection (3), in a case where—

(a) the licence has not ceased to be in force;

(b) in the application for the licence the applicant made an election under section 13;

(c) any instalment payable by virtue of that election has not become due and payable; and

(d) the instalments paid do not exceed the amount of the fee as reassessed,

a refund shall not be made to the holder of the licence in accordance with subsection (3) (a) or (b) but in that case each of the remaining instalments payable in respect of the licence shall be reduced by an amount that bears to the amount that but for this subsection would be required to be refunded to that holder under subsection (3) the same proportion as one bears to the number of those remaining instalments.

(5) Where on a reassessment of a fee under subsection (1) the fee is increased, the additional amount payable by virtue of the reassessment shall be due and payable in accordance with the provisions of subsections (6) and (7).

(6) For the purpose of subsection (5), where—

(a) during the whole of the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by one person, the additional amount shall be due and payable within 14 days after notice of the reassessment is served on that person; or

(b) during the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by two or more persons, the additional amount shall be due and payable, within 14 days after notice of the reassessment is served on them, by those persons in proportion to the periods, in days, for which they held the licence,

unless,

unless, in respect of that additional amount or any part of that additional amount so due and payable by that person or any of those persons, approval has been given under subsection (7) for the payment of that amount or part by instalments.

(7) A person by whom any additional amount or part is payable under subsection (6) may, within 14 days after the service on him of notice of the reassessment by virtue of which the additional amount or part became so payable by him, apply to the Commissioner for approval to pay that amount or part by instalments, and if the Commissioner approves of the amount or part being so paid, it shall be due and payable by that person by such instalments payable at such times as are specified in the instrument of the Commissioner's approval.

(8) For the purposes of making the apportionment referred to in subsection (3) (b) or subsection (6) (b), where the licence has not ceased to be in force the period, in days, for which the licensee who was the holder of the licence at the time of the reassessment has held the licence together with the unexpired period, in days, of the licence shall be deemed to be the period for which that licensee held the licence.

(9) Any amount which is due and payable by any person under subsection (6) or (7) and which is unpaid may be recovered by the Commissioner, as a debt, in any court of competent jurisdiction.

Value of tobacco.

15. The Minister may from time to time determine the basis upon which and the means by which a value shall be attributed to tobacco sold during any period and for the purposes of this Act the value of that tobacco shall be the value so attributed.

16.

16. (1) A licence shall expire, subject to this Act, on the twenty-seventh day of August next following the day on which the licence comes into force and may, from time to time, upon— Renewal of licences.

(a) application made to the Commissioner in a form approved by him;

(b) receipt by the Commissioner of the particulars, if any, required by him to be furnished under section 8; and

(c) payment of—

(i) the fee assessed by the Commissioner in accordance with section 12; or

(ii) where the applicant has made an election under section 13, the first instalment of that fee,

be renewed for successive periods of one year expiring, subject to this Act, on the twenty-seventh day of August.

(2) Where the Commissioner refuses to renew a licence, he shall, in writing, inform the applicant of the reasons for the refusal and refund to the applicant any fee paid by the applicant and referred to in subsection (1) (c).

17. (1) A licensee may, at any time, by notice in writing to the Commissioner, surrender his licence, and the licence shall thereupon cease to be in force. Surrender and termination of licences.

(2) A licence shall cease to be in force if—

(a) the applicant for the licence or renewal of the licence made an election under section 13 and an instalment that is due and payable under that section is unpaid; or

(b)

(b) any additional amount that is due and payable under section 14 is unpaid.

Transfer of licences.

18. (1) The holder of a licence and any person to whom that holder proposes to transfer the licence may, by application made in a form approved by the Commissioner and accompanied by a fee of $10, jointly request the Commissioner to enter in his records the transfer of the licence from the holder to that person on and from such day as may be specified in the application.

(2) The Commissioner shall comply with the request or refuse to comply with the request and, where he complies with the request, shall notify the persons making the request that he has made an entry in his records in accordance with the request.

(3) A transfer of a licence in accordance with a request made under subsection (1) shall, after the transfer is recorded in accordance with the request, take effect on and from the day specified in the request as the day upon which the licence is transferred.

(4) Any person who has made a request under subsection (1) may without fee inspect in the office of the Commissioner the entry in the records of the Commissioner of the transfer.

(5) Where the Commissioner refuses to comply with a request made under subsection (1) he shall, in writing, inform the persons making the request of the reasons for the refusal.

PART

PART IV.

APPEALS AND OBJECTIONS.

