

FIRST PRINT

**BUSINESS FRANCHISE LICENCES (TOBACCO)
AMENDMENT BILL 1985**

EXPLANATORY NOTE

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

The object of this Bill is to amend the Business Franchise Licences (Tobacco) Act 1975, so as—

- (a) to provide that the Chief Commissioner for Business Franchise Licences (Tobacco) may issue either a monthly or an annual licence to a tobacco retailer (Schedule 1);
 - (b) to increase licence fees, to provide for certain penalty payments in case of late payment of licence fees and to make further provision with respect to licences and assessments of licence fees (Schedule 2);
 - (c) to make further provision with respect to the powers of the Chief Commissioner and inspectors under the Principal Act to obtain information and evidence (Schedule 3);
 - (d) to increase the penalties for certain offences under the Principal Act (Schedule 4); and
 - (e) to abolish the scheme of separate licensing of tobacco retailing by means of vending machines and to make further provision with respect to retailing by that means (Schedule 5).
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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with certain exceptions, commence on the day on which it receives the Royal Assent.

Clause 3 provides that for the purposes of the proposed Act the Business Franchise Licences (Tobacco) Act 1975 may be referred to as the Principal Act.

Clause 4 sets out the Schedules to the proposed Act.

Clause 5 gives effect to the Schedules of amendments.

Clause 6 gives effect to Schedule 6 (savings, transitional and other provisions).

Schedule 1 (1) (a) amends the definition of "relevant period" in section 3 (1) of the Principal Act in order to define the period (of tobacco sales) in relation to which the fee for a monthly retailer's licence will be assessed.

Schedule 1 (1) (b) inserts new subsections (1A) and (1B) into section 3 of the Principal Act to provide for adjustments to be made to the relevant period (as defined in section 3 (1) of the Principal Act) in relation to licence fees in certain circumstances.

Schedule 1 (1) (c) inserts a new subsection (6) into section 3 of the Principal Act to draw the distinction between annual and monthly retailers' licences. (Retailers' licences granted under the Principal Act as at present in force are annual licences.)

Schedule 1 (2) amends section 12 (6) of the Principal Act as a consequence of Schedule 1 (3).

Schedule 1 (3) amends section 16 of the Principal Act so as to provide for the duration of monthly retailers' licences as well as annual ones.

Schedule 1 (4) inserts a new section 18 into the Principal Act, which allows the Chief Commissioner to cancel a retailer's annual licence and substitute a monthly licence instead.

Schedule 2 (1) (a) amends section 10 of the Principal Act to exempt, from liability for an offence under section 10 (1), a licensed tobacco retailer who sells tobacco by wholesale to another licensed retailer, provided that the tobacco was sold to the firstmentioned retailer by a licensed wholesaler.

Schedule 2 (1) (b) amends section 10 of the Principal Act by inserting new subsection (6), which provides that in proceedings for an offence under that section, a quantity of tobacco found in a person's possession may be presumed (until the contrary is shown) to be intended for sale if that quantity exceeds a quantity to be prescribed by the regulations.

Schedule 2 (2) (a) amends section 12 of the Principal Act to increase the variable component of a licence fee (i.e. that part of the fee that is calculated by reference to tobacco sales) from 15 per cent to 25 per cent.

Schedule 2 (2) (b) amends section 12 of the Principal Act to increase the fixed component of the fee for annual retailers' licences from \$10 to \$20 per annum (with effect from the commencement of the next licensing period).

Schedule 2 (2) (c) amends section 12 of the Principal Act to provide that, in an assessment of the fee for a retailer's licence, tobacco sold by the retailer shall be disregarded if the tobacco was purchased from another retailer who only purchases tobacco from licensed wholesalers.

Schedule 2 (3) amends section 14 of the Principal Act, which empowers the Chief Commissioner, if satisfied that a fee has been incorrectly assessed, to reassess the fee for a licence. The effect of the amendment is to provide that the licensee is obliged to pay not only the amount of the necessary fee adjustment but a further amount (equal to twice the amount of the adjustment) by way of penalty.

Schedule 2 (4) amends section 17 of the Principal Act to oblige a licensee, upon ceasing to trade, to surrender his or her licence.

Schedule 2 (5) amends section 22 of the Principal Act to make it clear that a person objecting to or appealing against a reassessment by the Chief Commissioner under section 14 of that Act must pay the amount of the adjustment (and any associated penalty payment) before proceeding with the objection or appeal.

Schedule 2 (6) (a) and (b) amend section 28A of the Principal Act to provide that where a person has illegally traded in tobacco without a licence, the Chief Commissioner may recover, in addition to the fee that would have been payable by the person if the person had had a licence, an amount by way of penalty equal to twice that amount.

Schedule 2 (6) (c) amends section 28A of the Principal Act to provide for the payment by instalments of amounts payable under that section.

Schedule 2 (7) inserts a new section 28B into the Principal Act, which provides for a sliding scale of interest and penalty payments in cases where licence fees are not paid in due time.

Schedule 3 (1) amends section 7 of the Principal Act to confer on licensing inspectors a right of access to any premises (other than residential premises) in order to examine and deal with records for the purposes of the Principal Act.

