

FIRST PRINT

**BUSINESS FRANCHISE LICENCES (TOBACCO)
(APPLICATION AND ENFORCEMENT) AMENDMENT
BILL 1986**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The Business Franchise Licences (Petroleum Products) (Application and Enforcement) Amendment Bill 1986 is cognate with this Bill.

The principal object of this Bill is to amend the Business Franchise Licences (Tobacco) Act 1975 in order to eliminate discrimination of a kind which imposes an undue burden on some forms of trade in tobacco and to protect the revenue derived under that Act from trading in tobacco against certain avoidance practices.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the Schedule of amendments to the Principal Act, and of proposed section 3 in so far as it gives effect to those amendments, on 28 December 1986. The rest of the proposed Act will commence on assent.

Clause 3 is a formal provision that gives effect to the Schedule of amendments.

Schedule 1 (1) amends section 3 of the Principal Act, which defines certain terms and contains other provisions in aid of the interpretation of the Principal Act, to insert a definition of "road vehicle" and to state, in one provision (proposed section 3 (4A)), rather than in several provisions, that the Principal Act applies to sales of tobacco in the course of intrastate trade.

Schedule 1 (2) inserts proposed section 3AA into the Principal Act so as to state that the Principal Act also extends to apply to sales of tobacco otherwise than in the course of intrastate trade.

Schedule 1 (3) amends section 3G of the Principal Act in consequence of the amendment made by Schedule 1 (1) (c).

Schedule 1 (4) amends section 7 of the Principal Act so as to allow inspectors for the purposes of the Principal Act to require information, from any person capable of giving it to them, concerning a business carried on by any person in connection with tobacco. (At present the inspectors' powers are limited to requiring information concerning financial and other records relating to such a business which are in the custody or under the control of the person from whom the information is required.)

Schedule 1 (5) amends sections 7 (5) and 8 (5) of the Principal Act so as to permit information furnished by a person in compliance with a requirement made by the Chief Commissioner or an inspector under the Principal Act to be used in evidence against the person in proceedings other than criminal proceedings.

Schedule 1 (6) inserts proposed new section 8AA into the Principal Act, which requires transporters of tobacco to keep certain records relating to its nature, quantity, origin and destination and empowers inspectors to inspect the records and to stop and detain vehicles for that purpose.

Schedule 1 (7) amends section 8A of the Principal Act to allow an inspector, having stopped a road vehicle which is transporting tobacco in respect of which appropriate records are not produced as required under proposed section 8AA, or in respect of which an offence is reasonably suspected of having been committed, to require the driver of the vehicle to convey the inspector to the vehicle's destination and, if the driver refuses, allows the inspector to take charge of the vehicle.

Schedule 1 (8) amends section 10 of the Principal Act in consequence of the amendment made by Schedule 1 (1) (c).

Schedule 1 (9) amends section 11 of the Principal Act so as to specify the only grounds for refusal of a licence under the Principal Act, namely, that the Chief Commissioner under the Principal Act is satisfied—

- (a) that the intended licensee has not made a payment required to be made under the Principal Act; or
- (b) that the intended licensee, if issued with a licence, will not comply with the requirements of the Principal Act.

Schedule 1 (10) amends section 12 of the Principal Act—

- (a) to shift the obligation to pay the licence fee in respect of the wholesale distribution chain from the ultimate wholesaler (as at present) to the initial wholesaler (Schedule 1 (9) (a), (b) and (d));
- (b) in consequence of the amendment made by Schedule 1 (1) (c) (Schedule 1 (9) (c)); and