19. (1) Where the Commissioner refuses to grant a licence to any person, that person may, in accordance with this section, appeal against the refusal to the District Court and, if the Court is satisfied that in all the circumstances of the case the licence ought to be granted, it may direct that, on payment of the licence fee or, where he has made an election under section 13, the first instalment of that fee, a licence be granted to that person to be in force on and from such day as is specified in the direction.

Appeal against refusal to grant licence.

(2) The Commissioner shall give effect to any direction given by the District Court under subsection (1).

(3) Subject to this section, an appeal under this section shall be instituted, heard and determined in accordance with rules of court.

(4) The determination of the District Court on the hearing of an appeal under this section is final and without appeal.

20. (1) Where the Commissioner refuses to renew a licence, the applicant for renewal may appeal against the refusal to the District Court.

Appeal against refusal to renew or transfer licence.

(2) Where the Commissioner refuses to comply with a request made under section 18 (1), either of the persons making the request may appeal against the refusal to the District Court.

(3)

(3) The provisions of section 19 apply to and in respect of an appeal under this section as if it were an appeal against a refusal to grant a licence.

Objection to and appeal against assessment.

21. (1) A licensee who has paid the fee assessed in respect of his licence or, where he has made an election under section 13, the first instalment of that fee, may within one month after the grant or renewal of the licence object to the Commissioner against the assessment of the fee on the ground that the fee is excessive by reason that it was incorrectly assessed by the Commissioner under section 12 and on no other ground.

(2) The Commissioner shall, as soon as practicable, determine the objection and serve on the licensee notice of his determination.

(3) If the licensee is not satisfied with the determination of the Commissioner on his objection or if within one month after the objection was lodged the Commissioner has not given a determination with respect to the objection, the licensee may appeal to the Tribunal against the assessment of the fee on the ground referred to in subsection (1) and on no other ground.

(4) An appeal under subsection (3) may be lodged—

(a) where the licensee is not satisfied with the determination of the Commissioner on his objection, within one month after his being notified by the Commissioner of that determination; or

(b) where the Commissioner has not, within one month after the objection was lodged, given a determination with respect to the objection, within 2 months after the objection was lodged.

(5)

(5) The Tribunal shall hear and determine the appeal and assess the fee payable and the provisions of section 12 apply to the Tribunal's assessment of that fee in the same way as that section applies to the assessment of fees by the Commissioner.

(6) The decision of the Tribunal on any such appeal shall be conclusive.

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

(8) Where on an objection or appeal made under this section, the Commissioner or Tribunal upholds the objection or appeal, in whole or in part—

(a) the Commissioner shall, where the whole of the fee as determined on the objection or appeal has been paid, refund any amount overpaid to the person who paid the whole of the fee as originally assessed or the first instalment of the fee as originally assessed; or

(b) if in the application for the licence the applicant made an election under section 13 any instalment payable by virtue of that election has not become due and payable and—

(i) the applicant is, when the appeal is determined, the holder of the licence, each of the remaining instalments payable in respect of the licence shall be reduced by an amount that bears to the difference between the fee as originally assessed and the fee as determined on the objection or appeal the same proportion as one bears to the number of those remaining instalments; or

(ii)

(ii) during the period between the date on which the licence commenced to be in force and the date on which the objection or appeal was determined the licence was held by two or more persons, the Commissioner shall refund to that applicant an amount that bears to the difference between the fee as originally assessed and the fee as determined on the objection or appeal the same proportion as the period, in days, for which the licence was in force up to the date on which the objection or appeal was determined bears to the period, in days, from the date on which the licence commenced to be in force until (but not including) the twenty-eighth day of August next following and each of the remaining instalments payable in respect of the licence shall be reduced by an amount that bears to the balance of that difference the same proportion as one bears to the number of those remaining instalments.

(9) Section 13 (4) applies to the calculation of reductions under subsection (8) in the same way as it applies to the calculation of instalments under section 13 (3).

Objection to and appeal against reassessment.

22. A person on whom notice of the reassessment of a licence fee is served may, within 14 days after service of the notice, object to and appeal against the reassessment as if the reassessment were an assessment to or against which an objection or appeal may be made under section 21, and the provisions of section 21 apply accordingly.

PART

PART V.

MISCELLANEOUS.

Records to be kept.

23. (1) A person who carries on the business of selling tobacco shall keep such accounts, records, books and documents as may be prescribed containing such particulars as may be prescribed relating to tobacco and shall preserve each of those accounts, records, books and documents for a period of 5 years after the last entry was made in it.

Penalty : $1,000.

