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BUSINESS FRANCHISE LICENCES (TOBACCO) AMENDMENT BILL, 1978

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are—

(a) to enable an inspector to require the production of certain records and statements and the answering of certain questions by a person found in or on premises used for the storage or custody of records relating to the handling or sale of tobacco (Schedule 1 (3));

(b) to repeal section 18 of the Business Franchise Licences (Tobacco) Act, 1975 (hereinafter referred to as the "Principal Act") which provided for the transfer of licences granted under that Act (Schedule 1 (4));

(c) to provide that proceedings may be brought for an offence against the Act within the period of 2 years from the commission of the offence (Schedule 1 (6));

(d) where a person has traded for a period without a licence that he was required to have held under the Principal Act, to empower the Commissioner to recover an amount equal to the licence fee that would have been payable if the person had been licensed for that period (Schedule 1 (7));

(e) on and from a date to be notified in the Gazette, to require a person who carries on tobacco wholesaling to hold a licence under the Principal Act with a monthly term, rather than a yearly term, as presently provided, and to require a member of a group of tobacco wholesalers, as defined in Schedule 2 to the proposed Act, to be a holder of a new class of licence to be known as a group wholesale tobacco merchant's licence, if he is to carry on tobacco wholesaling (clause 9 and Schedule 2 (1)–(12) and (14));

(f) to require a holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence to endorse, or cause to be endorsed, on invoices issued by him, certain matter signifying that he is licensed (Schedule 2 (13)); and

(g) to make other provisions of a minor, saving, consequential or transitional character.

44892J 419—

BUSINESS FRANCHISE LICENCES (TOBACCO) AMENDMENT BILL, 1978

No. , 1978.

A BILL FOR

An Act to amend the Business Franchise Licences (Tobacco) Act, 1975, so as to provide for monthly licensing of tobacco wholesaling, for the issue of group wholesale tobacco merchants' licences and for the recovery of an amount in respect of unlicensed tobacco wholesaling or retailing; and in certain other respects.

[MR RENSHAW—2 *March*, 1978.]

44892J 419—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 :—

5 **1.** This Act may be cited as the "Business Franchise Licences (Tobacco) Amendment Act, 1978". Short title.

2. (1) Except as provided in subsection (2), this Act shall commence on the date of assent to this Act. Commencement.

(2) Sections 6, 9 and 10 and Schedule 2 shall commence 10 on such day, being the 28th day of a month, as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. The Business Franchise Licences (Tobacco) Act, 1975, is referred to in this Act as the Principal Act. Principal Act.

15 **4.** In this Act, "appointed day" means the day appointed and notified pursuant to section 2 (2). Interpretation.

5. The Principal Act is amended in the manner set forth in Schedule 1. Amendment of Act No. 63, 1975.

6. The Principal Act is further amended in the manner set 20 forth in Schedule 2. Further amendment of Act No. 63, 1975.

7. A reference in this Act or the Principal Act, as amended by this Act, whether before or after the appointed day, to a licensee or the holder of a licence includes a reference to a person to whom the licence has been transferred under section 18 of the Principal Act, as in force before the date of assent to this Act. **Saving.**

8. (1) Notwithstanding section 2 (2), where a person would be required to hold a licence under the Principal Act, as amended by this Act, in order to carry on tobacco wholesaling on or after the appointed day, section 6 and Schedule 2 shall, for the purpose only of doing anything, or requiring anything to be done, for the purpose of granting the licence before the appointed day, be deemed to have commenced on the date of assent to this Act. **Transitional.**

(2) Subsection (1) has no operation in relation to the granting of any licence authorising the licensee to carry on tobacco wholesaling before the appointed day.

9. Notwithstanding any provision of the Principal Act or contained in the licence, a wholesale tobacco merchant's licence in force under the Principal Act immediately before the appointed day shall, on and from that day, have no force or effect. **Termination of certain licences.**

10. Where the holder of a wholesale tobacco merchant's licence in force under the Principal Act immediately before the appointed day— **Liability for, and refund of, certain fees.**

(a) had elected to pay the licence fee by instalments in accordance with section 13 of that Act—he is not required to pay any such instalment that first becomes due and payable on or after the appointed day; or

(b) has paid to the Commissioner the total licence fee payable in respect of the licence—he shall be entitled to a refund of such proportion of the fee as the number of complete months, if any, between the appointed day and the day next succeeding the last day for which the licence was granted bears to the number of complete months for which the licence was granted.

SCHEDULE 1.

Sec. 5.

AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 2—

From the matter relating to Part III, omit "18", insert instead "17".

(2) Section 3 (6)—

Omit the subsection.

(3) Section 7 (2) (b)—

After "tobacco or", insert "for the storage or custody of any record relating to the processing, packaging, distribution, sale or purchase of tobacco or".

(4) Section 18—

Omit the section.

(5) Section 20 (2)—

Omit the subsection.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) Section 27 (1A)—

After section 27 (1), insert :—

5 (1A) Proceedings for an offence against this Act may be commenced at any time within a period of 2 years after the commission of the offence.

(7) Section 28A—

After section 28, insert :—

10 28A. (1) Where a person was required by this Act to hold a licence in respect of any period, but did not do so, the person shall pay to the Commissioner an amount equal to the fee which would have been payable for the licence had he applied for or held the licence.

Recovery of unpaid fees from unlicensed persons.

15 (2) The Commissioner may, at any time after the commencement of this section, assess the amount of the fee as if the person had applied for the licence, notwithstanding that the Commissioner might, before that commencement, have made or purported to have made 20 such an assessment.

(3) Notice of the assessment under this section shall be served by the Commissioner on the person.

(4) The person may, within 1 month after service of the assessment, object to the Commissioner 25 against the assessment of the fee on the ground that the fee was excessive by reason that it was incorrectly assessed by the Commissioner under section 12 and on no other ground.

(5) The Commissioner shall, as soon as practic- 30 able, determine the objection and serve the person with notice of his determination.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) If the person is not satisfied with the determination of the Commissioner on his objection or if within 1 month after the objection was lodged the Commissioner has not given a determination with respect to the objection, the person may appeal to the Tribunal against the assessment of the fee on the ground referred to in subsection (4).

(7) The provisions of section 21 (4), (5), (6) and (7) apply to and in respect of an appeal under this section, and so apply as if the reference in section 21 (4) (a) to the licensee were a reference to the person appealing under this section, and as if a reference (however expressed) in the regulations to a prescribed form of appeal were a reference to a form approved by the Tribunal.

(8) The Commissioner on an objection, or the Tribunal on an appeal, may vary the assessment.

(9) Any amount which is assessed under this section and which is unpaid may be recovered by the Commissioner, as a debt, in any court of competent jurisdiction unless the person satisfies the court that he was not required to hold the licence referred to in subsection (1).

(10) Proceedings may not be commenced for the purpose of recovering the amount referred to in subsection (9) until—

(a) if the person does not object to the assessment under this section—the expiration of 1 month after service of notice of the assessment under subsection (3);

(b) if the person objects to the assessment but does not appeal against the assessment under this section—the expiration of the period during which an appeal could have been made; or

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) if the person appeals against the assessment under this section—the appeal is determined.

5 (11) A certificate purporting to be signed by the Commissioner and stating that a specified amount is the amount assessed under this section in respect of a specified person is admissible in the proceedings and shall be prima facie evidence of the matters so certified.

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10 SCHEDULE 2. Sec. 6.

FURTHER AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 2—

After the matter relating to Part V, insert :—

SCHEDULE 1.—RELEVANT PERIODS FOR WHOLESALE
15 TOBACCO MERCHANTS' LICENCES.

(2) (a) Section 3 (1), definition of "group wholesale tobacco merchant's licence"—

After the definition of "Commissioner", insert :—

"group wholesale tobacco merchant's licence" means a group wholesale tobacco merchant's licence referred to in section 11 (2) (a) and in force under this Act;
20

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 3 (1), definition of "relevant period"—

Omit the definition, insert instead :—

"relevant period" means—

(a) in relation to a retail tobacconist's licence or a renewal thereof—the period of 1 year that ended on the 30th June that last preceded the 27th August that last preceded the day on and from which the licence or renewal, if granted, would be in force; and

(b) in relation to a wholesale tobacco merchant's licence, a group wholesale tobacco merchant's licence or a renewal thereof—the month specified in column 2 of Schedule 1 that last preceded the month—

(i) specified in column 1 of Schedule 1 opposite the firstmentioned month; and

(ii) upon the 27th day of which the licence or renewal, if granted and in force for the whole of its term, would expire;

(c) Section 3 (1), definition of "voting share"—

After the definition of "vending machine", insert :—

"voting share" has the meaning ascribed thereto in section 5 (1) of the Companies Act, 1961;

(d) Section 3 (1), definition of "wholesale tobacco merchant's licence"—

After "means a", insert "wholesale tobacco merchant's".

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(e) Section 3 (6A)—

Before section 3 (7), insert :—

5 (6A) A reference in this Act to a holder of a group wholesale tobacco merchant's licence includes a reference to each person whose name is, under section 11 (3A), specified in a group wholesale tobacco merchant's licence that is in force.

10 (3) Sections 3A–3F—

After section 3, insert :—

Membership of a group of wholesale tobacco merchants.

3A. (1) For the purposes of this Act, a person is a member of a group of wholesale tobacco merchants if—

(a) that person is one of the persons who constitute a
15 group for the purposes of this Act; and

(b) there is not in force a determination under subsection (2) or (3) by the Commissioner that that person is not a member of the group.

(2) The Commissioner may by writing under his
20 hand determine that a person who would, but for the determination, be a member of a group for the purposes of this Act is not a member of the group of wholesale tobacco merchants if he is satisfied that that person has continuously carried on tobacco wholesaling independently
25 of the group and will continue to carry on tobacco wholesaling independently of the group and is not subject to control by any other member of the group.

(3) The Commissioner may by writing under his hand determine that a person who would, but for the
30 determination, be a member of a group for the purposes of this Act, is not a member of any group for the purposes of this Act if he is satisfied that the person is not carrying on and has no intention of carrying on tobacco wholesaling.

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) A determination made under subsection (2) or (3) shall come into force on the making thereof and shall continue in force until it is revoked by the Commissioner and notice of the revocation has been served on the person in respect of whom the determination was made.

(5) Notice of a determination under subsection (2) shall be given by the Commissioner to the person in respect of whom the determination was made and to all the members of the group concerned whom he considers are carrying on tobacco wholesaling.

(6) Notice of a determination under subsection (3) shall be published in the Gazette.

(7) The Commissioner may at any time revoke a determination made under subsection (2) or (3).

(8) Notice of the revocation of a determination made under subsection (2) or (3) shall be given by the Commissioner to the person in respect of whom the determination was made and all members of the group in respect of which the determination was made who he considers are carrying on tobacco wholesaling.

Grouping of corporations.

3B. For the purposes of this Act, corporations constitute a group if they are related to each other (within the meaning of the Companies Act, 1961).

Grouping where employees used in another business.

3C. For the purposes of this Act, if—

(a) an employee of an employer, or 2 or more employees of an employer, performs or perform duties solely or mainly for or in connection with a business carried on by that employer and another person or other persons or by another person or other persons; or

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) an employer has, in respect of the employment of, or the performance of duties by, one or more of his employees, an agreement, arrangement or undertaking (whether formal or informal, whether expressed or implied and whether or not the agreement, arrangement or undertaking includes provisions in respect of the supply of goods or services or goods and services) with another person or other persons relating to a business carried on by that other person or those other persons, whether alone or together with another person or other persons,

that employer and—

(c) each such other person; or

(d) both or all of those other persons,

constitute a group.

Grouping of commonly controlled businesses.

3D. (1) A reference in this section to 2 businesses does not include a reference to 2 businesses both of which are owned by the same person, not being a trustee, or by the trustee or trustees of a trust.

(2) For the purposes of this Act, where the same person has, or the same persons have together, a controlling interest, as referred to in subsection (3), in each of 2 businesses, the persons who carry on those businesses constitute a group.

(3) For the purposes of subsection (2), the same person has, or the same persons have together, a controlling interest in each of 2 businesses if that person has, or those persons have together, a controlling interest under any of

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

the following paragraphs in one of the businesses and a controlling interest under the same or another of the following paragraphs in the other business :—

(a) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation, if the directors, or a majority of the directors, or one or more of the directors, being a director or directors who is or are entitled to exercise a majority in voting power at meetings of the directors of the corporation, are or is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person or of those persons acting together;

(b) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation that has a share capital, if that person or those persons acting together could (whether directly or indirectly) exercise, control the exercise of or substantially influence the exercise of, half or more than half of the voting power attached to voting shares issued by the corporation;

(c) a person has, or persons have together, a controlling interest in a business, being a business carried on by a partnership, if that person or those persons—

(i) owns, or own together (whether beneficially or not) half or more than half of the capital of the partnership; or

(ii) is, or are together, entitled (whether beneficially or not) to half or more than half of the profits of the partnership;

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) a person has, or persons have together, a controlling interest in a business, being a business carried on under a trust, if that person (whether or not as the trustee of another trust) is the beneficiary, or those persons (whether or not as the trustees of another trust) are together the beneficiaries, in respect of half or more than half of the value of the interests in the trust first mentioned in this paragraph;

(e) a person has a controlling interest in a business if, whether or not he is a trustee of a trust, he is the sole owner of the business, or persons, being 2 or more trustees of a trust, have a controlling interest in a business if they are the owners of the business.

(4) Where a corporation has a controlling interest under subsection (3) in a business, it shall be deemed to have a controlling interest in any other business in which another corporation that is related to it (within the meaning of the Companies Act, 1961) has a controlling interest.

(5) Where—

(a) a person has, or persons have together, a controlling interest under subsection (3) in a business; and

(b) the person or persons who carry on that business has or have such a controlling interest in another business,

the person or persons referred to in paragraph (a) shall be deemed to have a controlling interest in the business referred to in paragraph (b).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) Where—

(a) a person is a beneficiary under a trust; or

(b) 2 or more persons together are beneficiaries under a trust,

in respect of half or more than half of the value of the interests in that trust and the trustee or trustees of that trust has or have under subsection (3) a controlling interest in a business, that beneficiary or those beneficiaries shall, for the purposes of subsection (3), be deemed to have a controlling interest in that business.

Smaller groups subsumed into larger groups.

3E. (1) Notwithstanding any other provision of this Act (except subsection (2)), where a person is, whether or not by virtue of this subsection, a member of 2 or more groups (each of which is in subsection (2) referred to as a smaller group), all of the members of those groups constitute, for the purposes of this Act, one group.