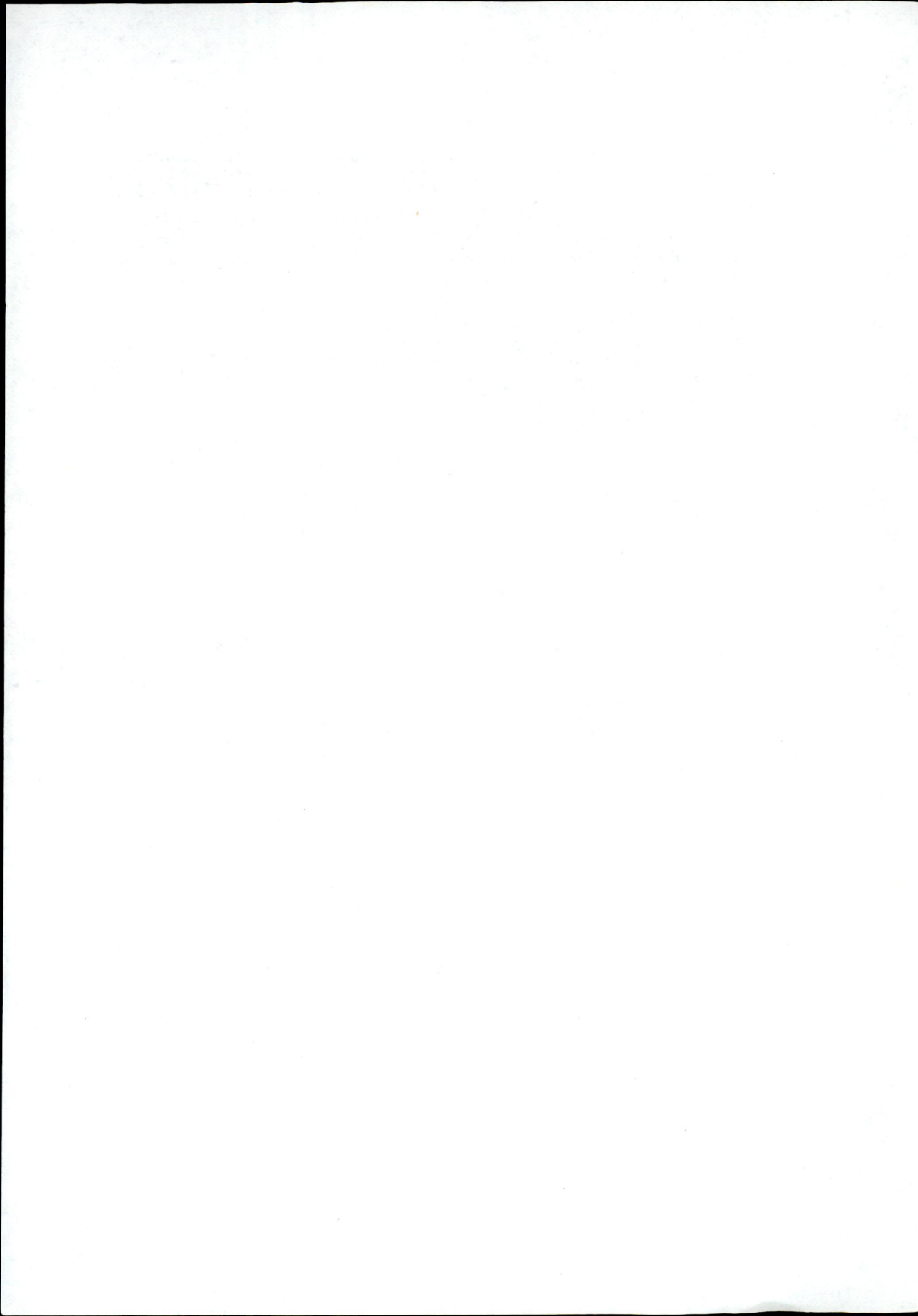
- (c) to permit information furnished by a person in compliance with a requirement made by the Chief Commissioner under section 8 of the Principal Act to be taken into account when assessing a licence fee (Schedule 1 (10) (e)).

Schedule 1 (11) inserts proposed section 15A into the Principal Act in order to enable the Chief Commissioner to refund or waive payment of a licence fee by a person in respect of tobacco sold by retail outside New South Wales if the person has paid or is liable to pay a fee under a law of another State or a Territory of the Commonwealth which corresponds to the Principal Act.

Schedule 1 (12) amends sections 21 and 28A of the Principal Act to provide that, in an appeal brought by a licensee against an assessment or reassessment of the licence fee, the licensee bears the burden of proving the assessment or reassessment made by the Chief Commissioner to be wrong.