Schedule 3 (2) inserts a new section 7A into the Principal Act to provide for the issue of a warrant to search residential premises suspected to contain records, documents or tobacco to which an inspector requires access for the purposes of the Principal Act.

Schedule 3 (3) amends section 8 of the Principal Act to enable the Chief Commissioner to require from any person information which that person has in relation to tobacco trading and other matters relevant to the operation of the Principal Act.

Schedule 3 (4) inserts new sections 8A and 8B into the Principal Act. Section 8A allows an inspector to seize tobacco in circumstances where it appears to be in a person's possession for illegal sale. Section 8B provides for proceedings in respect of the subsequent disposal of seized tobacco.

Schedule 3 (5) inserts Schedule 2 into the Principal Act to make provision with respect to search warrants issued under new section 7A (inserted by Schedule 3 (2)).

Schedule 4 (1)–(7) amend sections 8, 10, 23, 23A, 24, 25, and 31 of the Principal Act to increase the penalties provided for offences under those sections.

Schedule 4 (8) amends section 27 of the Principal Act to permit proceedings for an offence against the Principal Act or the regulations to be taken before a Local Court or before the Supreme Court in its summary jurisdiction and to provide that, where proceedings for any such offence are taken before a Local Court, the maximum penalty which the Local Court may impose, in respect of an offence for which the maximum penalty would otherwise exceed \$10,000, is limited to \$10,000.

Schedule 5 amends the Principal Act in relation to the sale of tobacco through vending machines, an activity presently regulated under the Principal Act by a licence specifically authorising it. The object of the amendment is to abolish this category of licence. Vending machine sales will in future be treated as ordinary retailing and sellers will be required to hold a retailer's licence.

Schedule 5 (1) (d) amends the definition of "tobacco retailing" so that it includes the sale of tobacco by vending machines. The other amendments contained in Schedule 5 (apart from Schedule 5 (4)) are consequential.

Schedule 5 (4) inserts a new section 10A into the Principal Act, which requires licensees who sell tobacco through vending machines to display particulars of their licences on the machines.

Schedule 6 enacts certain savings and transitional provisions in connection with the proposed Act and provides for further amendment of the Principal Act in anticipation of the commencement of the Search Warrants Act 1985.

**BUSINESS FRANCHISE LICENCES (TOBACCO)
AMENDMENT BILL 1985**

No. , 1985

A BILL FOR

An Act to amend the Business Franchise Licences (Tobacco) Act 1975 to vary the fee payable for a licence under that Act, to make further provision with respect to the term for which such a licence may be granted and for other purposes.

Business Franchise Licences (Tobacco) Amendment 1985

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) Amendment Act 1985".

Commencement

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

(2) Schedules 2 (1) (b), 3 (3) and 5 (4), and section 5 in its application to each of those provisions, shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

15 Principal Act

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

Schedules

4. This Act contains the following Schedules:

20 SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT TO
PROVIDE FOR ANNUAL AND MONTHLY RETAILERS'
LICENCES

25 SCHEDULE 2—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO WHOLESALERS' AND RETAILERS'
LICENCES

SCHEDULE 3—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO THE POWERS OF THE CHIEF
COMMISSIONER AND INSPECTORS

30 SCHEDULE 4—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO PENALTIES AND PROCEEDINGS FOR
OFFENCES

SCHEDULE 5—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO THE SALE OF TOBACCO BY VENDING
MACHINES

Business Franchise Licences (Tobacco) Amendment 1985

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Amendment of Act No. 63, 1975

- 5 5. The Principal Act is amended in the manner set forth in Schedules 1–5.

Savings, transitional and other provisions

6. Schedule 6 has effect.

SCHEDULE 1

(Sec. 5)

10 **AMENDMENTS TO THE PRINCIPAL ACT TO PROVIDE FOR ANNUAL AND MONTHLY RETAILERS' LICENCES**

- (1) (a) Section 3 (1), definition of “relevant period”—

- (i) In paragraph (a), after “licence” where secondly occurring, insert “(being, in either case, an annual licence)”.
- 15 (ii) In paragraph (a), after “period”, insert “(as adjusted, if the case requires, in accordance with subsection (1B))”.
- (iii) After paragraph (a), insert:
 - (a1) in relation to a retail tobacconist’s licence or a group retail tobacconist’s licence (being, in either case, a monthly licence)—the period (as adjusted, if the case requires, in accordance with subsection (1A) or (1B)) consisting of the month specified in column 2 of Schedule 1 that last preceded the month—
 - 20
 - 25 (i) specified in column 1 of Schedule 1 opposite the firstmentioned month; and
 - (ii) at the end of which the licence, if granted and in force for the whole of its term, would expire; or

Business Franchise Licences (Tobacco) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT TO PROVIDE FOR
ANNUAL AND MONTHLY RETAILERS' LICENCES—*continued*

(b) Section 3 (1A), (1B)—

After section 3 (1), insert:

(1A) Subject to subsection (1B), where a monthly retail tobacco-
n⁵ tobacconist's licence or a monthly group retail tobacco-
n⁵ tobacconist's licence is the first such licence held by a person, the period
n⁵ which, but for this subsection, would be the relevant period in
n⁵ relation to the licence shall be adjusted by adding to it the period
n⁵ from 1 July last preceding that period until the commencement
n⁵ of that period.