(2) Except for the purpose of determining whether a group is constituted under subsection (1), a group which, but for this subsection, would be a smaller group ceases to be a group if its members are members of a group constituted under subsection (1).

Beneficiaries under discretionary trusts.

3F. A person who, as the result of the exercise of a power or discretion by the trustee of a discretionary trust or by any other person or by that trustee and any other person, may benefit under that trust shall be deemed, for the purposes of this Act, to be a beneficiary in respect of half or more than half of the value of the interests in that trust.

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) Section 10 (1)—

After "licence", insert "or a group wholesale tobacco merchant's licence".

(5) (a) Section 11 (1) (c) (ii)—

After "applicant", insert "is an applicant for a retail tobacconist's licence and".

(b) Section 11 (1A)—

After section 11 (1), insert :—

(1A) An application under subsection (1) (a)—

(a) for a wholesale tobacco merchant's licence—may be made by any person other than a person who is a member of a group of wholesale tobacco merchants;

(b) for a group wholesale tobacco merchant's licence—may be made on behalf of all or any of the members of a group of wholesale tobacco merchants by any member of the group; and

(c) for a retail tobacconist's licence—may be made by any person.

(c) Section 11 (2) (a)—

After "merchant's licence", insert "or a group wholesale tobacco merchant's licence".

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 11 (3)—

Omit "in a form approved by him and payment of the prescribed fee (if any) by the holder of the licence", insert instead "by the holder, or if there is more than one holder, any of the holders, of the licence in a form approved by the Commissioner and payment of the prescribed fee (if any)".

(e) Section 11 (3A)—

After section 11 (3), insert :—

(3A) The Commissioner shall, on the grant of a group wholesale tobacco merchant's licence, cause the name of each person who is a member of the group of wholesale tobacco merchants and on whose behalf the application for the licence was made to be specified in the licence.

(6) (a) Section 12 (1) (a), (a1)—

Omit section 12 (1) (a), insert instead :—

(a) for a wholesale tobacco merchant's licence—a fee of $10 together with an amount of 10 per centum of the value of tobacco sold by the applicant in the course of tobacco wholesaling during the relevant period;

(a1) for a group wholesale tobacco merchant's licence—a fee of $10 together with an amount of 10 per centum of the value of tobacco sold by all persons who are members of the group of wholesale tobacco merchants of which the applicant for the licence or a renewal thereof

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

is a member (whether or not the application was made by them or on their behalf and whether or not they were members of that group during the whole or any part of the relevant period) in the course of tobacco wholesaling during the relevant period;

(b) Section 12 (1A)–(1C)—

After section 12 (1), insert :—

(1A) Where an applicant for a wholesale tobacco merchant's licence or a renewal thereof was, at any time during the relevant period for the licence or renewal, a member of a group of wholesale tobacco merchants, the tobacco sold by the applicant in the course of tobacco wholesaling during that relevant period shall, for the purposes of subsection (1) (a), be deemed to have included any tobacco sold by the other or, if more than one, all of the other members of the group in the course of tobacco wholesaling during that period unless the applicant satisfies the Commissioner that a fee for a wholesale tobacco merchant's licence, a group wholesale tobacco merchant's licence or a renewal thereof has been paid to the Commissioner after having been assessed in respect of the sale of that tobacco during that relevant period.

(1B) Where—

(a) an application is made on behalf of all or any of the members of a group of wholesale tobacco merchants for a group wholesale tobacco merchant's licence or a renewal thereof; and

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) any member of the group referred to in paragraph (a) was, at any time during the relevant period for the licence or renewal, a member of another group of wholesale tobacco merchants (any one or more of the members of which is not a member of the group referred to in paragraph (a)),

the tobacco sold by members of the firstmentioned group in the course of tobacco wholesaling during that relevant period shall, for the purposes of subsection (1) (a1), be deemed to have included any tobacco sold by any of the members of the other group in the course of tobacco wholesaling during that period unless the applicant satisfies the Commissioner that a fee for a wholesale tobacco merchant's licence, a group wholesale tobacco merchant's licence or a renewal thereof has been paid to the Commissioner after having been assessed in respect of the sale of that tobacco during that relevant period.

(1C) For the purposes of subsections (1) (a) and (a1), (1A) and (1B), tobacco shall not be treated as having been sold by reason only of its having been sold to the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence.

(c) Section 12 (2)—

Omit "payable by the applicant", insert instead "payable".

(d) Section 12 (2)—

Omit "subsection (1)", insert instead "subsections (1)–(1C)".

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(e) Section 12 (3)—

Omit "payable by the applicant" wherever occurring, insert instead "payable".

(f) Section 12 (3)—

Omit "subsection (1)" wherever occurring, insert instead "subsections (1)–(1C)".

(g) Section 12 (3A)—

After section 12 (3), insert :—

(3A) A fee payable in respect of a licence under subsection (2) or (3) is payable by the applicant for the licence.

(h) Section 12 (6)—

Omit "a licence", insert instead "a retail tobacconist's licence".

(i) Section 12 (8)—

After section 12 (7), insert :—

(8) In subsections (2) and (3), "applicant", in relation to a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence, includes any person whose tobacco wholesaling during the relevant period for the licence would be required to be taken into account by reason of subsection (1) (a1), (1A) or (1B) for the purpose of determining the fee for the licence if the fee was not required to be assessed under either subsection (2) or (3).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(7) (a) Section 13 (2)—

Omit "for a licence", insert instead "for a retail tobacconist's licence".

(b) Section 13 (2)—

Omit "of a licence", insert instead "of a retail tobacconist's licence".

(c) Section 13 (3)—

Omit "the licence" where firstly occurring, insert instead "a retail tobacconist's licence".

(d) Section 13 (5)—

Omit "a licence", insert instead "a retail tobacconist's licence".

(e) Section 13 (6)—

Omit "a licence", insert instead "a retail tobacconist's licence".

(8) (a) Section 14 (5)—

Omit "and payable in accordance with the provisions of subsections (6) and (7).", insert instead :—

and payable—

(a) if the reassessment was made in respect of a retail tobacconist's licence—in accordance with subsections (6) and (7); or

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) if the reassessment was made in respect of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence—in accordance with subsections (6A) and (7).

(b) Section 14 (6) (a)—

After "and payable", insert "by that person".

(c) Section 14 (6A)—

After section 14 (6), insert :—

(6A) Where the additional amount is payable by virtue of a reassessment in respect of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence, the additional amount shall be due and payable (whether or not the licence has ceased to be in force)—

(a) within 14 days after notice of the reassessment is served on the person who is or was the holder of the wholesale tobacco merchant's licence or on any one or more of the persons who are or were holders of the group wholesale tobacco merchant's licence, as the case may be; and

(b) by the person or, where notice is served on more than one person, by each of the persons on whom the notice is served.

(d) Section 14 (7)—

After "subsection (6)", insert "or (6A)".

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(e) Section 14 (9)—

After "subsection (6)", insert ", (6A)".

5 (9) (a) Section 16 (1)—

Omit "A licence", insert instead "A retail tobacconist's licence".

(b) Section 16 (1A), (1B)—

After section 16 (1), insert :—

10 (1A) A wholesale tobacco merchant's licence and a group wholesale tobacco merchant's licence shall expire, subject to section 17 (2)—

(a) in the case of a licence that was first in force on a day in a month occurring before
15 the 28th day of the month—on the 27th day of the month in which it was first in force; and

(b) in any other case—on the 27th day of the next succeeding month after the month
20 during which it was first in force.

(1B) A licence referred to in subsection (1A) may, from time to time, upon—

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

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

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) payment of the fee assessed by the Commissioner in accordance with section 12,

be renewed for successive periods of one month expiring on the 27th day of the next succeeding month after the month in which the licence is renewed.

(c) Section 16 (2)—

After "subsection (1) (c)", insert "or (1B) (c), as the case may be".

(10) (a) Section 17 (1)—

Omit "licensee", insert instead "holder of a retail tobacconist's licence".

(b) Section 17 (2) (a)—

Before "the applicant", insert "it is a retail tobacconist's licence and".

(c) Section 17 (2) (b)—

After "section 14", insert "in respect of the licence".

(11) Section 19 (1)—

Omit "or, where", insert instead "or, where the licence for which that person applied was a retail tobacconist's licence and".

(12) (a) Section 21 (1)—

After "section 13", insert "in relation to the fee assessed in respect of a retail tobacconist's licence".

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 21 (8) (b)—

Omit "the application for the licence", insert instead "his application for a retail tobacconist's licence in respect of which licence the appeal was instituted,".

(c) Section 21 (8) (b)—

Omit "section 13", insert instead "section 13,".

(13) Section 23A—

After section 23, insert :—

Invoices to be endorsed.

23A. (1) A holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence shall endorse or cause to be endorsed on every invoice issued by him for or in relation to the sale of tobacco the words "SOLD BY LICENSED WHOLESALER—LICENCE No. " followed by the number of his licence.

Penalty : $500.

(2) A person shall not issue an invoice which bears—

(a) the words "SOLD BY LICENSED WHOLESALER" (or words of like import) unless he is the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence; or

(b) the matter "LICENCE No. " (or matter of like import) followed by a number, unless he is the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence bearing that number.

Penalty : $1,000.

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(14) Schedule 1—

After Part V, insert :—

5 SCHEDULE 1. Sec. 3 (1).

RELEVANT PERIODS FOR WHOLESALE TOBACCO MERCHANTS' LICENCES.

Column 1.	Column 2.
July	May
August	June
September	July
October	August
November	September
December	October
January	November
February	December
March	January
April	February
May	March
June	April

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1978
[32c]

BUSINESS FRANCHISE LICENCES (TOBACCO) AMENDMENT BILL, 1978

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are—

(a) to enable an inspector to require the production of certain records and statements and the answering of certain questions by a person found in or on premises used for the storage or custody of records relating to the handling or sale of tobacco (Schedule 1 (3));

(b) to repeal section 18 of the Business Franchise Licences (Tobacco) Act, 1975 (hereinafter referred to as the "Principal Act") which provided for the transfer of licences granted under that Act (Schedule 1 (4));

(c) to provide that proceedings may be brought for an offence against the Act within the period of 2 years from the commission of the offence (Schedule 1 (6));

(d) where a person has traded for a period without a licence that he was required to have held under the Principal Act, to empower the Commissioner to recover an amount equal to the licence fee that would have been payable if the person had been licensed for that period (Schedule 1 (7));

(e) on and from a date to be notified in the Gazette, to require a person who carries on tobacco wholesaling to hold a licence under the Principal Act with a monthly term, rather than a yearly term, as presently provided, and to require a member of a group of tobacco wholesalers, as defined in Schedule 2 to the proposed Act, to be a holder of a new class of licence to be known as a group wholesale tobacco merchant's licence, if he is to carry on tobacco wholesaling (clause 9 and Schedule 2 (1)–(12) and (14));

(f) to require a holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence to endorse, or cause to be endorsed, on invoices issued by him, certain matter signifying that he is licensed (Schedule 2 (13)); and

(g) to make other provisions of a minor, saving, consequential or transitional character.

BUSINESS FRANCHISE LICENCES (TOBACCO) AMENDMENT BILL, 1978

No. , 1978.

A BILL FOR

An Act to amend the Business Franchise Licences (Tobacco) Act, 1975, so as to provide for monthly licensing of tobacco wholesaling, for the issue of group wholesale tobacco merchants' licences and for the recovery of an amount in respect of unlicensed tobacco wholesaling or retailing; and in certain other respects.

[MR RENSHAW—2 *March*, 1978.]

44892J 419—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 :—

5 **1.** This Act may be cited as the "Business Franchise Licences (Tobacco) Amendment Act, 1978". Short title.

2. (1) Except as provided in subsection (2), this Act shall commence on the date of assent to this Act. Commencement.

(2) Sections 6, 9 and 10 and Schedule 2 shall commence 10 on such day, being the 28th day of a month, as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. The Business Franchise Licences (Tobacco) Act, 1975, is referred to in this Act as the Principal Act. Principal Act.

15 **4.** In this Act, "appointed day" means the day appointed and notified pursuant to section 2 (2). Interpretation.

5. The Principal Act is amended in the manner set forth in Schedule 1. Amendment of Act No. 63, 1975.

6. The Principal Act is further amended in the manner set 20 forth in Schedule 2. Further amendment of Act No. 63, 1975.

7. A reference in this Act or the Principal Act, as amended by this Act, whether before or after the appointed day, to a licensee or the holder of a licence includes a reference to a person to whom the licence has been transferred under section 18 of the Principal Act, as in force before the date of assent to this Act. **Saving.**

8. (1) Notwithstanding section 2 (2), where a person would be required to hold a licence under the Principal Act, as amended by this Act, in order to carry on tobacco wholesaling on or after the appointed day, section 6 and Schedule 2 shall, for the purpose only of doing anything, or requiring anything to be done, for the purpose of granting the licence before the appointed day, be deemed to have commenced on the date of assent to this Act. **Transitional.**

(2) Subsection (1) has no operation in relation to the granting of any licence authorising the licensee to carry on tobacco wholesaling before the appointed day.

9. Notwithstanding any provision of the Principal Act or contained in the licence, a wholesale tobacco merchant's licence in force under the Principal Act immediately before the appointed day shall, on and from that day, have no force or effect. **Termination of certain licences.**

10. Where the holder of a wholesale tobacco merchant's licence in force under the Principal Act immediately before the appointed day— **Liability for, and refund of, certain fees.**

(a) had elected to pay the licence fee by instalments in accordance with section 13 of that Act—he is not required to pay any such instalment that first becomes due and payable on or after the appointed day; or

(b) has paid to the Commissioner the total licence fee payable in respect of the licence—he shall be entitled to a refund of such proportion of the fee as the number of complete months, if any, between the appointed day and the day next succeeding the last day for which the licence was granted bears to the number of complete months for which the licence was granted.

SCHEDULE 1.

Sec. 5.

AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 2—

From the matter relating to Part III, omit "18", insert instead "17".

(2) Section 3 (6)—

Omit the subsection.

(3) Section 7 (2) (b)—

After "tobacco or", insert "for the storage or custody of any record relating to the processing, packaging, distribution, sale or purchase of tobacco or".

(4) Section 18—

Omit the section.

(5) Section 20 (2)—

Omit the subsection.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) Section 27 (1A)—

After section 27 (1), insert :—

5 (1A) Proceedings for an offence against this Act may be commenced at any time within a period of 2 years after the commission of the offence.

(7) Section 28A—

After section 28, insert :—

10 28A. (1) Where a person was required by this Act to hold a licence in respect of any period, but did not do so, the person shall pay to the Commissioner an amount equal to the fee which would have been payable for the licence had he applied for or held the licence.