Schedule 1 (13) inserts proposed section 26A into the Principal Act, which provides that a notice of assessment or reassessment authenticated by the Chief Commissioner is evidence, in any appeal against the assessment or reassessment, that the assessment or reassessment was duly made and is conclusive evidence of that fact in other proceedings.

Schedule 1 (14) amends section 31 of the Principal Act to allow regulations to be made for or with respect to the stopping, detention and taking charge of road vehicles and the impounding and release of tobacco.



**BUSINESS FRANCHISE LICENCES (TOBACCO)
(APPLICATION AND ENFORCEMENT) AMENDMENT
BILL 1986**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 63, 1975

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



**BUSINESS FRANCHISE LICENCES (TOBACCO)
(APPLICATION AND ENFORCEMENT) AMENDMENT
BILL 1986**

NEW SOUTH WALES



No. , 1986

A BILL FOR

An Act to amend the Business Franchise Licences (Tobacco) Act 1975 so as not to discriminate, in the application of licence fees, between different forms of trade in tobacco, and to make further provision for the enforcement of the Act.

See also Business Franchise Licences (Petroleum Products) (Application and Enforcement) Amendment Bill 1985.

*Business Franchise Licences (Tobacco) (Application and Enforcement)
Amendment 1986*

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) (Application and Enforcement) Amendment Act 1986".

Commencement

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

(2) Schedule 1, and section 3 in its application to that Schedule, shall commence or be deemed to have commenced, as the case requires, on 28 December 1986.

Amendment of Act No. 63, 1975

15 3. The Business Franchise Licences (Tobacco) Act 1975 is amended in the manner set forth in Schedule 1.

SCHEDULE 1

(Sec. 3)

**20 AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES
(TOBACCO) ACT 1975**

(1) Section 3 (Interpretation)—

(a) Section 3 (1), definition of "road vehicle" —

After the definition of "retail tobacconist's licence", insert:

**25 "road vehicle" means a vehicle designed solely or principally
for transporting persons, goods or animals by road;**

**(b) Section 3 (1), definitions of "tobacco retailing", "tobacco
wholesaling" —**

Omit "in the course of intrastate trade" wherever occurring.

*Business Franchise Licences (Tobacco) (Application and Enforcement)
Amendment 1986*

SCHEDULE 1—*continued*

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

(c) Section 3 (4A)—

After subsection (4), insert:

(4A) A reference in this Act to the sale of tobacco is a reference to the sale of tobacco in the course of intrastate trade.

5 (d) Section 3 (7)—

Omit “in the course of intrastate trade”.

(2) Section 3AA—

After section 3, insert:

Additional operation of Act

10 3AA. (1) Without prejudice to its effect apart from this section, this Act also has, by force of this section, the effect it would have if there were added at the end of section 3 (4A) the words “and otherwise than in the course of intrastate trade”.

15 (2) Nothing in this Act affects the operation of section 14A of the Interpretation Act 1897.

(3) Section 3G (**Retail sales by tobacco wholesaler**)—

Section 3G (1), (3)—

Omit “in the course of intrastate trade” wherever occurring.

*Business Franchise Licences (Tobacco) (Application and Enforcement)
Amendment 1986*

SCHEDULE 1—*continued*

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

(4) Section 7 (**Inspectors**)—

Section 7 (3) (c)—

Omit the paragraph, insert instead:

(c) to answer any question relating to—

- 5 (i) any records or documents in the custody or under the control of the bank manager or other person;
- (ii) any statement produced in accordance with paragraph (b); or
- 10 (iii) the carrying on by any person of any business of processing, packaging, distributing, transporting, selling or purchasing tobacco or financial transactions in connection with or arising out of the carrying on of any such business.

15 (5) Section 7 (**Inspectors**), section 8 (**Particulars of dealings with tobacco**)—

Sections 7 (5), 8 (5)—

Omit “proceedings, civil or criminal” wherever occurring, insert instead “criminal proceedings”.

