

CONCURRENCE COPY

BUSINESS FRANCHISE LICENCES (TOBACCO) (ADMINISTRATION) AMENDMENT BILL, 1983

EXPLANATORY NOTE

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

This Bill is cognate with the Stamp Duties (Administration) Amendment Bill, 1983.

The objects of this Bill are—

- (a) to create the office of Chief Commissioner for Business Franchise Licences (Tobacco);
 - (b) to provide that the Secretary of the Department of Finance is to hold the office of Chief Commissioner ex officio;
 - (c) to reconstitute the office of Assistant Commissioner for Business Franchise Licences (Tobacco) as the office of Commissioner for Business Franchise Licences (Tobacco);
 - (d) to enable the Chief Commissioner to delegate any of his functions to the Commissioner and other officers, and (subject to the instrument of delegation) to enable a delegate of the Chief Commissioner to authorise the exercise of delegated functions by other officers; and
 - (e) to make other provisions of a minor, consequential or ancillary nature.
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**BUSINESS FRANCHISE LICENCES (TOBACCO)
(ADMINISTRATION) AMENDMENT BILL, 1983**

No. , 1983.

A BILL FOR

An Act to amend the Business Franchise Licences (Tobacco) Act, 1975,
so as to create the offices of Chief Commissioner and Commissioner for
Business Franchise Licences (Tobacco).

[MR SHEAHAN—16 *March*, 1983.]

Business Franchise Licences (Tobacco) (Administration) 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 Short title.

1. This Act may be cited as the "Business Franchise Licences (Tobacco) (Administration) Amendment Act, 1983".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

10 (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Schedules.

3. This Act contains the following Schedules:—

15 SCHEDULE 1.—AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES (TOBACCO) ACT, 1975.

SCHEDULE 2.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Amendment of Act No. 63, 1975.

4. The Business Franchise Licences (Tobacco) Act, 1975, is amended
20 in the manner set forth in Schedule 1.

Savings, transitional and other provisions.

5. Schedule 2 has effect.

Business Franchise Licences (Tobacco) (Administration) Amendment.

SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES
(TOBACCO) ACT, 1975.

- 5 (1) (a) Section 3 (1), definition of "Assistant Commissioner"—
Omit the definition.
- (b) Section 3 (1), definition of "Chief Commissioner"—
Before the definition of "Commissioner", insert:—
10 "Chief Commissioner" means the Chief Commissioner for
Business Franchise Licences (Tobacco) referred to in
section 5;
- (c) Section 3 (1), definition of "inspector"—
Omit "7 (1)", insert instead "5 (4)".
- (2) Section 3A—
15 Omit "Commissioner" wherever occurring, insert instead "Chief
Commissioner".
- (3) Sections 5, 5A—
Omit section 5, insert instead:—
Chief Commissioner and other officers.
20 5. (1) There shall be a Chief Commissioner for Business Franchise
Licences (Tobacco), who shall be responsible for the due
administration of this Act.
- (2) The person for the time being holding office or acting as
Secretary of the Department of Finance shall also hold office as Chief
25 Commissioner.

Business Franchise Licences (Tobacco) (Administration) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES
(TOBACCO) ACT, 1975—*continued.*

5 (3) There shall be a Commissioner for Business Franchise Licences (Tobacco), who shall be employed under, and hold office subject to, the Public Service Act, 1979.

(4) Such other staff, including inspectors, as may be necessary for the administration of this Act shall be employed under, and hold office subject to, the Public Service Act, 1979.

10 (5) A person may, while holding office as Commissioner, also hold office, if appointed as such, as Commissioner under any other enactment administered by the Minister for Finance.

15 (6) The powers, authorities, duties and functions of the Chief Commissioner may be exercised and performed by the Commissioner while there is no person holding office as Chief Commissioner or (subject to and in accordance with any prescribed conditions or limitations) in the prescribed circumstances.

20 (7) Where the Commissioner purports to exercise or perform any of the powers, authorities, duties or functions of the Chief Commissioner pursuant to subsection (6), the Commissioner shall be deemed, in respect of any person affected thereby, to have sufficient cause to exercise or perform the power, authority, duty or function, as the case may be.

25 (8) Any act or thing done or suffered by the Commissioner pursuant to subsection (6) has the same force and effect as it would have if it had been done or suffered by the Chief Commissioner and shall be deemed to have been done or suffered by the Chief Commissioner.

30 (9) The regulations may provide that a specified reference in this or any other Act or instrument under an Act to the Chief Commissioner shall be read and construed as, or as including, a reference to the Commissioner.