Recovery of unpaid fees from unlicensed persons.

15 (2) The Commissioner may, at any time after the commencement of this section, assess the amount of the fee as if the person had applied for the licence, notwithstanding that the Commissioner might, before that commencement, have made or purported to have made 20 such an assessment.

(3) Notice of the assessment under this section shall be served by the Commissioner on the person.

(4) The person may, within 1 month after service of the assessment, object to the Commissioner 25 against the assessment of the fee on the ground that the fee was excessive by reason that it was incorrectly assessed by the Commissioner under section 12 and on no other ground.

(5) The Commissioner shall, as soon as practic- 30 able, determine the objection and serve the person with notice of his determination.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) If the person is not satisfied with the determination of the Commissioner on his objection or if within 1 month after the objection was lodged the Commissioner has not given a determination with respect to the objection, the person may appeal to the Tribunal against the assessment of the fee on the ground referred to in subsection (4).

(7) The provisions of section 21 (4), (5), (6) and (7) apply to and in respect of an appeal under this section, and so apply as if the reference in section 21 (4) (a) to the licensee were a reference to the person appealing under this section, and as if a reference (however expressed) in the regulations to a prescribed form of appeal were a reference to a form approved by the Tribunal.

(8) The Commissioner on an objection, or the Tribunal on an appeal, may vary the assessment.

(9) Any amount which is assessed under this section and which is unpaid may be recovered by the Commissioner, as a debt, in any court of competent jurisdiction unless the person satisfies the court that he was not required to hold the licence referred to in subsection (1).

(10) Proceedings may not be commenced for the purpose of recovering the amount referred to in subsection (9) until—

(a) if the person does not object to the assessment under this section—the expiration of 1 month after service of notice of the assessment under subsection (3);

(b) if the person objects to the assessment but does not appeal against the assessment under this section—the expiration of the period during which an appeal could have been made; or

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) if the person appeals against the assessment under this section—the appeal is determined.

5 (11) A certificate purporting to be signed by the Commissioner and stating that a specified amount is the amount assessed under this section in respect of a specified person is admissible in the proceedings and shall be prima facie evidence of the matters so certified.

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10 SCHEDULE 2. Sec. 6.

FURTHER AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 2—

After the matter relating to Part V, insert :—

SCHEDULE 1.—RELEVANT PERIODS FOR WHOLESALE
15 TOBACCO MERCHANTS' LICENCES.

(2) (a) Section 3 (1), definition of "group wholesale tobacco merchant's licence"—

After the definition of "Commissioner", insert :—

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

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 3 (1), definition of "relevant period"—

Omit the definition, insert instead :—

5 "relevant period" means—

(a) in relation to a retail tobacconist's licence or a renewal thereof—the period of 1 year that ended on the 30th June that last preceded the 27th August that last preceded the day
10 on and from which the licence or renewal, if granted, would be in force; and

(b) in relation to a wholesale tobacco merchant's licence, a group wholesale tobacco merchant's licence or a renewal thereof—
15 the month specified in column 2 of Schedule 1 that last preceded the month—

(i) specified in column 1 of Schedule 1 opposite the firstmentioned month; and

20 (ii) upon the 27th day of which the licence or renewal, if granted and in force for the whole of its term, would expire;

(c) Section 3 (1), definition of "voting share"—

25 After the definition of "vending machine", insert :—

"voting share" has the meaning ascribed thereto in section 5 (1) of the Companies Act, 1961;

(d) Section 3 (1), definition of "wholesale tobacco
30 merchant's licence"—

After "means a", insert "wholesale tobacco merchant's".

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(e) Section 3 (6A)—

Before section 3 (7), insert :—

5 (6A) A reference in this Act to a holder of a group wholesale tobacco merchant's licence includes a reference to each person whose name is, under section 11 (3A), specified in a group wholesale tobacco merchant's licence that is in force.

10 (3) Sections 3A–3F—

After section 3, insert :—

3A. (1) For the purposes of this Act, a person is a member of a group of wholesale tobacco merchants if— **Membership of a group of wholesale tobacco merchants.**

(a) that person is one of the persons who constitute a 15 group for the purposes of this Act; and

(b) there is not in force a determination under sub-section (2) or (3) by the Commissioner that that person is not a member of the group.

(2) The Commissioner may by writing under his 20 hand determine that a person who would, but for the determination, be a member of a group for the purposes of this Act is not a member of the group of wholesale tobacco merchants if he is satisfied that that person has continuously carried on tobacco wholesaling independently 25 of the group and will continue to carry on tobacco wholesaling independently of the group and is not subject to control by any other member of the group.

(3) The Commissioner may by writing under his hand determine that a person who would, but for the 30 determination, be a member of a group for the purposes of this Act, is not a member of any group for the purposes of this Act if he is satisfied that the person is not carrying on and has no intention of carrying on tobacco wholesaling.

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) A determination made under subsection (2) or (3) shall come into force on the making thereof and shall continue in force until it is revoked by the Commissioner and notice of the revocation has been served on the person in respect of whom the determination was made.

(5) Notice of a determination under subsection (2) shall be given by the Commissioner to the person in respect of whom the determination was made and to all the members of the group concerned whom he considers are carrying on tobacco wholesaling.

(6) Notice of a determination under subsection (3) shall be published in the Gazette.

(7) The Commissioner may at any time revoke a determination made under subsection (2) or (3).

(8) Notice of the revocation of a determination made under subsection (2) or (3) shall be given by the Commissioner to the person in respect of whom the determination was made and all members of the group in respect of which the determination was made who he considers are carrying on tobacco wholesaling.

Grouping of corporations.

3B. For the purposes of this Act, corporations constitute a group if they are related to each other (within the meaning of the Companies Act, 1961).

Grouping where employees used in another business.

3C. For the purposes of this Act, if—

(a) an employee of an employer, or 2 or more employees of an employer, performs or perform duties solely or mainly for or in connection with a business carried on by that employer and another person or other persons or by another person or other persons; or

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) an employer has, in respect of the employment of, or the performance of duties by, one or more of his employees, an agreement, arrangement or undertaking (whether formal or informal, whether expressed or implied and whether or not the agreement, arrangement or undertaking includes provisions in respect of the supply of goods or services or goods and services) with another person or other persons relating to a business carried on by that other person or those other persons, whether alone or together with another person or other persons,

that employer and—

(c) each such other person; or

(d) both or all of those other persons,

constitute a group.

Grouping of commonly controlled businesses.

3D. (1) A reference in this section to 2 businesses does not include a reference to 2 businesses both of which are owned by the same person, not being a trustee, or by the trustee or trustees of a trust.

(2) For the purposes of this Act, where the same person has, or the same persons have together, a controlling interest, as referred to in subsection (3), in each of 2 businesses, the persons who carry on those businesses constitute a group.

(3) For the purposes of subsection (2), the same person has, or the same persons have together, a controlling interest in each of 2 businesses if that person has, or those persons have together, a controlling interest under any of

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

the following paragraphs in one of the businesses and a controlling interest under the same or another of the following paragraphs in the other business :—

(a) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation, if the directors, or a majority of the directors, or one or more of the directors, being a director or directors who is or are entitled to exercise a majority in voting power at meetings of the directors of the corporation, are or is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person or of those persons acting together;

(b) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation that has a share capital, if that person or those persons acting together could (whether directly or indirectly) exercise, control the exercise of or substantially influence the exercise of, half or more than half of the voting power attached to voting shares issued by the corporation;

(c) a person has, or persons have together, a controlling interest in a business, being a business carried on by a partnership, if that person or those persons—

(i) owns, or own together (whether beneficially or not) half or more than half of the capital of the partnership; or

(ii) is, or are together, entitled (whether beneficially or not) to half or more than half of the profits of the partnership;

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) a person has, or persons have together, a controlling interest in a business, being a business carried on under a trust, if that person (whether or not as the trustee of another trust) is the beneficiary, or those persons (whether or not as the trustees of another trust) are together the beneficiaries, in respect of half or more than half of the value of the interests in the trust first mentioned in this paragraph;

(e) a person has a controlling interest in a business if, whether or not he is a trustee of a trust, he is the sole owner of the business, or persons, being 2 or more trustees of a trust, have a controlling interest in a business if they are the owners of the business.

(4) Where a corporation has a controlling interest under subsection (3) in a business, it shall be deemed to have a controlling interest in any other business in which another corporation that is related to it (within the meaning of the Companies Act, 1961) has a controlling interest.

(5) Where—

(a) a person has, or persons have together, a controlling interest under subsection (3) in a business; and

(b) the person or persons who carry on that business has or have such a controlling interest in another business,

the person or persons referred to in paragraph (a) shall be deemed to have a controlling interest in the business referred to in paragraph (b).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) Where—

(a) a person is a beneficiary under a trust; or

(b) 2 or more persons together are beneficiaries under a trust,

in respect of half or more than half of the value of the interests in that trust and the trustee or trustees of that trust has or have under subsection (3) a controlling interest in a business, that beneficiary or those beneficiaries shall, for the purposes of subsection (3), be deemed to have a controlling interest in that business.

Smaller groups subsumed into larger groups.

3E. (1) Notwithstanding any other provision of this Act (except subsection (2)), where a person is, whether or not by virtue of this subsection, a member of 2 or more groups (each of which is in subsection (2) referred to as a smaller group), all of the members of those groups constitute, for the purposes of this Act, one group.

(2) Except for the purpose of determining whether a group is constituted under subsection (1), a group which, but for this subsection, would be a smaller group ceases to be a group if its members are members of a group constituted under subsection (1).

Beneficiaries under discretionary trusts.

3F. A person who, as the result of the exercise of a power or discretion by the trustee of a discretionary trust or by any other person or by that trustee and any other person, may benefit under that trust shall be deemed, for the purposes of this Act, to be a beneficiary in respect of half or more than half of the value of the interests in that trust.

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) Section 10 (1)—

After "licence", insert "or a group wholesale tobacco merchant's licence".

(5) (a) Section 11 (1) (c) (ii)—

After "applicant", insert "is an applicant for a retail tobacconist's licence and".

(b) Section 11 (1A)—

After section 11 (1), insert :—

(1A) An application under subsection (1) (a)—

(a) for a wholesale tobacco merchant's licence—may be made by any person other than a person who is a member of a group of wholesale tobacco merchants;

(b) for a group wholesale tobacco merchant's licence—may be made on behalf of all or any of the members of a group of wholesale tobacco merchants by any member of the group; and

(c) for a retail tobacconist's licence—may be made by any person.

(c) Section 11 (2) (a)—

After "merchant's licence", insert "or a group wholesale tobacco merchant's licence".

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 11 (3)—

Omit "in a form approved by him and payment of the prescribed fee (if any) by the holder of the licence", insert instead "by the holder, or if there is more than one holder, any of the holders, of the licence in a form approved by the Commissioner and payment of the prescribed fee (if any)".

(e) Section 11 (3A)—

After section 11 (3), insert :—

(3A) The Commissioner shall, on the grant of a group wholesale tobacco merchant's licence, cause the name of each person who is a member of the group of wholesale tobacco merchants and on whose behalf the application for the licence was made to be specified in the licence.

(6) (a) Section 12 (1) (a), (a1)—

Omit section 12 (1) (a), insert instead :—

(a) for a wholesale tobacco merchant's licence—a fee of $10 together with an amount of 10 per centum of the value of tobacco sold by the applicant in the course of tobacco wholesaling during the relevant period;

(a1) for a group wholesale tobacco merchant's licence—a fee of $10 together with an amount of 10 per centum of the value of tobacco sold by all persons who are members of the group of wholesale tobacco merchants of which the applicant for the licence or a renewal thereof

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

is a member (whether or not the application was made by them or on their behalf and whether or not they were members of that group during the whole or any part of the relevant period) in the course of tobacco wholesaling during the relevant period;

(b) Section 12 (1A)–(1C)—

After section 12 (1), insert :—

(1A) Where an applicant for a wholesale tobacco merchant's licence or a renewal thereof was, at any time during the relevant period for the licence or renewal, a member of a group of wholesale tobacco merchants, the tobacco sold by the applicant in the course of tobacco wholesaling during that relevant period shall, for the purposes of subsection (1) (a), be deemed to have included any tobacco sold by the other or, if more than one, all of the other members of the group in the course of tobacco wholesaling during that period unless the applicant satisfies the Commissioner that a fee for a wholesale tobacco merchant's licence, a group wholesale tobacco merchant's licence or a renewal thereof has been paid to the Commissioner after having been assessed in respect of the sale of that tobacco during that relevant period.

(1B) Where—

(a) an application is made on behalf of all or any of the members of a group of wholesale tobacco merchants for a group wholesale tobacco merchant's licence or a renewal thereof; and

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) any member of the group referred to in paragraph (a) was, at any time during the relevant period for the licence or renewal, a member of another group of wholesale tobacco merchants (any one or more of the members of which is not a member of the group referred to in paragraph (a)),

the tobacco sold by members of the firstmentioned group in the course of tobacco wholesaling during that relevant period shall, for the purposes of subsection (1) (a1), be deemed to have included any tobacco sold by any of the members of the other group in the course of tobacco wholesaling during that period unless the applicant satisfies the Commissioner that a fee for a wholesale tobacco merchant's licence, a group wholesale tobacco merchant's licence or a renewal thereof has been paid to the Commissioner after having been assessed in respect of the sale of that tobacco during that relevant period.

(1C) For the purposes of subsections (1) (a) and (a1), (1A) and (1B), tobacco shall not be treated as having been sold by reason only of its having been sold to the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence.

(c) Section 12 (2)—

Omit "payable by the applicant", insert instead "payable".

(d) Section 12 (2)—

Omit "subsection (1)", insert instead "subsections (1)–(1C)".

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(e) Section 12 (3)—

Omit "payable by the applicant" wherever occurring, insert instead "payable".

(f) Section 12 (3)—

Omit "subsection (1)" wherever occurring, insert instead "subsections (1)–(1C)".

(g) Section 12 (3A)—

After section 12 (3), insert :—

(3A) A fee payable in respect of a licence under subsection (2) or (3) is payable by the applicant for the licence.

(h) Section 12 (6)—

Omit "a licence", insert instead "a retail tobacconist's licence".

(i) Section 12 (8)—

After section 12 (7), insert :—

(8) In subsections (2) and (3), "applicant", in relation to a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence, includes any person whose tobacco wholesaling during the relevant period for the licence would be required to be taken into account by reason of subsection (1) (a1), (1A) or (1B) for the purpose of determining the fee for the licence if the fee was not required to be assessed under either subsection (2) or (3).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(7) (a) Section 13 (2)—

Omit "for a licence", insert instead "for a retail tobacconist's licence".