*Business Franchise Licences (Tobacco) (Application and Enforcement)
Amendment 1986*

SCHEDULE 1—*continued*

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

(6) Section 8AA—

After section 8, insert:

Transportation records

5 8AA. (1) A person shall not cause any tobacco to be consigned for transportation by road vehicle into or within New South Wales unless, at or before the time when the transporter takes possession of the tobacco, a record of consignment is delivered to the transporter.

10 (2) A person shall not take possession of any tobacco for transportation by the person by road vehicle into or within New South Wales unless, on or before taking possession of the tobacco, a record of consignment is delivered to the person.

(3) For the purposes of this section, a record of consignment is a document which accurately shows—

- 15 (a) the date of consignment;
- (b) the type and quantity of tobacco consigned;
- (c) the name and address of the consignor;
- (d) the name and address of the consignee;
- (e) the address to which the tobacco is to be delivered; and
- 20 (f) such other particulars as may be prescribed.

(4) An inspector may at any time require a road vehicle in which the inspector reasonably suspects tobacco is being transported to stop and may require the person in charge of the vehicle to produce the record of consignment for inspection.

25 (5) The person in charge of the road vehicle shall stop the vehicle and shall produce the record of consignment as required by an inspector.

Penalty: \$1,000 or imprisonment for 3 months, or both.

*Business Franchise Licences (Tobacco) (Application and Enforcement)
Amendment 1986*

SCHEDULE 1—*continued*

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

(7) Section 8A (**Seizure of tobacco**)—

(a) Section 8A (2A)–(2C)—

After subsection (2), insert:

(2A) If—

- 5 (a) the driver of a road vehicle transporting tobacco does not produce, on demand made by an inspector, a record of consignment referred to in section 8AA; or
- 10 (b) an inspector reasonably suspects that an offence has been committed by any person in relation to tobacco transported by road vehicle,

the inspector may require the driver of the vehicle to convey the inspector in the vehicle to the address for delivery by the driver of the tobacco.

(2B) If—

- 15 (a) a person does not convey an inspector in accordance with a requirement made by the inspector; or
- (b) it appears to the inspector that the driver is not complying in a reasonable manner with a requirement made by the inspector,

20 the inspector may direct the driver to drive the vehicle to the nearest practicable place, determined by the inspector, at which the tobacco may be kept in custody by a person authorised in that behalf by the Chief Commissioner.

25 (2C) If the person does not comply with the inspector's direction, the inspector may take charge of the vehicle for the purpose of conveying the tobacco to the place where it is to be kept in custody.

(b) Section 8A (3), (4)—

30 Omit "subsection (1)" wherever occurring, insert instead "this section".

*Business Franchise Licences (Tobacco) (Application and Enforcement)
Amendment 1986*

SCHEDULE 1—*continued*

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

(8) Section 10 (**Offences relating to sale of tobacco**)—

Section 10 (3)—

Omit “in the course of intrastate trade”.

(9) Section 11 (**Issue of licence**)—

5 Section 11 (4)—

After section 11 (3A), insert:

10 (4) The Chief Commissioner may refuse to grant a licence to an applicant who complies with the requirements of subsection (1) only if the Chief Commissioner believes on reasonable grounds that the applicant—

(a) has not paid an amount due and payable by the applicant under this Act; or

(b) will not comply with the requirements of this Act if the licence is granted.

15 (10) Section 12 (**Fees**)—

(a) Section 12 (1) (a)—

Omit “period;”, insert instead:

period, other than tobacco purchased on or after 1 January 1987—

20 (i) from the holder of a wholesale tobacco merchant’s licence or a group wholesale tobacco merchant’s licence; or

25 (ii) from the holder of a retail tobacconist’s licence or a group retail tobacconist’s licence who does not, in the relevant period, purchase tobacco from any person other than a licensed tobacco wholesaler or a licensed group tobacco wholesaler;

*Business Franchise Licences (Tobacco) (Application and Enforcement)
Amendment 1986*

SCHEDULE 1—*continued*

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

(b) Section 12 (1) (a1)—

Omit “period;”, insert instead:

period, other than tobacco purchased on or after 1 January
1987—

5 (i) from the holder of a wholesale tobacco merchant’s licence
or a group wholesale tobacco merchant’s licence; or

10 (ii) from the holder of a retail tobacconist’s licence or a group
retail tobacconist’s licence who does not, in the relevant
period, purchase tobacco from any person other than a
licensed tobacco wholesaler or a licensed group tobacco
wholesaler;

(c) Section 12 (1) (b), (c)—

Omit “in the course of intrastate trade” wherever occurring.