(2) This section does not apply so as to require the preservation of any accounts, records, books or documents—

(a) in respect of which the Commissioner has notified the person carrying on the business that preservation is not required; or

(b) of a company which has gone into liquidation and which has been finally dissolved.

Disclosure of information.

24. (1) Except as provided by subsection (2), a person shall not disclose any information or publish any record or part of any record obtained by him in connection with the administration or execution of this Act or the regulations, unless the disclosure or publication is made—

(a) with the consent of the person from whom the information or document was obtained;

(b) in connection with the administration or execution of this Act or the regulations; or

(c) for the purpose of any legal proceedings arising out of this Act or the regulations or of any report of any such proceedings.

Penalty : $2,500.

(2) The Commissioner may communicate any matter which comes to his knowledge in the exercise or performance of his powers, authorities, duties or functions under this Act or the regulations to an officer or authority engaged in administering or executing a law of another State or a Territory of the Commonwealth relating to the licensing of persons to carry on the business of selling any tobacco.

(3) Nothing in subsection (1) prevents the disclosure of information or the publication of a document in accordance with any lawful requirement of the Commonwealth Statistician.

False or misleading statements.

25. (1) A person shall not—

(a) make an application under this Act; or

(b) make an answer whether orally or in writing to a question put to him pursuant to this Act by the Commissioner or by or before the Tribunal,

that is false or misleading in a material particular.

Penalty: $250 or imprisonment for 3 months, or both.

(2) A person shall not—

(a) in furnishing any information;

(b)

(b) in giving any notification; or

(c) in keeping any record,

pursuant to this Act, make any statement or representation that is false or misleading in a material particular.

Penalty: $250 or imprisonment for 3 months, or both.

(3) It is a defence to a charge under subsection (1) or (2) if it is proved that, at the time the application, answer, statement or representation was made, the defendant believed on reasonable grounds that it was neither false nor misleading.

Evidence.

26. A certificate signed by the Commissioner or the Assistant Commissioner certifying any one or more of the following matters, that is to say—

(a) that a person specified therein was or was not an inspector at a time or during a period so specified; or

(b) that a person so specified was or was not the holder of a licence at a time or during a period so specified,

is admissible in any proceedings under this Act and shall be prima facie evidence of the matters so certified.

Proceedings on prosecutions.

27. (1) Proceedings for an offence against this Act or the regulations may only be taken in a summary manner before a stipendiary magistrate sitting in petty sessions.

(2) An information for an offence against this Act or the regulations may not be laid without the approval in writing of the Minister.

(3) An information laid for an offence against this Act or the regulations shall, in the absence of evidence to the contrary, be deemed to have been laid with the approval in writing of the Minister.

Institution of prosecutions.

28. (1) An information for an offence against this Act or the regulations may be laid in the name of the Commissioner by any officer of the Public Service employed in the administration or execution of this Act and authorised to lay informations on behalf of the Commissioner, and any prosecution instituted in the name of the Commissioner shall, in the absence of evidence to the contrary, be deemed to have been instituted by his authority.

(2) An officer referred to in subsection (1) may appear on behalf of the Commissioner in any proceedings for an offence against this Act or the regulations.

Offences by bodies corporate.

29. Where a person convicted of an offence against this Act or the regulations is a body corporate, every person concerned in the management of that body corporate may be convicted of the like offence unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

Service of documents by the Commissioner.

30. (1) Any notice or other document required or authorised by this Act or the regulations to be served or given by the Commissioner shall be deemed to have been duly served or given—

(a) if delivered personally to, or if left at the last known place of abode or business in or out of the State of the person, on or to whom the notice or document is to be served or given; or

(b)

(b) if sent by prepaid letter post, addressed to the person on or to whom the notice or document is to be served or given at his last known place of business or abode in or out of the State.

(2) Service of a notice or document in accordance with subsection (1) (b) shall prima facie be deemed to have been effected at the time when it would be delivered in the ordinary course of post.

(3) The provisions of this section are in addition to and not in derogation of the provisions of section 362 of the Companies Act, 1961.

Regulations.

31. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to requiring persons, or persons belonging to classes of persons, specified in the regulations to make returns in such form and manner and containing such information relating to sales, purchases or stocks of, or dealings with, tobacco, as is indicated by the regulations and to furnish the returns to the Commissioner within such time as may be so specified.

(2) The regulations may impose a penalty not exceeding $500 for an offence arising under the regulations.

(3) Regulations may be made so as to apply differently to or in respect of different classes of persons or different classes of tobacco or according to such other different factors as may be specified in the regulations.

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

Government House,
Sydney, 23rd October, 1975.