10 (1B) Where the period that would, but for this subsection, be
n¹⁰ the relevant period in relation to a particular retail tobacco-
n¹⁰ tobacconist's licence or group retail tobacco-
n¹⁰ tobacconist's licence includes any period
n¹⁰ that formed the whole or part of the relevant period in relation
n¹⁰ to another such licence previously held by the same person, the
n¹⁵ firstmentioned period shall be adjusted by subtracting from it the
n¹⁵ period that formed the whole or part of the relevant period for
n¹⁵ that other licence.

(c) Section 3 (6)—

After section 3 (5), insert:

20 (6) For the purposes of this Act, a retail tobacco-
n²⁰ tobacconist's licence
n²⁰ or a group retail tobacco-
n²⁰ tobacconist's licence—

(a) is an annual licence if, as provided by section 16 (1A), it
n²⁵ expires on 27 August in any year; or

(b) is a monthly licence if, as provided by section 16 (1B), it
n²⁵ expires at the end of any month.

(2) Section 12 (6)—

After "licence" where secondly occurring, insert "(being, in either
case, an annual licence)".

Business Franchise Licences (Tobacco) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT TO PROVIDE FOR
ANNUAL AND MONTHLY RETAILERS' LICENCES—*continued*

(3) Section 16 (1)–(1B)—

Omit section 16 (1), insert instead:

5 (1) A retail tobacconist's licence or a group retail tobacconist's licence shall be an annual licence or a monthly licence, as may be determined by the Chief Commissioner and endorsed on the licence.

10 (1A) An annual retail tobacconist's licence or an annual group retail tobacconist's licence shall be in force on and from the day specified in the licence as its commencement day until (unless it sooner ceases to have effect) 27 August next following that day.

(1B) A monthly retail tobacconist's licence or a monthly group retail tobacconist's licence shall be in force on and from the day specified in the licence as its commencement day until the expiry of the month that includes that day.

15 (4) Section 18—

After section 17, insert:

Commutation of retailers' licences

18. The Chief Commissioner may—

20 (a) by notice in writing served on a person who is the holder of an annual retail tobacconist's licence or an annual group retail tobacconist's licence, revoke that licence with effect from the commencement of the day specified for the purposes of paragraph (b); and

25 (b) grant the person a monthly licence commencing on any specified day.

Business Franchise Licences (Tobacco) Amendment 1985

SCHEDULE 2

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
WHOLESALEERS' AND RETAILERS' LICENCES

5 (1) (a) Section 10 (1A)—

After section 10 (1), insert:

10 (1A) Subsection (1) does not apply in respect of a sale by
wholesale by the holder of a tobacco retailer's licence of tobacco
sold by wholesale to that holder by a person who is the holder
of a tobacco wholesaler's licence or a group tobacco wholesaler's
licence.

(b) Section 10 (6)—

After section 10 (5), insert:

15 (6) In any proceedings for an offence under this section, a
quantity of tobacco in a person's possession shall, if the quantity
exceeds the prescribed quantity, be presumed, until the court is
satisfied to the contrary, to be in the person's possession for sale.

(2) (a) Section 12 (1)—

20 Omit "15 per cent" wherever occurring, insert instead "25 per
cent".

(b) Section 12 (1) (b), (c)—

Omit "\$10" wherever occurring, insert instead "\$20 (or, in the
case of a monthly licence, \$10)".

(c) Section 12 (1) (b), (c)—

25 Omit "(other than tobacco purchased in the course of intrastate
trade from the holder of a wholesale tobacco merchant's licence
or a group wholesale tobacco merchant's licence);" wherever
occurring, insert instead:

, other than tobacco purchased in the course of intrastate trade—

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

Business Franchise Licences (Tobacco) Amendment 1985

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
WHOLESALEERS' AND RETAILERS' LICENCES—*continued*

- 5 (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;
- (3) (a) Section 14 (5)—
After "reassessment" where secondly occurring, insert ", together
with an amount by way of penalty equal to twice the amount so
payable,".
- 10 (b) Section 14 (6)—
After section 14 (5), insert:
(6) The Chief Commissioner may, in a particular case, for
reasons which to the Chief Commissioner appear sufficient, remit
the whole or part of any penalty payable under subsection (5).
- 15 (c) Section 14 (7)—
Omit "additional amount is payable", insert instead "amounts
are payable by way of additional fee and penalty".
- (d) Section 14 (7)—
Omit "the additional amount", insert instead "the amounts".
- 20 (e) Section 14 (7)—
Omit "amount by", insert instead "amounts by".
- (f) Section 14 (7)—
Omit "amount being", insert instead "amounts being".
- (g) Section 14 (7)—
25 Omit "it shall", insert instead "the amounts shall".