(d) Section 12 (1c)—

15 After “sold” where secondly occurring, insert “, prior to 1 January
1987,”.

(e) Section 12 (7)—

Omit the subsection.

(11) Section 15A—

20 After section 15, insert:

Refund, etc., of fees

25 15A. The Chief Commissioner may, in relation to the value of
tobacco sold by retail at a place outside New South Wales in the
relevant period, refund the whole or part of any fee paid, or waive
payment of the whole or part of any fee payable, under this Act
by a person if the person satisfies the Chief Commissioner that
the person has, in relation to the value of that tobacco, paid a fee
to another person under a law of another State or a Territory of
the Commonwealth which corresponds to this Act.

*Business Franchise Licences (Tobacco) (Application and Enforcement)
Amendment 1986*

SCHEDULE 1—*continued*

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

- (12) Section 21 (**Objection to and appeal against assessment**), section 28A
(**Recovery of unpaid fees from unlicensed persons**)—

Sections 21 (7A), 28A (8A)—

- 5 After “made” wherever occurring, insert “and, without limiting the generality of the foregoing, that person shall bear the onus of proving that the assessment of the fee is incorrect”.

- (13) Section 26A—

After section 26, insert:

Notice of assessment

- 10 26A. (1) In any proceedings under this Act or the regulations or for the recovery of any amount due and payable under this Act or the regulations, the production of a notice of assessment of a fee, or of a document certified by the Chief Commissioner to be
15 a copy of such a notice, shall be conclusive evidence of the due making of the assessment and that the amount and all the particulars of the assessment are correct, except in proceedings by way of appeal against the assessment, when it shall be prima facie evidence only.

(2) In this section, “assessment” includes reassessment.

- 20 (14) Section 31 (**Regulations**)—

(a) Section 31 (2) (a)—

Omit “and” where lastly occurring.

(b) Section 31 (2) (b), (c)—

After section 31 (2) (b), insert:

- 25 ; and

*Business Franchise Licences (Tobacco) (Application and Enforcement)
Amendment 1986*

SCHEDULE 1—*continued*

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

- (c) the stopping, detaining and taking charge of road vehicles, the taking and keeping in custody of tobacco and the release of tobacco taken in custody.