(b) Section 13 (2)—

Omit "of a licence", insert instead "of a retail tobacconist's licence".

(c) Section 13 (3)—

Omit "the licence" where firstly occurring, insert instead "a retail tobacconist's licence".

(d) Section 13 (5)—

Omit "a licence", insert instead "a retail tobacconist's licence".

(e) Section 13 (6)—

Omit "a licence", insert instead "a retail tobacconist's licence".

(8) (a) Section 14 (5)—

Omit "and payable in accordance with the provisions of subsections (6) and (7).", insert instead :—

and payable—

(a) if the reassessment was made in respect of a retail tobacconist's licence—in accordance with subsections (6) and (7); or

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) if the reassessment was made in respect of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence—in accordance with subsections (6A) and (7).

(b) Section 14 (6) (a)—

After "and payable", insert "by that person".

(c) Section 14 (6A)—

After section 14 (6), insert :—

(6A) Where the additional amount is payable by virtue of a reassessment in respect of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence, the additional amount shall be due and payable (whether or not the licence has ceased to be in force)—

(a) within 14 days after notice of the reassessment is served on the person who is or was the holder of the wholesale tobacco merchant's licence or on any one or more of the persons who are or were holders of the group wholesale tobacco merchant's licence, as the case may be; and

(b) by the person or, where notice is served on more than one person, by each of the persons on whom the notice is served.

(d) Section 14 (7)—

After "subsection (6)", insert "or (6A)".

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(e) Section 14 (9)—

After "subsection (6)", insert ", (6A)".

5 (9) (a) Section 16 (1)—

Omit "A licence", insert instead "A retail tobacconist's licence".

(b) Section 16 (1A), (1B)—

After section 16 (1), insert :—

10 (1A) A wholesale tobacco merchant's licence and a group wholesale tobacco merchant's licence shall expire, subject to section 17 (2)—

(a) in the case of a licence that was first in force on a day in a month occurring before
15 the 28th day of the month—on the 27th day of the month in which it was first in force; and

(b) in any other case—on the 27th day of the next succeeding month after the month
20 during which it was first in force.

(1B) A licence referred to in subsection (1A) may, from time to time, upon—

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

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

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) payment of the fee assessed by the Commissioner in accordance with section 12,

5

be renewed for successive periods of one month expiring on the 27th day of the next succeeding month after the month in which the licence is renewed.

(c) Section 16 (2)—

10

After "subsection (1) (c)", insert "or (1B) (c), as the case may be".

(10) (a) Section 17 (1)—

Omit "licensee", insert instead "holder of a retail tobacconist's licence".

15

(b) Section 17 (2) (a)—

Before "the applicant", insert "it is a retail tobacconist's licence and".

(c) Section 17 (2) (b)—

After "section 14", insert "in respect of the licence".

20 (11) Section 19 (1)—

Omit "or, where", insert instead "or, where the licence for which that person applied was a retail tobacconist's licence and".

(12) (a) Section 21 (1)—

25

After "section 13", insert "in relation to the fee assessed in respect of a retail tobacconist's licence".

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 21 (8) (b)—

Omit "the application for the licence", insert instead "his application for a retail tobacconist's licence in respect of which licence the appeal was instituted,".

(c) Section 21 (8) (b)—

Omit "section 13", insert instead "section 13,".

(13) Section 23A—

After section 23, insert :—

Invoices to be endorsed.

23A. (1) A holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence shall endorse or cause to be endorsed on every invoice issued by him for or in relation to the sale of tobacco the words "SOLD BY LICENSED WHOLESALER—LICENCE No. " followed by the number of his licence.

Penalty : $500.

(2) A person shall not issue an invoice which bears—

(a) the words "SOLD BY LICENSED WHOLESALER" (or words of like import) unless he is the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence; or

(b) the matter "LICENCE No. " (or matter of like import) followed by a number, unless he is the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence bearing that number.

Penalty : $1,000.

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(14) Schedule 1—

After Part V, insert :—

5 SCHEDULE 1. Sec. 3 (1).

RELEVANT PERIODS FOR WHOLESALE TOBACCO MERCHANTS' LICENCES.

Column 1.	Column 2.
July	May
August	June
September	July
October	August
November	September
December	October
January	November
February	December
March	January
April	February
May	March
June	April

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1978
[32c]

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PROOF

BUSINESS FRANCHISE LICENCES (TOBACCO) AMENDMENT BILL, 1978

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are—

(a) to enable an inspector to require the production of certain records and statements and the answering of certain questions by a person found in or on premises used for the storage or custody of records relating to the handling or sale of tobacco (Schedule 1 (3));

(b) to repeal section 18 of the Business Franchise Licences (Tobacco) Act, 1975 (hereinafter referred to as the "Principal Act") which provided for the transfer of licences granted under that Act (Schedule 1 (4));

(c) to provide that proceedings may be brought for an offence against the Act within the period of 2 years from the commission of the offence (Schedule 1 (6));

(d) where a person has traded for a period without a licence that he was required to have held under the Principal Act, to empower the Commissioner to recover an amount equal to the licence fee that would have been payable if the person had been licensed for that period (Schedule 1 (7));

(e) on and from a date to be notified in the Gazette, to require a person who carries on tobacco wholesaling to hold a licence under the Principal Act with a monthly term, rather than a yearly term, as presently provided, and to require a member of a group of tobacco wholesalers, as defined in Schedule 2 to the proposed Act, to be a holder of a new class of licence to be known as a group wholesale tobacco merchant's licence, if he is to carry on tobacco wholesaling (clause 9 and Schedule 2 (1)–(12) and (14));

(f) to require a holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence to endorse, or cause to be endorsed, on invoices issued by him, certain matter signifying that he is licensed (Schedule 2 (13)); and

(g) to make other provisions of a minor, saving, consequential or transitional character.

PROOF

BUSINESS FRANCHISE LICENCES (TOBACCO) AMENDMENT BILL, 1978

No. , 1978.

A BILL FOR

An Act to amend the Business Franchise Licences (Tobacco) Act, 1975, so as to provide for monthly licensing of tobacco wholesaling, for the issue of group wholesale tobacco merchants' licences and for the recovery of an amount in respect of unlicensed tobacco wholesaling or retailing; and in certain other respects.

[MR RENSHAW—2 *March*, 1978.]

44892J 419—A¶

Business Franchise Licences (Tobacco) Amendment.

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 :—

5 **1.** This Act may be cited as the "Business Franchise Licences (Tobacco) Amendment Act, 1978". Short title.

2. (1) Except as provided in subsection (2), this Act shall commence on the date of assent to this Act. Commencement.

(2) Sections 6, 9 and 10 and Schedule 2 shall commence 10 on such day, being the 28th day of a month, as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. The Business Franchise Licences (Tobacco) Act, 1975, is referred to in this Act as the Principal Act. Principal Act.

15 **4.** In this Act, "appointed day" means the day appointed and notified pursuant to section 2 (2). Interpretation.

5. The Principal Act is amended in the manner set forth in Schedule 1. Amendment of Act No. 63, 1975.

6. The Principal Act is further amended in the manner set 20 forth in Schedule 2. Further amendment of Act No. 63, 1975.

7. A reference in this Act or the Principal Act, as amended by this Act, whether before or after the appointed day, to a licensee or the holder of a licence includes a reference to a person to whom the licence has been transferred under section 18 of the Principal Act, as in force before the date of assent to this Act. Saving.

8. (1) Notwithstanding section 2 (2), where a person would be required to hold a licence under the Principal Act, as amended by this Act, in order to carry on tobacco wholesaling on or after the appointed day, section 6 and Schedule 2 shall, for the purpose only of doing anything, or requiring anything to be done, for the purpose of granting the licence before the appointed day, be deemed to have commenced on the date of assent to this Act. Transitional.

(2) Subsection (1) has no operation in relation to the granting of any licence authorising the licensee to carry on tobacco wholesaling before the appointed day.

9. Notwithstanding any provision of the Principal Act or contained in the licence, a wholesale tobacco merchant's licence in force under the Principal Act immediately before the appointed day shall, on and from that day, have no force or effect. Termination of certain licences.

10. Where the holder of a wholesale tobacco merchant's licence in force under the Principal Act immediately before the appointed day— Liability for, and refund of, certain fees.

(a) had elected to pay the licence fee by instalments in accordance with section 13 of that Act—he is not required to pay any such instalment that first becomes due and payable on or after the appointed day; or

(b) has paid to the Commissioner the total licence fee payable in respect of the licence—he shall be entitled to a refund of such proportion of the fee as the number of complete months, if any, between the appointed day and the day next succeeding the last day for which the licence was granted bears to the number of complete months for which the licence was granted.

SCHEDULE 1.

Sec. 5.

AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 2—

From the matter relating to Part III, omit "18", insert instead "17".

(2) Section 3 (6)—

Omit the subsection.

(3) Section 7 (2) (b)—

After "tobacco or", insert "for the storage or custody of any record relating to the processing, packaging, distribution, sale or purchase of tobacco or".

(4) Section 18—

Omit the section.

(5) Section 20 (2)—

Omit the subsection.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) Section 27 (1A)—

After section 27 (1), insert :—

5 (1A) Proceedings for an offence against this Act may be commenced at any time within a period of 2 years after the commission of the offence.

(7) Section 28A—

After section 28, insert :—

10 28A. (1) Where a person was required by this Act to hold a licence in respect of any period, but did not do so, the person shall pay to the Commissioner an amount equal to the fee which would have been payable for the licence had he applied for or held the licence.

Recovery of unpaid fees from unlicensed persons.

15 (2) The Commissioner may, at any time after the commencement of this section, assess the amount of the fee as if the person had applied for the licence, notwithstanding that the Commissioner might, before that commencement, have made or purported to have made 20 such an assessment.

(3) Notice of the assessment under this section shall be served by the Commissioner on the person.

(4) The person may, within 1 month after service of the assessment, object to the Commissioner 25 against the assessment of the fee on the ground that the fee was excessive by reason that it was incorrectly assessed by the Commissioner under section 12 and on no other ground.

(5) The Commissioner shall, as soon as practic- 30 able, determine the objection and serve the person with notice of his determination.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) If the person is not satisfied with the determination of the Commissioner on his objection or if within 1 month after the objection was lodged the Commissioner has not given a determination with respect to the objection, the person may appeal to the Tribunal against the assessment of the fee on the ground referred to in subsection (4).

(7) The provisions of section 21 (4), (5), (6) and (7) apply to and in respect of an appeal under this section, and so apply as if the reference in section 21 (4) (a) to the licensee were a reference to the person appealing under this section, and as if a reference (however expressed) in the regulations to a prescribed form of appeal were a reference to a form approved by the Tribunal.

(8) The Commissioner on an objection, or the Tribunal on an appeal, may vary the assessment.

(9) Any amount which is assessed under this section and which is unpaid may be recovered by the Commissioner, as a debt, in any court of competent jurisdiction unless the person satisfies the court that he was not required to hold the licence referred to in subsection (1).

(10) Proceedings may not be commenced for the purpose of recovering the amount referred to in subsection (9) until—

(a) if the person does not object to the assessment under this section—the expiration of 1 month after service of notice of the assessment under subsection (3);

(b) if the person objects to the assessment but does not appeal against the assessment under this section—the expiration of the period during which an appeal could have been made; or

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) if the person appeals against the assessment under this section—the appeal is determined.

5 (11) A certificate purporting to be signed by the Commissioner and stating that a specified amount is the amount assessed under this section in respect of a specified person is admissible in the proceedings and shall be prima facie evidence of the matters so certified.

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10 SCHEDULE 2. Sec. 6.

FURTHER AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 2—

After the matter relating to Part V, insert :—

SCHEDULE 1.—RELEVANT PERIODS FOR WHOLESALE
15 TOBACCO MERCHANTS' LICENCES.

(2) (a) Section 3 (1), definition of "group wholesale tobacco merchant's licence"—

After the definition of "Commissioner", insert :—

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

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 3 (1), definition of "relevant period"—

Omit the definition, insert instead :—

5 "relevant period" means—

(a) in relation to a retail tobacconist's licence or a renewal thereof—the period of 1 year that ended on the 30th June that last preceded the 27th August that last preceded the day
10 on and from which the licence or renewal, if granted, would be in force; and

(b) in relation to a wholesale tobacco merchant's licence, a group wholesale tobacco merchant's licence or a renewal thereof—
15 the month specified in column 2 of Schedule 1 that last preceded the month—

(i) specified in column 1 of Schedule 1 opposite the firstmentioned month; and

20 (ii) upon the 27th day of which the licence or renewal, if granted and in force for the whole of its term, would expire;

(c) Section 3 (1), definition of "voting share"—

25 After the definition of "vending machine", insert :—

"voting share" has the meaning ascribed thereto in section 5 (1) of the Companies Act, 1961;

(d) Section 3 (1), definition of "wholesale tobacco
30 merchant's licence"—

After "means a", insert "wholesale tobacco merchant's".

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(e) Section 3 (6A)—

Before section 3 (7), insert :—

5 (6A) A reference in this Act to a holder of a group wholesale tobacco merchant's licence includes a reference to each person whose name is, under section 11 (3A), specified in a group wholesale tobacco merchant's licence that is in force.

10 (3) Sections 3A–3F—

After section 3, insert :—

Membership of a group of wholesale tobacco merchants.

3A. (1) For the purposes of this Act, a person is a member of a group of wholesale tobacco merchants if—

(a) that person is one of the persons who constitute a
15 group for the purposes of this Act; and

(b) there is not in force a determination under sub-section (2) or (3) by the Commissioner that that person is not a member of the group.

(2) The Commissioner may by writing under his
20 hand determine that a person who would, but for the determination, be a member of a group for the purposes of this Act is not a member of the group of wholesale tobacco merchants if he is satisfied that that person has continuously carried on tobacco wholesaling independently
25 of the group and will continue to carry on tobacco wholesaling independently of the group and is not subject to control by any other member of the group.

(3) The Commissioner may by writing under his hand determine that a person who would, but for the
30 determination, be a member of a group for the purposes of this Act, is not a member of any group for the purposes of this Act if he is satisfied that the person is not carrying on and has no intention of carrying on tobacco wholesaling.

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) A determination made under subsection (2) or (3) shall come into force on the making thereof and shall continue in force until it is revoked by the Commissioner and notice of the revocation has been served on the person in respect of whom the determination was made.

(5) Notice of a determination under subsection (2) shall be given by the Commissioner to the person in respect of whom the determination was made and to all the members of the group concerned whom he considers are carrying on tobacco wholesaling.

(6) Notice of a determination under subsection (3) shall be published in the Gazette.