Business Franchise Licences (Tobacco) Amendment 1985

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
WHOLESALEERS' AND RETAILERS' LICENCES—*continued*

(4) (a) Section 17 (1)—

Omit the subsection, insert instead:

5 (1) A holder of a licence who has ceased to carry on the business authorised by the licence shall, within 30 days of ceasing to carry on that business, by notice in writing to the Chief Commissioner, surrender the licence and advise the address of premises where records relating to that business will in future be kept.

Penalty: \$200.

10 (b) Section 17 (2)—

After “if”, insert “surrendered under subsection (1) or if”.

(5) Section 22—

After “served”, insert “and who has paid any amount payable under section 14 in respect of the reassessment”.

15 (6) (a) Section 28A (1)—

After “licence” where lastly occurring, insert “, together with an amount by way of penalty equal to twice the amount of the fee assessed for the purposes of this section”.

(b) Section 28A (9)—

20 Omit “assessed”, insert instead “due and payable”.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
WHOLESALEERS' AND RETAILERS' LICENCES—*continued*

(c) Section 28A (11A)—

After section 28A (11), insert:

5 (11A) A person by whom any amounts are payable by way of
fee and penalty under this section may, within 14 days after the
service on the person of notice of the assessment under this
section, apply to the Chief Commissioner for approval to pay the
amounts by instalments, and if the Chief Commissioner approves
10 of the amounts being so paid, the amounts shall be due and
payable by the person by such instalments payable at such times
as are specified in the instrument of the Chief Commissioner's
approval.

(d) Section 28A (14)—

After section 28A (13), insert:

15 (14) The Chief Commissioner may, in a particular case, for
reasons which to the Chief Commissioner appear sufficient, remit
the whole or part of any amount payable under this section.

(7) Section 28B—

After section 28A, insert:

Penalties for late fees in certain cases

20 28B. (1) If an amount payable under section 14 or 28A (in this
section referred to as the "principal amount") is not paid before
the expiration of the time allowed by or under the relevant
section, there shall be payable to the Chief Commissioner by the
person liable to pay the principal amount—

25 (a) where the principal amount is paid not later than the 14th
day after the time so allowed—interest at the rate of 20
per cent per annum of the principal amount, to be
computed from the expiration of that time until (and
including) the date of payment; or

Business Franchise Licences (Tobacco) Amendment 1985

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
WHOLESALEERS' AND RETAILERS' LICENCES—*continued*

(b) where—

(i) the principal amount is paid later than that day but not later than 1 month after that day—a penalty equal to 10 per cent;

5 (ii) the principal amount is paid later than 1 month after that day but not later than 2 months after that day—a penalty equal to 25 per cent; or

(iii) the principal amount is paid later than 2 months after that day—a penalty equal to 100 per cent,

10 of the principal amount.

(2) The provisions of subsection (1) apply to and in respect of the unpaid balance for the time being of any principal amount in the same way as they apply to and in respect of a principal amount for the time being unpaid.

15 (3) The Chief Commissioner may, in a particular case, for reasons which to the Chief Commissioner appear sufficient, remit the whole or part of any interest or penalty payable under this section.

20 (4) Any interest or penalty payable under this section may be recovered by the Chief Commissioner, as a debt, in any court of competent jurisdiction.

SCHEDULE 3

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS

5 (1) (a) Section 7 (1)–(4D)—

Omit section 7 (2)–(4), insert instead:

10 (1) An inspector shall at all reasonable times have full and free access to all premises, records and documents for any of the purposes of this Act or the regulations and for any such purpose may make extracts from or copies of any such records and documents.

15 (2) Subsection (1) does not authorise an inspector to enter that part of any premises being used for residential purposes without the consent of the occupier of that part of the premises, but nothing in this section limits the operation of section 7A.

(3) Without affecting the generality of subsection (1), an inspector may require any bank manager or other person to do any one or more of the following:

20 (a) to produce for inspection by the inspector any records and documents in the custody or under the control of the bank manager or other person, being records and documents relating to, or which the inspector reasonably believes relate to, the carrying on by any specified person of any business of processing, packaging, distributing,
25 transporting, selling or purchasing tobacco or to financial transactions in connection with or arising out of the carrying on by a specified person of any such business;

30 (b) to produce to the inspector a statement in writing in the English language setting out particulars of any records in the custody or under the control of the bank manager or other person, being records that are not written or that are not written in English, and which relate to, or which the inspector reasonably believes relate to, the carrying on by
35 any specified person of any business referred to in paragraph (a) or to any financial transactions in connection with or arising out of the carrying on by a specified person of any such business;

SCHEDULE 3—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued

- (c) to answer any question with respect to any records and documents in the custody or under the control of the bank manager or other person or with respect to any statement produced in accordance with paragraph (b).

5 (4) An inspector may make extracts from or copies of any statement produced in accordance with subsection (3) (b).

(4A) An inspector may—

10 (a) for the purpose of making extracts from or copies of any records or documents to which the inspector is entitled to have access or any statements which are produced to the inspector, take away and retain (for such time as may for that purpose be reasonably necessary) any such records, documents or statements; or

15 (b) where the inspector reasonably believes that any such records, documents or statements are evidence of an offence against this Act or the regulations, take away and retain those records, documents or statements until proceedings for any such offence have been heard and dealt with.