**BUSINESS FRANCHISE LICENCES (TOBACCO)
(APPLICATION AND ENFORCEMENT) AMENDMENT
ACT 1986 No. 180**

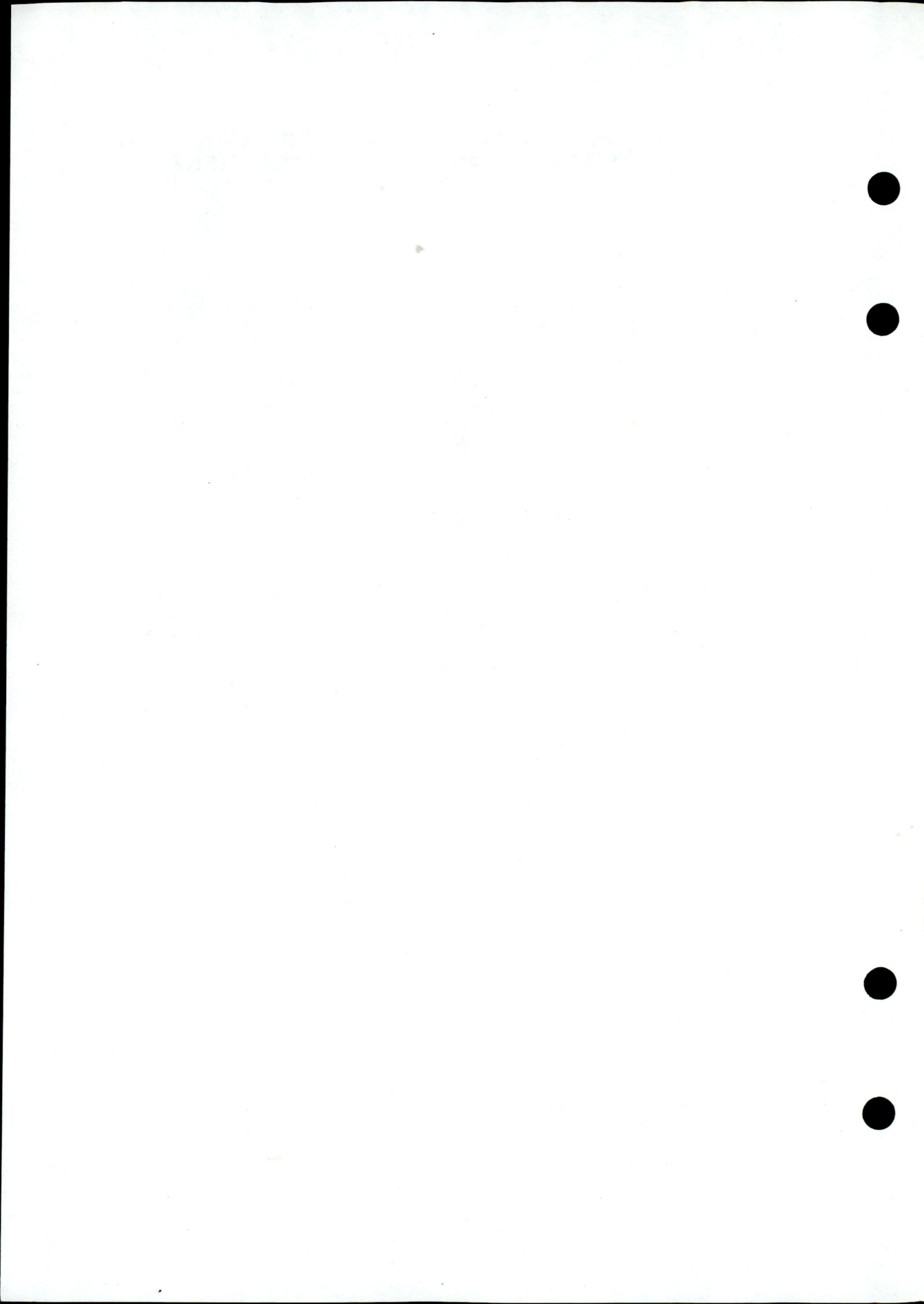
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 63, 1975

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



BUSINESS FRANCHISE LICENCES (TOBACCO) (APPLICATION AND ENFORCEMENT) AMENDMENT ACT 1986 No. 180

NEW SOUTH WALES



Act No. 180, 1986

An Act to amend the Business Franchise Licences (Tobacco) Act 1975 so as not to discriminate, in the application of licence fees, between different forms of trade in tobacco, and to make further provision for the enforcement of the Act. [Assented to 18 December 1986]

See also Business Franchise Licences (Petroleum Products) (Application and Enforcement) Amendment Act 1986.

*Business Franchise Licences (Tobacco) (Application and Enforcement)
Amendment 1986*

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) (Application and Enforcement) Amendment Act 1986".

Commencement

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

(2) Schedule 1, and section 3 in its application to that Schedule, shall commence or be deemed to have commenced, as the case requires, on 28 December 1986.

Amendment of Act No. 63, 1975

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

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE BUSINESS FRANCHISE LICENCES
(TOBACCO) ACT 1975

(1) Section 3 (**Interpretation**)—

(a) Section 3 (1), definition of "road vehicle" —

After the definition of "retail tobacconist's licence", insert:

"road vehicle" means a vehicle designed solely or principally for transporting persons, goods or animals by road;

(b) Section 3 (1), definitions of "tobacco retailing", "tobacco wholesaling" —

Omit "in the course of intrastate trade" wherever occurring.