(7) The Commissioner may at any time revoke a determination made under subsection (2) or (3).

(8) Notice of the revocation of a determination made under subsection (2) or (3) shall be given by the Commissioner to the person in respect of whom the determination was made and all members of the group in respect of which the determination was made who he considers are carrying on tobacco wholesaling.

Grouping of corporations.

3B. For the purposes of this Act, corporations constitute a group if they are related to each other (within the meaning of the Companies Act, 1961).

Grouping where employees used in another business.

3C. For the purposes of this Act, if—

(a) an employee of an employer, or 2 or more employees of an employer, performs or perform duties solely or mainly for or in connection with a business carried on by that employer and another person or other persons or by another person or other persons; or

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) an employer has, in respect of the employment of, or the performance of duties by, one or more of his employees, an agreement, arrangement or undertaking (whether formal or informal, whether expressed or implied and whether or not the agreement, arrangement or undertaking includes provisions in respect of the supply of goods or services or goods and services) with another person or other persons relating to a business carried on by that other person or those other persons, whether alone or together with another person or other persons,

that employer and—

(c) each such other person; or

(d) both or all of those other persons,

constitute a group.

Grouping of commonly controlled businesses.

3D. (1) A reference in this section to 2 businesses does not include a reference to 2 businesses both of which are owned by the same person, not being a trustee, or by the trustee or trustees of a trust.

(2) For the purposes of this Act, where the same person has, or the same persons have together, a controlling interest, as referred to in subsection (3), in each of 2 businesses, the persons who carry on those businesses constitute a group.

(3) For the purposes of subsection (2), the same person has, or the same persons have together, a controlling interest in each of 2 businesses if that person has, or those persons have together, a controlling interest under any of

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

the following paragraphs in one of the businesses and a controlling interest under the same or another of the following paragraphs in the other business :—

(a) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation, if the directors, or a majority of the directors, or one or more of the directors, being a director or directors who is or are entitled to exercise a majority in voting power at meetings of the directors of the corporation, are or is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person or of those persons acting together;

(b) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation that has a share capital, if that person or those persons acting together could (whether directly or indirectly) exercise, control the exercise of or substantially influence the exercise of, half or more than half of the voting power attached to voting shares issued by the corporation;

(c) a person has, or persons have together, a controlling interest in a business, being a business carried on by a partnership, if that person or those persons—

(i) owns, or own together (whether beneficially or not) half or more than half of the capital of the partnership; or

(ii) is, or are together, entitled (whether beneficially or not) to half or more than half of the profits of the partnership;

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) a person has, or persons have together, a controlling interest in a business, being a business carried on under a trust, if that person (whether or not as the trustee of another trust) is the beneficiary, or those persons (whether or not as the trustees of another trust) are together the beneficiaries, in respect of half or more than half of the value of the interests in the trust first mentioned in this paragraph;

(e) a person has a controlling interest in a business if, whether or not he is a trustee of a trust, he is the sole owner of the business, or persons, being 2 or more trustees of a trust, have a controlling interest in a business if they are the owners of the business.

(4) Where a corporation has a controlling interest under subsection (3) in a business, it shall be deemed to have a controlling interest in any other business in which another corporation that is related to it (within the meaning of the Companies Act, 1961) has a controlling interest.

(5) Where—

(a) a person has, or persons have together, a controlling interest under subsection (3) in a business; and

(b) the person or persons who carry on that business has or have such a controlling interest in another business,

the person or persons referred to in paragraph (a) shall be deemed to have a controlling interest in the business referred to in paragraph (b).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) Where—

(a) a person is a beneficiary under a trust; or

(b) 2 or more persons together are beneficiaries under a trust,

in respect of half or more than half of the value of the interests in that trust and the trustee or trustees of that trust has or have under subsection (3) a controlling interest in a business, that beneficiary or those beneficiaries shall, for the purposes of subsection (3), be deemed to have a controlling interest in that business.

Smaller groups subsumed into larger groups.

3E. (1) Notwithstanding any other provision of this Act (except subsection (2)), where a person is, whether or not by virtue of this subsection, a member of 2 or more groups (each of which is in subsection (2) referred to as a smaller group), all of the members of those groups constitute, for the purposes of this Act, one group.

(2) Except for the purpose of determining whether a group is constituted under subsection (1), a group which, but for this subsection, would be a smaller group ceases to be a group if its members are members of a group constituted under subsection (1).

Beneficiaries under discretionary trusts.

3F. A person who, as the result of the exercise of a power or discretion by the trustee of a discretionary trust or by any other person or by that trustee and any other person, may benefit under that trust shall be deemed, for the purposes of this Act, to be a beneficiary in respect of half or more than half of the value of the interests in that trust.

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) Section 10 (1)—

After "licence", insert "or a group wholesale tobacco merchant's licence".

(5) (a) Section 11 (1) (c) (ii)—

After "applicant", insert "is an applicant for a retail tobacconist's licence and".

(b) Section 11 (1A)—

After section 11 (1), insert :—

(1A) An application under subsection (1) (a)—

(a) for a wholesale tobacco merchant's licence—may be made by any person other than a person who is a member of a group of wholesale tobacco merchants;

(b) for a group wholesale tobacco merchant's licence—may be made on behalf of all or any of the members of a group of wholesale tobacco merchants by any member of the group; and

(c) for a retail tobacconist's licence—may be made by any person.

(c) Section 11 (2) (a)—

After "merchant's licence", insert "or a group wholesale tobacco merchant's licence".

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 11 (3)—

Omit "in a form approved by him and payment of the prescribed fee (if any) by the holder of the licence", insert instead "by the holder, or if there is more than one holder, any of the holders, of the licence in a form approved by the Commissioner and payment of the prescribed fee (if any)".

(e) Section 11 (3A)—

After section 11 (3), insert :—

(3A) The Commissioner shall, on the grant of a group wholesale tobacco merchant's licence, cause the name of each person who is a member of the group of wholesale tobacco merchants and on whose behalf the application for the licence was made to be specified in the licence.

(6) (a) Section 12 (1) (a), (a1)—

Omit section 12 (1) (a), insert instead :—

(a) for a wholesale tobacco merchant's licence—a fee of $10 together with an amount of 10 per centum of the value of tobacco sold by the applicant in the course of tobacco wholesaling during the relevant period;

(a1) for a group wholesale tobacco merchant's licence—a fee of $10 together with an amount of 10 per centum of the value of tobacco sold by all persons who are members of the group of wholesale tobacco merchants of which the applicant for the licence or a renewal thereof

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

is a member (whether or not the application was made by them or on their behalf and whether or not they were members of that group during the whole or any part of the relevant period) in the course of tobacco wholesaling during the relevant period;

(b) Section 12 (1A)–(1C)—

After section 12 (1), insert :—

(1A) Where an applicant for a wholesale tobacco merchant's licence or a renewal thereof was, at any time during the relevant period for the licence or renewal, a member of a group of wholesale tobacco merchants, the tobacco sold by the applicant in the course of tobacco wholesaling during that relevant period shall, for the purposes of subsection (1) (a), be deemed to have included any tobacco sold by the other or, if more than one, all of the other members of the group in the course of tobacco wholesaling during that period unless the applicant satisfies the Commissioner that a fee for a wholesale tobacco merchant's licence, a group wholesale tobacco merchant's licence or a renewal thereof has been paid to the Commissioner after having been assessed in respect of the sale of that tobacco during that relevant period.

(1B) Where—

(a) an application is made on behalf of all or any of the members of a group of wholesale tobacco merchants for a group wholesale tobacco merchant's licence or a renewal thereof; and

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) any member of the group referred to in paragraph (a) was, at any time during the relevant period for the licence or renewal, a member of another group of wholesale tobacco merchants (any one or more of the members of which is not a member of the group referred to in paragraph (a)),

the tobacco sold by members of the firstmentioned group in the course of tobacco wholesaling during that relevant period shall, for the purposes of subsection (1) (a1), be deemed to have included any tobacco sold by any of the members of the other group in the course of tobacco wholesaling during that period unless the applicant satisfies the Commissioner that a fee for a wholesale tobacco merchant's licence, a group wholesale tobacco merchant's licence or a renewal thereof has been paid to the Commissioner after having been assessed in respect of the sale of that tobacco during that relevant period.

(1C) For the purposes of subsections (1) (a) and (a1), (1A) and (1B), tobacco shall not be treated as having been sold by reason only of its having been sold to the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence.

(c) Section 12 (2)—

Omit "payable by the applicant", insert instead "payable".

(d) Section 12 (2)—

Omit "subsection (1)", insert instead "subsections (1)–(1C)".

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(e) Section 12 (3)—

Omit "payable by the applicant" wherever occurring, insert instead "payable".

(f) Section 12 (3)—

Omit "subsection (1)" wherever occurring, insert instead "subsections (1)–(1C)".

(g) Section 12 (3A)—

After section 12 (3), insert :—

(3A) A fee payable in respect of a licence under subsection (2) or (3) is payable by the applicant for the licence.

(h) Section 12 (6)—

Omit "a licence", insert instead "a retail tobacconist's licence".

(i) Section 12 (8)—

After section 12 (7), insert :—

(8) In subsections (2) and (3), "applicant", in relation to a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence, includes any person whose tobacco wholesaling during the relevant period for the licence would be required to be taken into account by reason of subsection (1) (a1), (1A) or (1B) for the purpose of determining the fee for the licence if the fee was not required to be assessed under either subsection (2) or (3).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(7) (a) Section 13 (2)—

Omit "for a licence", insert instead "for a retail tobacconist's licence".

(b) Section 13 (2)—

Omit "of a licence", insert instead "of a retail tobacconist's licence".

(c) Section 13 (3)—

Omit "the licence" where firstly occurring, insert instead "a retail tobacconist's licence".

(d) Section 13 (5)—

Omit "a licence", insert instead "a retail tobacconist's licence".

(e) Section 13 (6)—

Omit "a licence", insert instead "a retail tobacconist's licence".

(8) (a) Section 14 (5)—

Omit "and payable in accordance with the provisions of subsections (6) and (7).", insert instead :—

and payable—

(a) if the reassessment was made in respect of a retail tobacconist's licence—in accordance with subsections (6) and (7); or

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) if the reassessment was made in respect of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence—in accordance with subsections (6A) and (7).

(b) Section 14 (6) (a)—

After "and payable", insert "by that person".

(c) Section 14 (6A)—

After section 14 (6), insert :—

(6A) Where the additional amount is payable by virtue of a reassessment in respect of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence, the additional amount shall be due and payable (whether or not the licence has ceased to be in force)—

(a) within 14 days after notice of the reassessment is served on the person who is or was the holder of the wholesale tobacco merchant's licence or on any one or more of the persons who are or were holders of the group wholesale tobacco merchant's licence, as the case may be; and

(b) by the person or, where notice is served on more than one person, by each of the persons on whom the notice is served.

(d) Section 14 (7)—

After "subsection (6)", insert "or (6A)".

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(e) Section 14 (9)—

After "subsection (6)", insert ", (6A)".

5 (9) (a) Section 16 (1)—

Omit "A licence", insert instead "A retail tobacconist's licence".

(b) Section 16 (1A), (1B)—

After section 16 (1), insert :—

10 (1A) A wholesale tobacco merchant's licence and a group wholesale tobacco merchant's licence shall expire, subject to section 17 (2)—

(a) in the case of a licence that was first in force on a day in a month occurring before
15 the 28th day of the month—on the 27th day of the month in which it was first in force; and

(b) in any other case—on the 27th day of the next succeeding month after the month
20 during which it was first in force.

(1B) A licence referred to in subsection (1A) may, from time to time, upon—

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

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

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) payment of the fee assessed by the Commissioner in accordance with section 12,

5

be renewed for successive periods of one month expiring on the 27th day of the next succeeding month after the month in which the licence is renewed.

(c) Section 16 (2)—

10

After "subsection (1) (c)", insert "or (1B) (c), as the case may be".

(10) (a) Section 17 (1)—

Omit "licensee", insert instead "holder of a retail tobacconist's licence".

15

(b) Section 17 (2) (a)—

Before "the applicant", insert "it is a retail tobacconist's licence and".

(c) Section 17 (2) (b)—

After "section 14", insert "in respect of the licence".

20 (11) Section 19 (1)—

Omit "or, where", insert instead "or, where the licence for which that person applied was a retail tobacconist's licence and".

(12) (a) Section 21 (1)—

25

After "section 13", insert "in relation to the fee assessed in respect of a retail tobacconist's licence".

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 21 (8) (b)—

Omit "the application for the licence", insert instead "his application for a retail tobacconist's licence in respect of which licence the appeal was instituted,".

(c) Section 21 (8) (b)—

Omit "section 13", insert instead "section 13,".

(13) Section 23A—

After section 23, insert :—

Invoices to be endorsed.

23A. (1) A holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence shall endorse or cause to be endorsed on every invoice issued by him for or in relation to the sale of tobacco the words "SOLD BY LICENSED WHOLESALER—LICENCE No. " followed by the number of his licence.

Penalty : $500.

(2) A person shall not issue an invoice which bears—

(a) the words "SOLD BY LICENSED WHOLESALER" (or words of like import) unless he is the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence; or

(b) the matter "LICENCE No. " (or matter of like import) followed by a number, unless he is the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence bearing that number.

Penalty : $1,000.

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(14) Schedule 1—

After Part V, insert :—

5 SCHEDULE 1. Sec. 3 (1).

RELEVANT PERIODS FOR WHOLESALE TOBACCO MERCHANTS' LICENCES.

Column 1.	Column 2.
July	May
August	June
September	July
October	August
November	September
December	October
January	November
February	December
March	January
April	February
May	March
June	April

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1978

BUSINESS FRANCHISE LICENCES (TOBACCO) AMENDMENT ACT, 1978, No. 59

New South Wales

ANNO VICESIMO SEPTIMO

ELIZABETHÆ II REGINÆ

* *

Act No. 59, 1978.

An Act to amend the Business Franchise Licences (Tobacco) Act, 1975, so as to provide for monthly licensing of tobacco wholesaling, for the issue of group wholesale tobacco merchants' licences and for the recovery of an amount in respect of unlicensed tobacco wholesaling or retailing; and in certain other respects. [Assented to, 6th April, 1978.]

P 46851E (50c)

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 :—

Short title.

1. This Act may be cited as the "Business Franchise Licences (Tobacco) Amendment Act, 1978".

Commencement.

2. (1) Except as provided in subsection (2), this Act shall commence on the date of assent to this Act.

(2) Sections 6, 9 and 10 and Schedule 2 shall commence on such day, being the 28th day of a month, as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act.