20 (4B) An inspector shall, when taking away any records, documents or statements, tender an appropriate receipt to the person from whose possession they are taken.

(4C) A person who—

25 (a) denies an inspector access, or hinders or obstructs the access of an inspector, to any premises, records or documents to which the inspector is entitled to have access;

(b) hinders or obstructs an inspector in the exercise of any of the powers and authorities conferred on an inspector by this section; or

30 (c) fails or refuses to comply with any requirement under this section,

SCHEDULE 3—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued

is guilty of an offence against this Act.

Penalty: \$1,000 or imprisonment for 3 months, or both, and in the case of any offence under paragraph (c) an additional penalty not exceeding \$200 for every day on which the offence continues.

(4D) A person—

(a) is not guilty of an offence under subsection (4C) (a) unless it is established that the person was informed by the inspector, or otherwise knew, that the inspector was entitled to access to the premises, records or documents, as the case may be;

(b) is not guilty of an offence under subsection (4C) (c) unless it is established that the inspector warned the person that a failure or refusal to comply with the requirement was an offence;

(c) is not guilty of an offence under subsection (4C) (c) by reason of a failure or refusal to answer a question put to the person by the inspector, if the person satisfies the court that the person did not know, and could not with reasonable diligence ascertain, the answer to the question; and

(d) is not guilty of an offence under subsection (4C) (a), (b) or (c) unless it is established that the inspector identified himself or herself as an inspector.

(b) Section 7 (5)—

Omit “subsection (2) (b)”, insert instead “subsection (3) (c)”.

(c) Section 7 (5)—

Omit “subsection (3)”, insert instead “subsection (4c)”.

(d) Section 7 (6)—

Omit “subsection (2) (b) (iii)”, insert instead “subsection (3) (c)”.

SCHEDULE 3—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued

(e) Section 7 (8)—

After section 7 (7), insert:

5 (8) To the extent to which a member of the police force is not so authorised by any other law, a member of the police force is by this subsection authorised to provide an inspector with such assistance as the inspector may in a particular case require for or in connection with the exercise by the inspector of any of the inspector's powers and authorities under this section.

(2) Section 7A—

10 After section 7, insert:

Search warrants

7A. (1) In this section, "authorised justice" means—

(a) a Magistrate; or

15 (b) a justice of the peace employed in Local Courts Administration, Attorney General's Department.

(2) An inspector may apply to an authorised justice for a warrant to search any premises (or a part of any premises) being used for residential purposes if the inspector has reasonable grounds to believe that—

20 (a) any records or documents are to be found there, being records or documents to which the inspector would have access if they were kept on premises to which the inspector had access; or

25 (b) any tobacco is to be found there, being tobacco in a quantity that exceeds 5 kilograms (or, where some other quantity is prescribed, the quantity prescribed).

30 (3) An authorised justice to whom an application is made under subsection (2) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the inspector to enter and search the premises.

Business Franchise Licences (Tobacco) Amendment 1985

SCHEDULE 3—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued

(4) Schedule 2 has effect.

(5) A person shall not, without reasonable cause, obstruct or hinder a person executing a search warrant under this section.

Penalty : \$2,000 or imprisonment for 2 years, or both.

5 (3) (a) Section 8 (2)–(2B)—

Omit section 8 (2), insert instead:

(2) The Chief Commissioner may by notice in writing require any person—

10 (a) to furnish to the Chief Commissioner such information, in such form, as the Chief Commissioner requires; or

(b) to attend and give evidence before the Chief Commissioner or before any officer of the Public Service employed in the administration or execution of this Act and authorised by the Chief Commissioner in that behalf,

15 for the purpose of—

(c) inquiring into any business of dealing with tobacco;

(d) inquiring into or ascertaining that person's or any other person's liability or entitlement under any of the provisions of this Act; or

20 (e) ascertaining for the purposes of this Act the identity of any person who—

(i) may have a liability or entitlement under any of the provisions of this Act; or

25 (ii) may, by reason of being related to or associated or connected with another person, affect the liability of that other person,

SCHEDULE 3—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued

and may by the same or a subsequent notice require that person to produce to the Chief Commissioner, at a specified place and at or within a specified time, any records or documents of any specified kind relating to any such information.

5 (2A) The Chief Commissioner may require the information or evidence to be given on oath, and either orally or in writing, or to be given by statutory declaration, for which purpose either the Chief Commissioner or the authorised officer may administer an oath.

10 (2B) The regulations may prescribe scales of expenses to be allowed to persons whose attendance is required under this section.

(b) Section 8 (3)—

Omit “subsection (2)”, insert instead “this section”.

15 (c) Section 8 (5)—

After section 8 (4), insert:

20 (5) A person is not excused from complying with a requirement under this section to supply information on the ground that the information might tend to criminate the person or make the person liable to a penalty, but the information supplied by the person shall not be admissible against the person in any proceedings, civil or criminal, except proceedings under subsection (3) or section 25 or proceedings for an offence in connection with the verification by oath of the information.