*Business Franchise Licences (Tobacco) (Application and Enforcement)
Amendment 1986*

SCHEDULE 1—*continued*

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

(c) Section 3 (4A)—

After subsection (4), insert:

(4A) A reference in this Act to the sale of tobacco is a reference to the sale of tobacco in the course of intrastate trade.

(d) Section 3 (7)—

Omit “in the course of intrastate trade”.

(2) Section 3AA—

After section 3, insert:

Additional operation of Act

3AA. (1) Without prejudice to its effect apart from this section, this Act also has, by force of this section, the effect it would have if there were added at the end of section 3 (4A) the words “and otherwise than in the course of intrastate trade”.

(2) Nothing in this Act affects the operation of section 14A of the Interpretation Act 1897.

(3) Section 3G (**Retail sales by tobacco wholesaler**)—

Section 3G (1), (3)—

Omit “in the course of intrastate trade” wherever occurring.

*Business Franchise Licences (Tobacco) (Application and Enforcement)
Amendment 1986*

SCHEDULE 1—*continued*

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

(4) Section 7 (**Inspectors**)—

Section 7 (3) (c)—

Omit the paragraph, insert instead:

(c) to answer any question relating to—

- (i) any records or documents in the custody or under the control of the bank manager or other person;
- (ii) any statement produced in accordance with paragraph (b); or
- (iii) the carrying on by any person of any business of processing, packaging, distributing, transporting, selling or purchasing tobacco or financial transactions in connection with or arising out of the carrying on of any such business.

(5) Section 7 (**Inspectors**), section 8 (**Particulars of dealings with tobacco**)—

Sections 7 (5), 8 (5)—

Omit “proceedings, civil or criminal” wherever occurring, insert instead “criminal proceedings”.

SCHEDULE 1—*continued*

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

(6) Section 8AA—

After section 8, insert:

Transportation records

8AA. (1) A person shall not cause any tobacco to be consigned for transportation by road vehicle into or within New South Wales unless, at or before the time when the transporter takes possession of the tobacco, a record of consignment is delivered to the transporter.

(2) A person shall not take possession of any tobacco for transportation by the person by road vehicle into or within New South Wales unless, on or before taking possession of the tobacco, a record of consignment is delivered to the person.

(3) For the purposes of this section, a record of consignment is a document which accurately shows—

- (a) the date of consignment;
- (b) the type and quantity of tobacco consigned;
- (c) the name and address of the consignor;
- (d) the name and address of the consignee;
- (e) the address to which the tobacco is to be delivered; and
- (f) such other particulars as may be prescribed.

(4) An inspector may at any time require a road vehicle in which the inspector reasonably suspects tobacco is being transported to stop and may require the person in charge of the vehicle to produce the record of consignment for inspection.

(5) The person in charge of the road vehicle shall stop the vehicle and shall produce the record of consignment as required by an inspector.

Penalty: \$1,000 or imprisonment for 3 months, or both.

*Business Franchise Licences (Tobacco) (Application and Enforcement)
Amendment 1986*

SCHEDULE 1—*continued*

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

(7) Section 8A (**Seizure of tobacco**)—

(a) Section 8A (2A)–(2C)—

After subsection (2), insert:

(2A) If—

- (a) the driver of a road vehicle transporting tobacco does not produce, on demand made by an inspector, a record of consignment referred to in section 8AA; or
- (b) an inspector reasonably suspects that an offence has been committed by any person in relation to tobacco transported by road vehicle,

the inspector may require the driver of the vehicle to convey the inspector in the vehicle to the address for delivery by the driver of the tobacco.

(2B) If—

- (a) a person does not convey an inspector in accordance with a requirement made by the inspector; or
- (b) it appears to the inspector that the driver is not complying in a reasonable manner with a requirement made by the inspector,

the inspector may direct the driver to drive the vehicle to the nearest practicable place, determined by the inspector, at which the tobacco may be kept in custody by a person authorised in that behalf by the Chief Commissioner.

(2C) If the person does not comply with the inspector's direction, the inspector may take charge of the vehicle for the purpose of conveying the tobacco to the place where it is to be kept in custody.

(b) Section 8A (3), (4)—

Omit "subsection (1)" wherever occurring, insert instead "this section".