3. The Business Franchise Licences (Tobacco) Act, 1975, is referred to in this Act as the Principal Act.

Interpretation.

4. In this Act, "appointed day" means the day appointed and notified pursuant to section 2 (2).

Amendment of Act No. 63, 1975.

5. The Principal Act is amended in the manner set forth in Schedule 1.

Further amendment of Act No. 63, 1975.

6. The Principal Act is further amended in the manner set forth in Schedule 2.

7. A reference in this Act or the Principal Act, as amended by this Act, whether before or after the appointed day, to a licensee or the holder of a licence includes a reference to a person to whom the licence has been transferred under section 18 of the Principal Act, as in force before the date of assent to this Act. Saving.

8. (1) Notwithstanding section 2 (2), where a person would be required to hold a licence under the Principal Act, as amended by this Act, in order to carry on tobacco wholesaling on or after the appointed day, section 6 and Schedule 2 shall, for the purpose only of doing anything, or requiring anything to be done, for the purpose of granting the licence before the appointed day, be deemed to have commenced on the date of assent to this Act. Transitional.

(2) Subsection (1) has no operation in relation to the granting of any licence authorising the licensee to carry on tobacco wholesaling before the appointed day.

9. Notwithstanding any provision of the Principal Act or contained in the licence, a wholesale tobacco merchant's licence in force under the Principal Act immediately before the appointed day shall, on and from that day, have no force or effect. Termination of certain licences.

10. Where the holder of a wholesale tobacco merchant's licence in force under the Principal Act immediately before the appointed day— Liability for, and refund of, certain fees.

(a) had elected to pay the licence fee by instalments in accordance with section 13 of that Act—he is not required to pay any such instalment that first becomes due and payable on or after the appointed day; or

(b) has paid to the Commissioner the total licence fee payable in respect of the licence—he shall be entitled to a refund of such proportion of the fee as the number of complete months, if any, between the appointed day and the day next succeeding the last day for which the licence was granted bears to the number of complete months for which the licence was granted.

Sec. 5.

SCHEDULE 1.

AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 2—

From the matter relating to Part III, omit "18", insert instead "17".

(2) Section 3 (6)—

Omit the subsection.

(3) Section 7 (2) (b)—

After "tobacco or", insert "for the storage or custody of any record relating to the processing, packaging, distribution, sale or purchase of tobacco or".

(4) Section 18—

Omit the section.

(5) Section 20 (2)—

Omit the subsection.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) Section 27 (1A)—

After section 27 (1), insert :—

(1A) Proceedings for an offence against this Act may be commenced at any time within a period of 2 years after the commission of the offence.

(7) Section 28A—

After section 28, insert :—

Recovery of unpaid fees from unlicensed persons.

28A. (1) Where a person was required by this Act to hold a licence in respect of any period, but did not do so, the person shall pay to the Commissioner an amount equal to the fee which would have been payable for the licence had he applied for or held the licence.

(2) The Commissioner may, at any time after the commencement of this section, assess the amount of the fee as if the person had applied for the licence, notwithstanding that the Commissioner might, before that commencement, have made or purported to have made such an assessment.

(3) Notice of the assessment under this section shall be served by the Commissioner on the person.

(4) The person may, within 1 month after service of the assessment, object to the Commissioner against the assessment of the fee on the ground that the fee was excessive by reason that it was incorrectly assessed by the Commissioner under section 12 and on no other ground.

(5) The Commissioner shall, as soon as practicable, determine the objection and serve the person with notice of his determination.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) If the person is not satisfied with the determination of the Commissioner on his objection or if within 1 month after the objection was lodged the Commissioner has not given a determination with respect to the objection, the person may appeal to the Tribunal against the assessment of the fee on the ground referred to in subsection (4).

(7) The provisions of section 21 (4), (5), (6) and (7) apply to and in respect of an appeal under this section, and so apply as if the reference in section 21 (4) (a) to the licensee were a reference to the person appealing under this section, and as if a reference (however expressed) in the regulations to a prescribed form of appeal were a reference to a form approved by the Tribunal.

(8) The Commissioner on an objection, or the Tribunal on an appeal, may vary the assessment.

(9) Any amount which is assessed under this section and which is unpaid may be recovered by the Commissioner, as a debt, in any court of competent jurisdiction unless the person satisfies the court that he was not required to hold the licence referred to in subsection (1).

(10) Proceedings may not be commenced for the purpose of recovering the amount referred to in subsection (9) until—

(a) if the person does not object to the assessment under this section—the expiration of 1 month after service of notice of the assessment under subsection (3);

(b) if the person objects to the assessment but does not appeal against the assessment under this section—the expiration of the period during which an appeal could have been made; or

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) if the person appeals against the assessment under this section—the appeal is determined.

(11) A certificate purporting to be signed by the Commissioner and stating that a specified amount is the amount assessed under this section in respect of a specified person is admissible in the proceedings and shall be prima facie evidence of the matters so certified.

SCHEDULE 2. Sec. 6.

FURTHER AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 2—

After the matter relating to Part V, insert :—

SCHEDULE 1.—RELEVANT PERIODS FOR WHOLESALE TOBACCO MERCHANTS' LICENCES.

(2) (a) Section 3 (1), definition of "group wholesale tobacco merchant's licence"—

After the definition of "Commissioner", insert :—

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

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 3 (1), definition of "relevant period"—

Omit the definition, insert instead :—

"relevant period" means—

(a) in relation to a retail tobacconist's licence or a renewal thereof—the period of 1 year that ended on the 30th June that last preceded the 27th August that last preceded the day on and from which the licence or renewal, if granted, would be in force; and

(b) in relation to a wholesale tobacco merchant's licence, a group wholesale tobacco merchant's licence or a renewal thereof—the month specified in column 2 of Schedule 1 that last preceded the month—

(i) specified in column 1 of Schedule 1 opposite the firstmentioned month; and

(ii) upon the 27th day of which the licence or renewal, if granted and in force for the whole of its term, would expire;

(c) Section 3 (1), definition of "voting share"—

After the definition of "vending machine", insert :—

"voting share" has the meaning ascribed thereto in section 5 (1) of the Companies Act, 1961;

(d) Section 3 (1), definition of "wholesale tobacco merchant's licence"—

After "means a", insert "wholesale tobacco merchant's".

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(e) Section 3 (6A)—

Before section 3 (7), insert :—

(6A) A reference in this Act to a holder of a group wholesale tobacco merchant's licence includes a reference to each person whose name is, under section 11 (3A), specified in a group wholesale tobacco merchant's licence that is in force.

(3) Sections 3A–3F—

After section 3, insert :—

Membership of a group of wholesale tobacco merchants.

3A. (1) For the purposes of this Act, a person is a member of a group of wholesale tobacco merchants if—

(a) that person is one of the persons who constitute a group for the purposes of this Act; and

(b) there is not in force a determination under subsection (2) or (3) by the Commissioner that that person is not a member of the group.

(2) The Commissioner may by writing under his hand determine that a person who would, but for the determination, be a member of a group for the purposes of this Act is not a member of the group of wholesale tobacco merchants if he is satisfied that that person has continuously carried on tobacco wholesaling independently of the group and will continue to carry on tobacco wholesaling independently of the group and is not subject to control by any other member of the group.

(3) The Commissioner may by writing under his hand determine that a person who would, but for the determination, be a member of a group for the purposes of this Act, is not a member of any group for the purposes of this Act if he is satisfied that the person is not carrying on and has no intention of carrying on tobacco wholesaling.

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) A determination made under subsection (2) or (3) shall come into force on the making thereof and shall continue in force until it is revoked by the Commissioner and notice of the revocation has been served on the person in respect of whom the determination was made.

(5) Notice of a determination under subsection (2) shall be given by the Commissioner to the person in respect of whom the determination was made and to all the members of the group concerned whom he considers are carrying on tobacco wholesaling.

(6) Notice of a determination under subsection (3) shall be published in the Gazette.

(7) The Commissioner may at any time revoke a determination made under subsection (2) or (3).

(8) Notice of the revocation of a determination made under subsection (2) or (3) shall be given by the Commissioner to the person in respect of whom the determination was made and all members of the group in respect of which the determination was made who he considers are carrying on tobacco wholesaling.

Grouping of corporations.

3B. For the purposes of this Act, corporations constitute a group if they are related to each other (within the meaning of the Companies Act, 1961).

Grouping where employees used in another business.

3C. For the purposes of this Act, if—

(a) an employee of an employer, or 2 or more employees of an employer, performs or perform duties solely or mainly for or in connection with a business carried on by that employer and another person or other persons or by another person or other persons; or

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) an employer has, in respect of the employment of, or the performance of duties by, one or more of his employees, an agreement, arrangement or undertaking (whether formal or informal, whether expressed or implied and whether or not the agreement, arrangement or undertaking includes provisions in respect of the supply of goods or services or goods and services) with another person or other persons relating to a business carried on by that other person or those other persons, whether alone or together with another person or other persons,

that employer and—

(c) each such other person; or

(d) both or all of those other persons,

constitute a group.

Grouping of commonly controlled businesses.

3D. (1) A reference in this section to 2 businesses does not include a reference to 2 businesses both of which are owned by the same person, not being a trustee, or by the trustee or trustees of a trust.

(2) For the purposes of this Act, where the same person has, or the same persons have together, a controlling interest, as referred to in subsection (3), in each of 2 businesses, the persons who carry on those businesses constitute a group.

(3) For the purposes of subsection (2), the same person has, or the same persons have together, a controlling interest in each of 2 businesses if that person has, or those persons have together, a controlling interest under any of

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

the following paragraphs in one of the businesses and a controlling interest under the same or another of the following paragraphs in the other business :—

(a) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation, if the directors, or a majority of the directors, or one or more of the directors, being a director or directors who is or are entitled to exercise a majority in voting power at meetings of the directors of the corporation, are or is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person or of those persons acting together;

(b) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation that has a share capital, if that person or those persons acting together could (whether directly or indirectly) exercise, control the exercise of or substantially influence the exercise of, half or more than half of the voting power attached to voting shares issued by the corporation;

(c) a person has, or persons have together, a controlling interest in a business, being a business carried on by a partnership, if that person or those persons—

(i) owns, or own together (whether beneficially or not) half or more than half of the capital of the partnership; or

(ii) is, or are together, entitled (whether beneficially or not) to half or more than half of the profits of the partnership;

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) a person has, or persons have together, a controlling interest in a business, being a business carried on under a trust, if that person (whether or not as the trustee of another trust) is the beneficiary, or those persons (whether or not as the trustees of another trust) are together the beneficiaries, in respect of half or more than half of the value of the interests in the trust first mentioned in this paragraph;

(e) a person has a controlling interest in a business if, whether or not he is a trustee of a trust, he is the sole owner of the business, or persons, being 2 or more trustees of a trust, have a controlling interest in a business if they are the owners of the business.

(4) Where a corporation has a controlling interest under subsection (3) in a business, it shall be deemed to have a controlling interest in any other business in which another corporation that is related to it (within the meaning of the Companies Act, 1961) has a controlling interest.

(5) Where—

(a) a person has, or persons have together, a controlling interest under subsection (3) in a business; and

(b) the person or persons who carry on that business has or have such a controlling interest in another business,

the person or persons referred to in paragraph (a) shall be deemed to have a controlling interest in the business referred to in paragraph (b).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) Where—

(a) a person is a beneficiary under a trust; or

(b) 2 or more persons together are beneficiaries under a trust,

in respect of half or more than half of the value of the interests in that trust and the trustee or trustees of that trust has or have under subsection (3) a controlling interest in a business, that beneficiary or those beneficiaries shall, for the purposes of subsection (3), be deemed to have a controlling interest in that business.

Smaller groups subsumed into larger groups.

3E. (1) Notwithstanding any other provision of this Act (except subsection (2)), where a person is, whether or not by virtue of this subsection, a member of 2 or more groups (each of which is in subsection (2) referred to as a smaller group), all of the members of those groups constitute, for the purposes of this Act, one group.

(2) Except for the purpose of determining whether a group is constituted under subsection (1), a group which, but for this subsection, would be a smaller group ceases to be a group if its members are members of a group constituted under subsection (1).

Beneficiaries under discretionary trusts.

3F. A person who, as the result of the exercise of a power or discretion by the trustee of a discretionary trust or by any other person or by that trustee and any other person, may benefit under that trust shall be deemed, for the purposes of this Act, to be a beneficiary in respect of half or more than half of the value of the interests in that trust.

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) Section 10 (1)—

After "licence", insert "or a group wholesale tobacco merchant's licence".

(5) (a) Section 11 (1) (c) (ii)—

After "applicant", insert "is an applicant for a retail tobacconist's licence and".

(b) Section 11 (1A)—

After section 11 (1), insert :—

(1A) An application under subsection (1) (a)—

(a) for a wholesale tobacco merchant's licence—may be made by any person other than a person who is a member of a group of wholesale tobacco merchants;

(b) for a group wholesale tobacco merchant's licence—may be made on behalf of all or any of the members of a group of wholesale tobacco merchants by any member of the group; and

(c) for a retail tobacconist's licence—may be made by any person.

(c) Section 11 (2) (a)—

After "merchant's licence", insert "or a group wholesale tobacco merchant's licence".

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 11 (3)—

Omit "in a form approved by him and payment of the prescribed fee (if any) by the holder of the licence", insert instead "by the holder, or if there is more than one holder, any of the holders, of the licence in a form approved by the Commissioner and payment of the prescribed fee (if any)".

(e) Section 11 (3A)—

After section 11 (3), insert :—

(3A) The Commissioner shall, on the grant of a group wholesale tobacco merchant's licence, cause the name of each person who is a member of the group of wholesale tobacco merchants and on whose behalf the application for the licence was made to be specified in the licence.

(6) (a) Section 12 (1) (a), (a1)—

Omit section 12 (1) (a), insert instead :—

(a) for a wholesale tobacco merchant's licence—a fee of $10 together with an amount of 10 per centum of the value of tobacco sold by the applicant in the course of tobacco wholesaling during the relevant period;

(a1) for a group wholesale tobacco merchant's licence—a fee of $10 together with an amount of 10 per centum of the value of tobacco sold by all persons who are members of the group of wholesale tobacco merchants of which the applicant for the licence or a renewal thereof

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

is a member (whether or not the application was made by them or on their behalf and whether or not they were members of that group during the whole or any part of the relevant period) in the course of tobacco wholesaling during the relevant period;

(b) Section 12 (1A)–(1C)—

After section 12 (1), insert :—

(1A) Where an applicant for a wholesale tobacco merchant's licence or a renewal thereof was, at any time during the relevant period for the licence or renewal, a member of a group of wholesale tobacco merchants, the tobacco sold by the applicant in the course of tobacco wholesaling during that relevant period shall, for the purposes of subsection (1) (a), be deemed to have included any tobacco sold by the other or, if more than one, all of the other members of the group in the course of tobacco wholesaling during that period unless the applicant satisfies the Commissioner that a fee for a wholesale tobacco merchant's licence, a group wholesale tobacco merchant's licence or a renewal thereof has been paid to the Commissioner after having been assessed in respect of the sale of that tobacco during that relevant period.