25 (4) Sections 8A, 8B—

After section 8, insert:

*Business Franchise Licences (Tobacco) Amendment 1985***SCHEDULE 3—continued****AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued****Seizure of tobacco**

5 8A. (1) Where an inspector reasonably believes that any tobacco in a person's possession is evidence of an offence by any person, the inspector may take possession of any such tobacco and cause it to be placed in the custody of the Chief Commissioner, or a proper officer on behalf of the Chief Commissioner, until proceedings for any such offence have been heard and dealt with.

10 (2) Subsection (1) does not confer on an inspector any right of access to premises distinct from the right of access conferred by section 7 or under section 7A.

 (3) An inspector shall, when taking away any tobacco pursuant to subsection (1), tender an appropriate receipt to the person from whose possession the tobacco is taken.

15 (4) A person who hinders or obstructs an inspector in the exercise of the power conferred on an inspector by subsection (1) is guilty of an offence against this Act.

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

Proceedings in respect of seized tobacco

20 8B. (1) Where any tobacco has been seized under section 8A, the Chief Commissioner or an officer authorised for the purpose by the Chief Commissioner may make an application to the Supreme Court for an order under subsection (4).

25 (2) An application under subsection (1) may be heard and dealt with by the Supreme Court in its summary jurisdiction.

 (3) Where an application has been made to the Supreme Court under subsection (1) in relation to any tobacco—

30 (a) the Court may, if it thinks fit, require the Chief Commissioner or officer to give notice of the application to a person who the Court has reason to believe has an interest in the tobacco; and

SCHEDULE 3—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued

- (b) any person who claims to have an interest in the tobacco or any of it is entitled to appear and to adduce evidence at the hearing of the application.

5 (4) Where, at the hearing of an application under subsection (1), evidence is given that the tobacco was in the possession of a person for sale in the course of carrying on a business of tobacco wholesaling or retailing, the Court—

- 10 (a) may, by order, empower the Chief Commissioner to sell the tobacco in such manner and subject to such directions, if any, as the Court may specify, and to pay the proceeds of sale into Court; or

- (b) on the application of any person appearing to the Court to have an interest in the tobacco—

15 (i) fix the value of the tobacco for the purposes of an order under subparagraph (ii), having regard to the nature of that person's interest in the tobacco; and

20 (ii) order that, upon payment into Court by that person of an amount equal to the value of the tobacco so fixed, the Chief Commissioner shall deliver the tobacco to that person.

(5) Where—

- (a) in any proceedings before a court in which an offence under or arising out of the provisions of section 10 is found to be proven; or

25 (b) upon application subsequently made by or on behalf of the Chief Commissioner to the court before which those proceedings were taken,

Business Franchise Licences (Tobacco) Amendment 1985

SCHEDULE 3—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued

5 the court finds that any tobacco seized under section 8A was in any person's possession for sale in the course of the commission of, or for the purposes of, the offence, that tobacco (or, as the case may be, any money paid into the Supreme Court pursuant to an order under subsection (4) in respect of that tobacco) shall be forfeited to the Crown.

(6) Any tobacco forfeited under subsection (5) may be disposed of by the Minister on behalf of the Crown as the Minister thinks fit.

10 (7) On the application of a person appearing to the Court to be entitled to any tobacco seized under section 8A or any money paid into Court under this section, the Supreme Court—

15 (a) if it is of the opinion that proceedings whereby the tobacco or money might be forfeited to the Crown are not likely to be taken; or

(b) in any case with the consent of the Chief Commissioner,
may order that the tobacco or money be delivered or paid to a person appearing to the Court to be entitled to it.

20 (8) Nothing in this section prevents the Chief Commissioner from at any time causing any tobacco seized under section 8A to be delivered to a person appearing to the Chief Commissioner to be entitled to it.

(5) Schedule 2—

After Schedule 1, insert:

*Business Franchise Licences (Tobacco) Amendment 1985***SCHEDULE 3—continued****AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued****SCHEDULE 2**

(Sec. 7A (4))

PROVISIONS RELATING TO SEARCH WARRANTS ISSUED UNDER THIS ACT**Interpretation**

- 5 1. In this Schedule, except in so far as the context or subject-matter otherwise indicates or requires—
- “authorised justice” has the same meaning as in section 7A;
- “occupier”, in relation to any premises, includes a person in charge of the premises;
- “occupier’s notice” means an occupier’s notice referred to in clause 4;
- 10 “search warrant” means a search warrant issued under section 7A.

Application for warrant

2. (1) An application for a search warrant shall be made in writing.
- (2) An authorised justice shall not issue a search warrant unless—
- 15 (a) the application for the warrant sets out the grounds on which the warrant is being sought;
- (b) the applicant has given the authorised justice, either orally or in writing, such further information (if any) as the authorised justice requires concerning the grounds on which the warrant is being sought; and
- 20 (c) the information given by the applicant is verified before the authorised justice on oath or affirmation or by affidavit.
- (3) An authorised justice may administer an oath or affirmation or take an affidavit for the purposes of an application for a search warrant.