*Business Franchise Licences (Tobacco) (Application and Enforcement)
Amendment 1986*

SCHEDULE 1—*continued*

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

(8) Section 10 (**Offences relating to sale of tobacco**)—

Section 10 (3)—

Omit “in the course of intrastate trade”.

(9) Section 11 (**Issue of licence**)—

Section 11 (4)—

After section 11 (3A), insert:

(4) The Chief Commissioner may refuse to grant a licence to an applicant who complies with the requirements of subsection (1) only if the Chief Commissioner believes on reasonable grounds that the applicant—

- (a) has not paid an amount due and payable by the applicant under this Act; or
- (b) will not comply with the requirements of this Act if the licence is granted.

(10) Section 12 (**Fees**)—

(a) Section 12 (1) (a)—

Omit “period;”, insert instead:

period, other than tobacco purchased on or after 1 January 1987—

- (i) from the holder of a wholesale tobacco merchant’s licence or a group wholesale tobacco merchant’s licence; or
- (ii) from the holder of a retail tobacconist’s licence or a group retail tobacconist’s licence who does not, in the relevant period, purchase tobacco from any person other than a licensed tobacco wholesaler or a licensed group tobacco wholesaler;

*Business Franchise Licences (Tobacco) (Application and Enforcement)
Amendment 1986*

SCHEDULE 1—*continued*

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

(b) Section 12 (1) (a1)—

Omit “period;”, insert instead:

period, other than tobacco purchased on or after 1 January 1987—

- (i) from the holder of a wholesale tobacco merchant’s licence or a group wholesale tobacco merchant’s licence; or
- (ii) from the holder of a retail tobacconist’s licence or a group retail tobacconist’s licence who does not, in the relevant period, purchase tobacco from any person other than a licensed tobacco wholesaler or a licensed group tobacco wholesaler;

(c) Section 12 (1) (b), (c)—

Omit “in the course of intrastate trade” wherever occurring.

(d) Section 12 (1c)—

After “sold” where secondly occurring, insert “, prior to 1 January 1987,”.

(e) Section 12 (7)—

Omit the subsection.

(11) Section 15A—

After section 15, insert:

Refund, etc., of fees

15A. The Chief Commissioner may, in relation to the value of tobacco sold by retail at a place outside New South Wales in the relevant period, refund the whole or part of any fee paid, or waive payment of the whole or part of any fee payable, under this Act by a person if the person satisfies the Chief Commissioner that the person has, in relation to the value of that tobacco, paid a fee to another person under a law of another State or a Territory of the Commonwealth which corresponds to this Act.

*Business Franchise Licences (Tobacco) (Application and Enforcement)
Amendment 1986*

SCHEDULE 1—*continued*

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

- (12) Section 21 (**Objection to and appeal against assessment**), section 28A (**Recovery of unpaid fees from unlicensed persons**)—

Sections 21 (7A), 28A (8A)—

After “made” wherever occurring, insert “and, without limiting the generality of the foregoing, that person shall bear the onus of proving that the assessment of the fee is incorrect”.

- (13) Section 26A—

After section 26, insert:

Notice of assessment

26A. (1) In any proceedings under this Act or the regulations or for the recovery of any amount due and payable under this Act or the regulations, the production of a notice of assessment of a fee, or of a document certified by the Chief Commissioner to be a copy of such a notice, shall be conclusive evidence of the due making of the assessment and that the amount and all the particulars of the assessment are correct, except in proceedings by way of appeal against the assessment, when it shall be prima facie evidence only.

(2) In this section, “assessment” includes reassessment.

- (14) Section 31 (**Regulations**)—

(a) Section 31 (2) (a)—

Omit “and” where lastly occurring.

(b) Section 31 (2) (b), (c)—

After section 31 (2) (b), insert:

; and

*Business Franchise Licences (Tobacco) (Application and Enforcement)
Amendment 1986*

SCHEDULE 1—*continued*

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

- (c) the stopping, detaining and taking charge of road vehicles, the taking and keeping in custody of tobacco and the release of tobacco taken in custody.