(1B) Where—

(a) an application is made on behalf of all or any of the members of a group of wholesale tobacco merchants for a group wholesale tobacco merchant's licence or a renewal thereof; and

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) any member of the group referred to in paragraph (a) was, at any time during the relevant period for the licence or renewal, a member of another group of wholesale tobacco merchants (any one or more of the members of which is not a member of the group referred to in paragraph (a)),

the tobacco sold by members of the firstmentioned group in the course of tobacco wholesaling during that relevant period shall, for the purposes of subsection (1) (a1), be deemed to have included any tobacco sold by any of the members of the other group in the course of tobacco wholesaling during that period unless the applicant satisfies the Commissioner that a fee for a wholesale tobacco merchant's licence, a group wholesale tobacco merchant's licence or a renewal thereof has been paid to the Commissioner after having been assessed in respect of the sale of that tobacco during that relevant period.

(1C) For the purposes of subsections (1) (a) and (a1), (1A) and (1B), tobacco shall not be treated as having been sold by reason only of its having been sold to the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence.

(c) Section 12 (2)—

Omit "payable by the applicant", insert instead "payable".

(d) Section 12 (2)—

Omit "subsection (1)", insert instead "subsections (1)–(1C)".

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(e) Section 12 (3)—

Omit "payable by the applicant" wherever occurring, insert instead "payable".

(f) Section 12 (3)—

Omit "subsection (1)" wherever occurring, insert instead "subsections (1)–(1C)".

(g) Section 12 (3A)—

After section 12 (3), insert :—

(3A) A fee payable in respect of a licence under subsection (2) or (3) is payable by the applicant for the licence.

(h) Section 12 (6)—

Omit "a licence", insert instead "a retail tobacconist's licence".

(i) Section 12 (8)—

After section 12 (7), insert :—

(8) In subsections (2) and (3), "applicant", in relation to a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence, includes any person whose tobacco wholesaling during the relevant period for the licence would be required to be taken into account by reason of subsection (1) (a1), (1A) or (1B) for the purpose of determining the fee for the licence if the fee was not required to be assessed under either subsection (2) or (3).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(7) (a) Section 13 (2)—

Omit "for a licence", insert instead "for a retail tobacconist's licence".

(b) Section 13 (2)—

Omit "of a licence", insert instead "of a retail tobacconist's licence".

(c) Section 13 (3)—

Omit "the licence" where firstly occurring, insert instead "a retail tobacconist's licence".

(d) Section 13 (5)—

Omit "a licence", insert instead "a retail tobacconist's licence".

(e) Section 13 (6)—

Omit "a licence", insert instead "a retail tobacconist's licence".

(8) (a) Section 14 (5)—

Omit "and payable in accordance with the provisions of subsections (6) and (7).", insert instead :—

and payable—

(a) if the reassessment was made in respect of a retail tobacconist's licence—in accordance with subsections (6) and (7); or

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) if the reassessment was made in respect of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence—in accordance with subsections (6A) and (7).

(b) Section 14 (6) (a)—

After "and payable", insert "by that person".

(c) Section 14 (6A)—

After section 14 (6), insert :—

(6A) Where the additional amount is payable by virtue of a reassessment in respect of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence, the additional amount shall be due and payable (whether or not the licence has ceased to be in force)—

(a) within 14 days after notice of the reassessment is served on the person who is or was the holder of the wholesale tobacco merchant's licence or on any one or more of the persons who are or were holders of the group wholesale tobacco merchant's licence, as the case may be; and

(b) by the person or, where notice is served on more than one person, by each of the persons on whom the notice is served.

(d) Section 14 (7)—

After "subsection (6)", insert "or (6A)".

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(e) Section 14 (9)—

After "subsection (6)", insert ", (6A)".

(9) (a) Section 16 (1)—

Omit "A licence", insert instead "A retail tobacconist's licence".

(b) Section 16 (1A), (1B)—

After section 16 (1), insert :—

(1A) A wholesale tobacco merchant's licence and a group wholesale tobacco merchant's licence shall expire, subject to section 17 (2)—

(a) in the case of a licence that was first in force on a day in a month occurring before the 28th day of the month—on the 27th day of the month in which it was first in force; and

(b) in any other case—on the 27th day of the next succeeding month after the month during which it was first in force.

(1B) A licence referred to in subsection (1A) may, from time to time, upon—

(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

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) payment of the fee assessed by the Commissioner in accordance with section 12,

be renewed for successive periods of one month expiring on the 27th day of the next succeeding month after the month in which the licence is renewed.

(c) Section 16 (2)—

After "subsection (1) (c)", insert "or (1B) (c), as the case may be".

(10) (a) Section 17 (1)—

Omit "licensee", insert instead "holder of a retail tobacconist's licence".

(b) Section 17 (2) (a)—

Before "the applicant", insert "it is a retail tobacconist's licence and".

(c) Section 17 (2) (b)—

After "section 14", insert "in respect of the licence".

(11) Section 19 (1)—

Omit "or, where", insert instead "or, where the licence for which that person applied was a retail tobacconist's licence and".

(12) (a) Section 21 (1)—

After "section 13", insert "in relation to the fee assessed in respect of a retail tobacconist's licence".

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 21 (8) (b)—

Omit "the application for the licence", insert instead "his application for a retail tobacconist's licence in respect of which licence the appeal was instituted,".

(c) Section 21 (8) (b)—

Omit "section 13", insert instead "section 13,".

(13) Section 23A—

After section 23, insert :—

Invoices to be endorsed.

23A. (1) A holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence shall endorse or cause to be endorsed on every invoice issued by him for or in relation to the sale of tobacco the words "SOLD BY LICENSED WHOLESALER—LICENCE No. " followed by the number of his licence.

Penalty : $500.

(2) A person shall not issue an invoice which bears—

(a) the words "SOLD BY LICENSED WHOLESALER" (or words of like import) unless he is the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence; or

(b) the matter "LICENCE No. " (or matter of like import) followed by a number, unless he is the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence bearing that number.

Penalty : $1,000.

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(14) Schedule 1—

After Part V, insert :—

SCHEDULE 1. Sec. 3 (1).

RELEVANT PERIODS FOR WHOLESALE TOBACCO MERCHANTS' LICENCES.

Column 1.	Column 2.
July	May
August	June
September	July
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November	September
December	October
January	November
February	December
March	January
April	February
May	March
June	April

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

Government House,
Sydney, 6th April, 1978.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1978

BUSINESS FRANCHISE LICENCES (TOBACCO) AMENDMENT ACT, 1978, No. 59

New South Wales

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ELIZABETHÆ II REGINÆ

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Act No. 59, 1978.

An Act to amend the Business Franchise Licences (Tobacco) Act, 1975, so as to provide for monthly licensing of tobacco wholesaling, for the issue of group wholesale tobacco merchants' licences and for the recovery of an amount in respect of unlicensed tobacco wholesaling or retailing; and in certain other respects. [Assented to, 6th April, 1978.]

P 46851E (50c)

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 :—

Short title.

1. This Act may be cited as the "Business Franchise Licences (Tobacco) Amendment Act, 1978".

Commencement.

2. (1) Except as provided in subsection (2), this Act shall commence on the date of assent to this Act.

(2) Sections 6, 9 and 10 and Schedule 2 shall commence on such day, being the 28th day of a month, as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act.

3. The Business Franchise Licences (Tobacco) Act, 1975, is referred to in this Act as the Principal Act.

Interpretation.

4. In this Act, "appointed day" means the day appointed and notified pursuant to section 2 (2).

Amendment of Act No. 63, 1975.

5. The Principal Act is amended in the manner set forth in Schedule 1.

Further amendment of Act No. 63, 1975.

6. The Principal Act is further amended in the manner set forth in Schedule 2.

7. A reference in this Act or the Principal Act, as amended by this Act, whether before or after the appointed day, to a licensee or the holder of a licence includes a reference to a person to whom the licence has been transferred under section 18 of the Principal Act, as in force before the date of assent to this Act. Saving.

8. (1) Notwithstanding section 2 (2), where a person would be required to hold a licence under the Principal Act, as amended by this Act, in order to carry on tobacco wholesaling on or after the appointed day, section 6 and Schedule 2 shall, for the purpose only of doing anything, or requiring anything to be done, for the purpose of granting the licence before the appointed day, be deemed to have commenced on the date of assent to this Act. Transitional.

(2) Subsection (1) has no operation in relation to the granting of any licence authorising the licensee to carry on tobacco wholesaling before the appointed day.

9. Notwithstanding any provision of the Principal Act or contained in the licence, a wholesale tobacco merchant's licence in force under the Principal Act immediately before the appointed day shall, on and from that day, have no force or effect. Termination of certain licences.

10. Where the holder of a wholesale tobacco merchant's licence in force under the Principal Act immediately before the appointed day— Liability for, and refund of, certain fees.

(a) had elected to pay the licence fee by instalments in accordance with section 13 of that Act—he is not required to pay any such instalment that first becomes due and payable on or after the appointed day; or

(b) has paid to the Commissioner the total licence fee payable in respect of the licence—he shall be entitled to a refund of such proportion of the fee as the number of complete months, if any, between the appointed day and the day next succeeding the last day for which the licence was granted bears to the number of complete months for which the licence was granted.

Sec. 5.

SCHEDULE 1.

AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 2—

From the matter relating to Part III, omit "18", insert instead "17".

(2) Section 3 (6)—

Omit the subsection.

(3) Section 7 (2) (b)—

After "tobacco or", insert "for the storage or custody of any record relating to the processing, packaging, distribution, sale or purchase of tobacco or".

(4) Section 18—

Omit the section.

(5) Section 20 (2)—

Omit the subsection.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) Section 27 (1A)—

After section 27 (1), insert :—

(1A) Proceedings for an offence against this Act may be commenced at any time within a period of 2 years after the commission of the offence.

(7) Section 28A—

After section 28, insert :—

Recovery of unpaid fees from unlicensed persons.

28A. (1) Where a person was required by this Act to hold a licence in respect of any period, but did not do so, the person shall pay to the Commissioner an amount equal to the fee which would have been payable for the licence had he applied for or held the licence.

(2) The Commissioner may, at any time after the commencement of this section, assess the amount of the fee as if the person had applied for the licence, notwithstanding that the Commissioner might, before that commencement, have made or purported to have made such an assessment.

(3) Notice of the assessment under this section shall be served by the Commissioner on the person.

(4) The person may, within 1 month after service of the assessment, object to the Commissioner against the assessment of the fee on the ground that the fee was excessive by reason that it was incorrectly assessed by the Commissioner under section 12 and on no other ground.

(5) The Commissioner shall, as soon as practicable, determine the objection and serve the person with notice of his determination.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) If the person is not satisfied with the determination of the Commissioner on his objection or if within 1 month after the objection was lodged the Commissioner has not given a determination with respect to the objection, the person may appeal to the Tribunal against the assessment of the fee on the ground referred to in subsection (4).

(7) The provisions of section 21 (4), (5), (6) and (7) apply to and in respect of an appeal under this section, and so apply as if the reference in section 21 (4) (a) to the licensee were a reference to the person appealing under this section, and as if a reference (however expressed) in the regulations to a prescribed form of appeal were a reference to a form approved by the Tribunal.

(8) The Commissioner on an objection, or the Tribunal on an appeal, may vary the assessment.

(9) Any amount which is assessed under this section and which is unpaid may be recovered by the Commissioner, as a debt, in any court of competent jurisdiction unless the person satisfies the court that he was not required to hold the licence referred to in subsection (1).

(10) Proceedings may not be commenced for the purpose of recovering the amount referred to in subsection (9) until—

(a) if the person does not object to the assessment under this section—the expiration of 1 month after service of notice of the assessment under subsection (3);

(b) if the person objects to the assessment but does not appeal against the assessment under this section—the expiration of the period during which an appeal could have been made; or

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) if the person appeals against the assessment under this section—the appeal is determined.

(11) A certificate purporting to be signed by the Commissioner and stating that a specified amount is the amount assessed under this section in respect of a specified person is admissible in the proceedings and shall be prima facie evidence of the matters so certified.

SCHEDULE 2. Sec. 6.

FURTHER AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 2—

After the matter relating to Part V, insert :—

SCHEDULE 1.—RELEVANT PERIODS FOR WHOLESALE TOBACCO MERCHANTS' LICENCES.

(2) (a) Section 3 (1), definition of "group wholesale tobacco merchant's licence"—

After the definition of "Commissioner", insert :—

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

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 3 (1), definition of "relevant period"—

Omit the definition, insert instead :—

"relevant period" means—

(a) in relation to a retail tobacconist's licence or a renewal thereof—the period of 1 year that ended on the 30th June that last preceded the 27th August that last preceded the day on and from which the licence or renewal, if granted, would be in force; and

(b) in relation to a wholesale tobacco merchant's licence, a group wholesale tobacco merchant's licence or a renewal thereof—the month specified in column 2 of Schedule 1 that last preceded the month—

(i) specified in column 1 of Schedule 1 opposite the firstmentioned month; and

(ii) upon the 27th day of which the licence or renewal, if granted and in force for the whole of its term, would expire;

(c) Section 3 (1), definition of "voting share"—

After the definition of "vending machine", insert :—

"voting share" has the meaning ascribed thereto in section 5 (1) of the Companies Act, 1961;

(d) Section 3 (1), definition of "wholesale tobacco merchant's licence"—

After "means a", insert "wholesale tobacco merchant's".

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(e) Section 3 (6A)—

Before section 3 (7), insert :—

(6A) A reference in this Act to a holder of a group wholesale tobacco merchant's licence includes a reference to each person whose name is, under section 11 (3A), specified in a group wholesale tobacco merchant's licence that is in force.

(3) Sections 3A–3F—

After section 3, insert :—

Membership of a group of wholesale tobacco merchants.

3A. (1) For the purposes of this Act, a person is a member of a group of wholesale tobacco merchants if—

(a) that person is one of the persons who constitute a group for the purposes of this Act; and

(b) there is not in force a determination under subsection (2) or (3) by the Commissioner that that person is not a member of the group.