Record of proceedings before authorised justice

- 25 3. (1) An authorised justice who issues a search warrant shall cause a record to be made of all relevant particulars of the grounds the authorised justice has relied on to justify the issue of the warrant.
- (2) Any matter that might disclose the identity of a person shall not be recorded pursuant to this clause if the authorised justice is satisfied that the safety of any person might thereby be jeopardised.

30 Notice to occupier of premises entered pursuant to warrant

4. (1) An authorised justice shall prepare and furnish an occupier’s notice to the person to whom the authorised justice issues a search warrant.

SCHEDULE 3—continued**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued**

(2) An occupier's notice furnished in relation to a search warrant—

(a) shall specify—

- (i) the name of the person who applies for the warrant;
- (ii) the name of the authorised justice who issued the warrant;
- 5 (iii) the date and the time when the warrant was issued; and
- (iv) the address or other description of the premises the subject of the warrant; and

(b) shall contain a summary of the nature of the warrant and the powers conferred by the warrant.

10 (3) A person executing a search warrant shall—

- (a) upon entry into or on to the premises or as soon as practicable thereafter, serve the occupier's notice on a person who appears to be an occupier of the premises and to be of or above the age of 18 years; or
- 15 (b) if no such person is then present in or on the premises, serve the occupier's notice on the occupier of the premises, either personally or in such other manner as the authorised justice who issued the warrant may direct, as soon as practicable after executing the warrant.

(4) Service of an occupier's notice pursuant to subclause (3) (b) may be postponed by the authorised justice who issued the search warrant if that authorised justice is satisfied
20 that there are reasonable grounds for the postponement.

(5) Service of an occupier's notice pursuant to subclause (3) (b) may be postponed on more than one occasion, but shall not be postponed on any one occasion for a period exceeding 6 months.

Duty to show warrant

25 5. A person executing a search warrant shall produce the warrant for inspection by an occupier of the premises if requested to do so by that occupier.

Use of force to enter premises, etc.

6. (1) A person authorised to enter premises pursuant to a search warrant may use such force as is reasonably necessary for the purpose of entering the premises.

30 (2) A person authorised to search premises pursuant to a search warrant may, if it is reasonably necessary to do so, break open any receptacle in or upon the premises for the purposes of that search.

*Business Franchise Licences (Tobacco) Amendment 1985*SCHEDULE 3—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
*continued***Use of assistants to execute warrant**

7. A person may execute a search warrant with the aid of such assistants as the person considers necessary.

Execution of warrant by day or night

5 8. (1) A search warrant may be executed by day, but shall not be executed by night unless the authorised justice, by the warrant, authorises its execution by night.

(2) In subclause (1)—

“by day” means during the period between 6 a.m. and 9 p.m. on any day;

10 “by night” means during any period between 9 p.m. on any day and 6 a.m. on the following day.

Expiry of warrant

9. A search warrant ceases to have effect—

(a) on the expiration of the period of 1 month after its issue;

(b) if it is withdrawn by the authorised justice who issued the warrant; or

15 (c) when it is executed,

whichever first occurs.

Report to authorised justice on execution of warrant, etc.

10. (1) The person to whom a search warrant is issued shall furnish a report in writing to the authorised justice who issued the warrant—

20 (a) stating whether or not the warrant was executed;

(b) if the warrant was executed—setting out briefly the result of the execution of the warrant (including a brief description of anything seized);

(c) if the warrant was not executed—setting out briefly the reasons why the warrant was not executed; and

25 (d) stating whether or not an occupier’s notice has been served in connection with the execution of the warrant.

(2) A report with respect to a search warrant shall be made within 10 days after the execution of the warrant or the expiry of the warrant, whichever first occurs.

SCHEDULE 3—continued**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued****Death, absence, etc., of authorised justice who issued warrant**

11. Where the authorised justice who issued a search warrant has died, has ceased to be an authorised justice or is absent—

- 5 (a) a report required to be furnished to that authorised justice pursuant to clause 10; or
- (b) a power exercisable by that authorised justice under clause 4 (3) (b) or (4), shall be furnished to, or may be exercised by, as the case may be, any other authorised justice.

Defects in warrants

- 10 12. A search warrant is not invalidated by any defect, other than a defect which affects the substance of the warrant in a material particular.

Telephone search warrant

13. (1) In this clause—

“telephone” includes radio, telex and any other communication device.

- 15 (2) A person may make application by telephone for a search warrant.

(3) An authorised justice shall not issue a search warrant upon an application made by telephone unless the authorised justice is satisfied that the warrant is required urgently and that it is not practicable for the application to be made in person.

- 20 (4) If it is not practicable for an application for a search warrant to be made by telephone directly to an authorised justice, the application may be transmitted to the authorised justice by another person on behalf of the applicant.

(5) An authorised justice who issues a search warrant upon an application made by telephone shall—

- (a) complete and sign the warrant;
- 25 (b) inform the person who made the application of the terms of the warrant and of the date and the time when it was signed; and
- (c) prepare and furnish an occupier’s notice to the person who made the application or inform that person of the terms of an occupier’s notice.
- (6) Where a search warrant is issued upon an application made by telephone, the
- 30 applicant—
- (a) shall complete a form of search warrant in the terms indicated by the authorised justice under subclause (5) and write on it the name of that authorised justice and the date and the time when the warrant was signed; and

Business Franchise Licences (Tobacco) Amendment 1985

SCHEDULE 3—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued

(b) where the applicant was not furnished with an occupier's notice—shall complete a form of occupier's notice in the terms indicated by the authorised justice under subclause (5).