Business Franchise Licences (Tobacco) (Administration) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES
(TOBACCO) ACT, 1975—*continued.***Delegation.**

- 5 5A. (1) In this section, a reference to—
- (a) a function includes a reference to a power, authority and duty; and
 - (b) the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
- 10 (2) The Chief Commissioner may, by instrument in writing, delegate all or any of his functions (other than this power of delegation) conferred or imposed by or under this or any other Act, as specified in the instrument, to the Commissioner or any other person engaged in the administration of this Act and may, by such an
- 15 instrument, revoke wholly or in part any such delegation.
- (3) A delegation under subsection (2) may be made to—
 - (a) a specified person; or
 - (b) a person for the time being holding a specified office.
 - (4) Except in so far as the instrument of delegation otherwise provides, a person to whom a function has been delegated under subsection (2) may, by writing under his hand, authorise another person engaged in the administration of this Act to exercise the function so delegated and may, in like manner, revoke wholly or in part any such authorisation.
 - (5) An authorisation under subsection (4) may be given to—
 - (a) a specified person; or
 - (b) a person for the time being holding a specified office.
 - (6) Any act or thing done or suffered in the exercise of a function by a person to whom the function has been delegated under subsection (2) or by a person authorised by the delegate under
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Business Franchise Licences (Tobacco) (Administration) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES
(TOBACCO) ACT, 1975—*continued.*

5 subsection (4) to exercise the function has the same force and effect as if it had been done or suffered by the Chief Commissioner, and shall be deemed to have been done or suffered by the Chief Commissioner.

(7) A delegation under subsection (2) does not prevent the exercise of a function by the Chief Commissioner.

10 (8) The giving of an authorisation under subsection (4) does not prevent the exercise of a function by the person by whom the authorisation was given.

15 (9) A document purporting to be signed by a person as a delegate of the Chief Commissioner shall be deemed, unless the contrary is established, to have been signed by such a delegate and to have been so signed pursuant to the exercise of a function duly delegated to the person under subsection (2).

20 (10) A document purporting to be signed by a person authorised by a delegate of the Chief Commissioner to sign the document shall be deemed, unless the contrary is established, to have been signed by a person so authorised and so signed pursuant to the exercise of a function that he is duly authorised by such a delegate to exercise.

25 (11) A delegation or authorisation under this section may be made or given subject to such conditions or such limitations as to the exercise of any of the functions delegated, or as to time or circumstances, as may be specified in the instrument of delegation or authorisation.

(4) Section 7 (1)—

30 Omit the subsection.

Business Franchise Licences (Tobacco) (Administration) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES
(TOBACCO) ACT, 1975—*continued.*

- (5) Sections 8–31 (except sections 9 and 26)—
- 5 Omit “Commissioner” wherever occurring, insert instead “Chief Commissioner”.
- (6) Section 9—
- Omit “Commissioner, the Assistant Commissioner”, insert instead “Chief Commissioner, the Commissioner”.
- 10 (7) Section 26—
- Omit “Commissioner or the Assistant Commissioner”, insert instead “Chief Commissioner or the Commissioner”.

SCHEDULE 2.

(Sec. 5.)

15 SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Interpretation: Sch. 2.

1. In this Schedule, “appointed day” means the day appointed and notified under section 2 (2).

Officers.

- 20 2. (1) The person holding office as Assistant Commissioner for Business Franchise Licences (Tobacco) immediately before the appointed day shall be deemed to have been appointed on that day as Commissioner for Business Franchise Licences (Tobacco).

Business Franchise Licences (Tobacco) (Administration) Amendment.

SCHEDULE 2—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

5 (2) A person holding office as an inspector referred to in section 7 (1) of the Business Franchise Licences (Tobacco) Act, 1975, immediately before the appointed day shall be deemed to have been appointed on that day as an inspector referred to in section 5 (4) of that Act, as amended by this Act.

Things done before the appointed day.

10 3. (1) Any act, matter or thing done or omitted to be done before the appointed day by, to or in respect of the Commissioner for Business Franchise Licences (Tobacco) shall, to the extent that, but for the enactment of this Act, that act, matter or thing would on or after that day have had any force or effect or be in operation, be deemed to have been done or omitted to be done by, to or in respect of the Chief Commissioner for Business Franchise Licences (Tobacco).

15 (2) Without limiting the generality of subclause (1), all proceedings commenced before the appointed day by the Commissioner for Business Franchise Licences (Tobacco) and pending immediately before that day shall be deemed to be proceedings pending on that day by the Chief Commissioner for Business Franchise Licences (Tobacco) and all proceedings so commenced by any person against that Commissioner and pending immediately before that day shall be deemed to be proceedings pending
20 on that day by that person against that Chief Commissioner.

References to Commissioner or Assistant Commissioner for Business Franchise Licences (Tobacco).

4. On and from the appointed day, in any other Act (other than the Business Franchise Licences (Tobacco) Act, 1975) or in any regulation, by-law or statutory
25 instrument or in any document, whether of the same or of a different kind—

- (a) a reference to the Commissioner for Business Franchise Licences (Tobacco), being a reference to the Commissioner referred to in section 5 of the Business Franchise Licences (Tobacco) Act, 1975, as in force before the appointed day; or
30 (b) a reference to the Assistant Commissioner for Business Franchise Licences (Tobacco),

shall be read and construed as a reference to the Chief Commissioner for Business Franchise Licences (Tobacco) or the Commissioner for Business Franchise Licences (Tobacco), respectively, referred to in section 5 of the Business Franchise Licences
35 (Tobacco) Act, 1975, as amended by this Act.

Regulations.

5. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision made under subclause (1) may take effect as from the appointed
40 day or a later day.

Business Franchise Licences (Tobacco) (Administration) Amendment.

SCHEDULE 2—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

- 5 (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein; or
 - 10 (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.
- (4) A provision made under subclause (1) shall, if the regulations expressly so provide, have effect notwithstanding clause 3 or 4.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1983

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