(2) The Commissioner may by writing under his hand determine that a person who would, but for the determination, be a member of a group for the purposes of this Act is not a member of the group of wholesale tobacco merchants if he is satisfied that that person has continuously carried on tobacco wholesaling independently of the group and will continue to carry on tobacco wholesaling independently of the group and is not subject to control by any other member of the group.

(3) The Commissioner may by writing under his hand determine that a person who would, but for the determination, be a member of a group for the purposes of this Act, is not a member of any group for the purposes of this Act if he is satisfied that the person is not carrying on and has no intention of carrying on tobacco wholesaling.

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) A determination made under subsection (2) or (3) shall come into force on the making thereof and shall continue in force until it is revoked by the Commissioner and notice of the revocation has been served on the person in respect of whom the determination was made.

(5) Notice of a determination under subsection (2) shall be given by the Commissioner to the person in respect of whom the determination was made and to all the members of the group concerned whom he considers are carrying on tobacco wholesaling.

(6) Notice of a determination under subsection (3) shall be published in the Gazette.

(7) The Commissioner may at any time revoke a determination made under subsection (2) or (3).

(8) Notice of the revocation of a determination made under subsection (2) or (3) shall be given by the Commissioner to the person in respect of whom the determination was made and all members of the group in respect of which the determination was made who he considers are carrying on tobacco wholesaling.

Grouping of corporations.

3B. For the purposes of this Act, corporations constitute a group if they are related to each other (within the meaning of the Companies Act, 1961).

Grouping where employees used in another business.

3C. For the purposes of this Act, if—

(a) an employee of an employer, or 2 or more employees of an employer, performs or perform duties solely or mainly for or in connection with a business carried on by that employer and another person or other persons or by another person or other persons; or

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) an employer has, in respect of the employment of, or the performance of duties by, one or more of his employees, an agreement, arrangement or undertaking (whether formal or informal, whether expressed or implied and whether or not the agreement, arrangement or undertaking includes provisions in respect of the supply of goods or services or goods and services) with another person or other persons relating to a business carried on by that other person or those other persons, whether alone or together with another person or other persons,

that employer and—

(c) each such other person; or

(d) both or all of those other persons,

constitute a group.

Grouping of commonly controlled businesses.

3D. (1) A reference in this section to 2 businesses does not include a reference to 2 businesses both of which are owned by the same person, not being a trustee, or by the trustee or trustees of a trust.

(2) For the purposes of this Act, where the same person has, or the same persons have together, a controlling interest, as referred to in subsection (3), in each of 2 businesses, the persons who carry on those businesses constitute a group.

(3) For the purposes of subsection (2), the same person has, or the same persons have together, a controlling interest in each of 2 businesses if that person has, or those persons have together, a controlling interest under any of

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

the following paragraphs in one of the businesses and a controlling interest under the same or another of the following paragraphs in the other business :—

(a) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation, if the directors, or a majority of the directors, or one or more of the directors, being a director or directors who is or are entitled to exercise a majority in voting power at meetings of the directors of the corporation, are or is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person or of those persons acting together;

(b) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation that has a share capital, if that person or those persons acting together could (whether directly or indirectly) exercise, control the exercise of or substantially influence the exercise of, half or more than half of the voting power attached to voting shares issued by the corporation;

(c) a person has, or persons have together, a controlling interest in a business, being a business carried on by a partnership, if that person or those persons—

(i) owns, or own together (whether beneficially or not) half or more than half of the capital of the partnership; or

(ii) is, or are together, entitled (whether beneficially or not) to half or more than half of the profits of the partnership;

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) a person has, or persons have together, a controlling interest in a business, being a business carried on under a trust, if that person (whether or not as the trustee of another trust) is the beneficiary, or those persons (whether or not as the trustees of another trust) are together the beneficiaries, in respect of half or more than half of the value of the interests in the trust first mentioned in this paragraph;

(e) a person has a controlling interest in a business if, whether or not he is a trustee of a trust, he is the sole owner of the business, or persons, being 2 or more trustees of a trust, have a controlling interest in a business if they are the owners of the business.

(4) Where a corporation has a controlling interest under subsection (3) in a business, it shall be deemed to have a controlling interest in any other business in which another corporation that is related to it (within the meaning of the Companies Act, 1961) has a controlling interest.

(5) Where—

(a) a person has, or persons have together, a controlling interest under subsection (3) in a business; and

(b) the person or persons who carry on that business has or have such a controlling interest in another business,

the person or persons referred to in paragraph (a) shall be deemed to have a controlling interest in the business referred to in paragraph (b).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) Where—

(a) a person is a beneficiary under a trust; or

(b) 2 or more persons together are beneficiaries under a trust,

in respect of half or more than half of the value of the interests in that trust and the trustee or trustees of that trust has or have under subsection (3) a controlling interest in a business, that beneficiary or those beneficiaries shall, for the purposes of subsection (3), be deemed to have a controlling interest in that business.

Smaller groups subsumed into larger groups.

3E. (1) Notwithstanding any other provision of this Act (except subsection (2)), where a person is, whether or not by virtue of this subsection, a member of 2 or more groups (each of which is in subsection (2) referred to as a smaller group), all of the members of those groups constitute, for the purposes of this Act, one group.

(2) Except for the purpose of determining whether a group is constituted under subsection (1), a group which, but for this subsection, would be a smaller group ceases to be a group if its members are members of a group constituted under subsection (1).

Beneficiaries under discretionary trusts.

3F. A person who, as the result of the exercise of a power or discretion by the trustee of a discretionary trust or by any other person or by that trustee and any other person, may benefit under that trust shall be deemed, for the purposes of this Act, to be a beneficiary in respect of half or more than half of the value of the interests in that trust.

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) Section 10 (1)—

After "licence", insert "or a group wholesale tobacco merchant's licence".

(5) (a) Section 11 (1) (c) (ii)—

After "applicant", insert "is an applicant for a retail tobacconist's licence and".

(b) Section 11 (1A)—

After section 11 (1), insert :—

(1A) An application under subsection (1) (a)—

(a) for a wholesale tobacco merchant's licence—may be made by any person other than a person who is a member of a group of wholesale tobacco merchants;

(b) for a group wholesale tobacco merchant's licence—may be made on behalf of all or any of the members of a group of wholesale tobacco merchants by any member of the group; and

(c) for a retail tobacconist's licence—may be made by any person.

(c) Section 11 (2) (a)—

After "merchant's licence", insert "or a group wholesale tobacco merchant's licence".

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 11 (3)—

Omit "in a form approved by him and payment of the prescribed fee (if any) by the holder of the licence", insert instead "by the holder, or if there is more than one holder, any of the holders, of the licence in a form approved by the Commissioner and payment of the prescribed fee (if any)".

(e) Section 11 (3A)—

After section 11 (3), insert :—

(3A) The Commissioner shall, on the grant of a group wholesale tobacco merchant's licence, cause the name of each person who is a member of the group of wholesale tobacco merchants and on whose behalf the application for the licence was made to be specified in the licence.

(6) (a) Section 12 (1) (a), (a1)—

Omit section 12 (1) (a), insert instead :—

(a) for a wholesale tobacco merchant's licence—a fee of $10 together with an amount of 10 per centum of the value of tobacco sold by the applicant in the course of tobacco wholesaling during the relevant period;

(a1) for a group wholesale tobacco merchant's licence—a fee of $10 together with an amount of 10 per centum of the value of tobacco sold by all persons who are members of the group of wholesale tobacco merchants of which the applicant for the licence or a renewal thereof

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

is a member (whether or not the application was made by them or on their behalf and whether or not they were members of that group during the whole or any part of the relevant period) in the course of tobacco wholesaling during the relevant period;

(b) Section 12 (1A)–(1C)—

After section 12 (1), insert :—

(1A) Where an applicant for a wholesale tobacco merchant's licence or a renewal thereof was, at any time during the relevant period for the licence or renewal, a member of a group of wholesale tobacco merchants, the tobacco sold by the applicant in the course of tobacco wholesaling during that relevant period shall, for the purposes of subsection (1) (a), be deemed to have included any tobacco sold by the other or, if more than one, all of the other members of the group in the course of tobacco wholesaling during that period unless the applicant satisfies the Commissioner that a fee for a wholesale tobacco merchant's licence, a group wholesale tobacco merchant's licence or a renewal thereof has been paid to the Commissioner after having been assessed in respect of the sale of that tobacco during that relevant period.

(1B) Where—

(a) an application is made on behalf of all or any of the members of a group of wholesale tobacco merchants for a group wholesale tobacco merchant's licence or a renewal thereof; and

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) any member of the group referred to in paragraph (a) was, at any time during the relevant period for the licence or renewal, a member of another group of wholesale tobacco merchants (any one or more of the members of which is not a member of the group referred to in paragraph (a)),

the tobacco sold by members of the firstmentioned group in the course of tobacco wholesaling during that relevant period shall, for the purposes of subsection (1) (a1), be deemed to have included any tobacco sold by any of the members of the other group in the course of tobacco wholesaling during that period unless the applicant satisfies the Commissioner that a fee for a wholesale tobacco merchant's licence, a group wholesale tobacco merchant's licence or a renewal thereof has been paid to the Commissioner after having been assessed in respect of the sale of that tobacco during that relevant period.

(1C) For the purposes of subsections (1) (a) and (a1), (1A) and (1B), tobacco shall not be treated as having been sold by reason only of its having been sold to the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence.

(c) Section 12 (2)—

Omit "payable by the applicant", insert instead "payable".

(d) Section 12 (2)—

Omit "subsection (1)", insert instead "subsections (1)–(1C)".

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(e) Section 12 (3)—

Omit "payable by the applicant" wherever occurring, insert instead "payable".

(f) Section 12 (3)—

Omit "subsection (1)" wherever occurring, insert instead "subsections (1)–(1C)".

(g) Section 12 (3A)—

After section 12 (3), insert :—

(3A) A fee payable in respect of a licence under subsection (2) or (3) is payable by the applicant for the licence.

(h) Section 12 (6)—

Omit "a licence", insert instead "a retail tobacconist's licence".

(i) Section 12 (8)—

After section 12 (7), insert :—

(8) In subsections (2) and (3), "applicant", in relation to a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence, includes any person whose tobacco wholesaling during the relevant period for the licence would be required to be taken into account by reason of subsection (1) (a1), (1A) or (1B) for the purpose of determining the fee for the licence if the fee was not required to be assessed under either subsection (2) or (3).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(7) (a) Section 13 (2)—

Omit "for a licence", insert instead "for a retail tobacconist's licence".

(b) Section 13 (2)—

Omit "of a licence", insert instead "of a retail tobacconist's licence".

(c) Section 13 (3)—

Omit "the licence" where firstly occurring, insert instead "a retail tobacconist's licence".

(d) Section 13 (5)—

Omit "a licence", insert instead "a retail tobacconist's licence".

(e) Section 13 (6)—

Omit "a licence", insert instead "a retail tobacconist's licence".

(8) (a) Section 14 (5)—

Omit "and payable in accordance with the provisions of subsections (6) and (7).", insert instead :—

and payable—

(a) if the reassessment was made in respect of a retail tobacconist's licence—in accordance with subsections (6) and (7); or

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) if the reassessment was made in respect of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence—in accordance with subsections (6A) and (7).

(b) Section 14 (6) (a)—

After "and payable", insert "by that person".

(c) Section 14 (6A)—

After section 14 (6), insert :—

(6A) Where the additional amount is payable by virtue of a reassessment in respect of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence, the additional amount shall be due and payable (whether or not the licence has ceased to be in force)—

(a) within 14 days after notice of the reassessment is served on the person who is or was the holder of the wholesale tobacco merchant's licence or on any one or more of the persons who are or were holders of the group wholesale tobacco merchant's licence, as the case may be; and

(b) by the person or, where notice is served on more than one person, by each of the persons on whom the notice is served.

(d) Section 14 (7)—

After "subsection (6)", insert "or (6A)".

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(e) Section 14 (9)—

After "subsection (6)", insert ", (6A)".

(9) (a) Section 16 (1)—

Omit "A licence", insert instead "A retail tobacconist's licence".

(b) Section 16 (1A), (1B)—

After section 16 (1), insert :—

(1A) A wholesale tobacco merchant's licence and a group wholesale tobacco merchant's licence shall expire, subject to section 17 (2)—

(a) in the case of a licence that was first in force on a day in a month occurring before the 28th day of the month—on the 27th day of the month in which it was first in force; and

(b) in any other case—on the 27th day of the next succeeding month after the month during which it was first in force.

(1B) A licence referred to in subsection (1A) may, from time to time, upon—

(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

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) payment of the fee assessed by the Commissioner in accordance with section 12,

be renewed for successive periods of one month expiring on the 27th day of the next succeeding month after the month in which the licence is renewed.

(c) Section 16 (2)—

After "subsection (1) (c)", insert "or (1B) (c), as the case may be".

(10) (a) Section 17 (1)—

Omit "licensee", insert instead "holder of a retail tobacconist's licence".

(b) Section 17 (2) (a)—

Before "the applicant", insert "it is a retail tobacconist's licence and".

(c) Section 17 (2) (b)—

After "section 14", insert "in respect of the licence".

(11) Section 19 (1)—

Omit "or, where", insert instead "or, where the licence for which that person applied was a retail tobacconist's licence and".

(12) (a) Section 21 (1)—

After "section 13", insert "in relation to the fee assessed in respect of a retail tobacconist's licence".

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 21 (8) (b)—

Omit "the application for the licence", insert instead "his application for a retail tobacconist's licence in respect of which licence the appeal was instituted,".

(c) Section 21 (8) (b)—

Omit "section 13", insert instead "section 13,".

(13) Section 23A—

After section 23, insert :—

Invoices to be endorsed.

23A. (1) A holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence shall endorse or cause to be endorsed on every invoice issued by him for or in relation to the sale of tobacco the words "SOLD BY LICENSED WHOLESALER—LICENCE No. " followed by the number of his licence.

Penalty : $500.

(2) A person shall not issue an invoice which bears—

(a) the words "SOLD BY LICENSED WHOLESALER" (or words of like import) unless he is the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence; or

(b) the matter "LICENCE No. " (or matter of like import) followed by a number, unless he is the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence bearing that number.

Penalty : $1,000.

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(14) Schedule 1—

After Part V, insert :—

SCHEDULE 1. Sec. 3 (1).

RELEVANT PERIODS FOR WHOLESALE TOBACCO MERCHANTS' LICENCES.

Column 1.	Column 2.
July	May
August	June
September	July
October	August
November	September
December	October
January	November
February	December
March	January
April	February
May	March
June	April

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

Government House,
Sydney, 6th April, 1978.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1978