- 5 (7) A form of search warrant and a form of occupier's notice completed in accordance with subclause (6) shall be deemed to be a search warrant issued, and an occupier's notice prepared and furnished, in accordance with this Act.
-

SCHEDULE 4

(Sec. 5)

10 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
PENALTIES AND PROCEEDINGS FOR OFFENCES

- (1) Section 8 (3)—

Omit "\$2,500", insert instead "\$20,000".

- (2) Sections 10 (1), 23A (1), 31 (4)—

Omit "\$500" wherever occurring, insert instead "\$2,000".

15

- (3) Section 10 (2)–(4)—

Omit "\$250" wherever occurring, insert instead "\$2,000".

- (4) Section 23 (1), (1A)—

Omit "\$1,000" wherever occurring, insert instead "\$5,000".

20

- (5) Section 23A (2)—

Omit "Penalty: \$1,000", insert instead "Penalty (subsection (2)):
\$5,000".

- (6) Section 24 (1)—

Omit "\$2,500", insert instead "\$10,000".

Business Franchise Licences (Tobacco) Amendment 1985

SCHEDULE 4—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
PENALTIES AND PROCEEDINGS FOR OFFENCES—*continued*

(7) Section 25 (1), (2)—

Omit “\$250 or imprisonment for 3 months” wherever occurring, insert instead “\$5,000 or imprisonment for 12 months”.

(8) (a) Section 27 (1)—

5 Omit the subsection, insert instead:

(1) Proceedings for an offence against this Act or the regulations may be taken before a Local Court constituted by a Magistrate sitting alone or before the Supreme Court in its summary jurisdiction.

10 (b) Section 27 (1B), (1C)—

After section 27 (1A), insert:

15 (1B) If proceedings for an offence against this Act or the regulations are taken before a Local Court, the maximum penalty that that Court may impose in respect of the offence is, notwithstanding any provision of this Act, \$10,000 (including any daily penalty) or the maximum penalty provided by this Act or the regulations in respect of the offence, whichever is the lesser.

20 (1C) If proceedings against this Act or the regulations are taken before the Supreme Court, that Court may impose a penalty not exceeding the maximum penalty provided by this Act or the regulations in respect of the offence.

Business Franchise Licences (Tobacco) Amendment 1985

SCHEDULE 5

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE SALE
OF TOBACCO BY VENDING MACHINES

5 (1) (a) Section 3 (1), definition of "group licence"—

Omit " , a group tobacco vending machine operator's licence".

(b) Section 3 (1), definition of "group tobacco vending machine operator's licence"—

Omit the definition.

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

Omit paragraph (b).

(d) Section 3 (1), definition of "tobacco retailing"—

(i) Omit "include—", insert instead "include any business referred to in section 3G.";

15 (ii) Omit paragraphs (a) and (b).

(e) Section 3 (1), definitions of "tobacco vending machine operations", "tobacco vending machine operator's licence"—

Omit the definitions.

(f) Section 3 (1), definition of "tobacco wholesaling"—

20 Omit "or the business of tobacco vending machine operations".

(g) Section 3 (2)—

Omit the subsection, insert instead:

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

(2) (a) Section 3G (2)—

Omit the subsection.

30 (b) Section 3G (3) (a)—

Omit " , or by means of vending machines,".

Business Franchise Licences (Tobacco) Amendment 1985

SCHEDULE 5—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
SALE OF TOBACCO BY VENDING MACHINES—*continued*

(c) Section 3G (3)—

Omit “or by means of vending machines, as the case may be”.

(3) (a) Section 10 (2A)—

Omit the subsection.

5 (b) Section 10 (4)—

Omit “(other than the holder of a tobacco vending machine operator’s licence or a group tobacco vending machine operator’s licence)”.

(c) Section 10 (4A)—

10 After section 10 (4), insert:

(4A) Subsection (4) does not apply to the carrying on, by the holder of a retail tobacconist’s licence or group retail tobacconist’s licence, of tobacco retailing by means of vending machines.

15 (4) Section 10A—

After section 10, insert:

Identification of vending machines

20 10A. A person who carries on tobacco retailing by means of a vending machine shall display on the machine, in the prescribed manner, the prescribed particulars of the person’s licence.

Penalty: \$1,000.

(5) (a) Section 11 (1A) (c)—

After “tobacconists;”, insert “and”.

25 (b) Section 11 (1A) (e), (f)—

Omit the paragraphs.

Business Franchise Licences (Tobacco) Amendment 1985

SCHEDULE 5—continued

**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
SALE OF TOBACCO BY VENDING MACHINES—continued**

(c) Section 11 (2) (b)—

Omit the paragraph, insert instead:

(b) a retail tobacconist's licence or a group retail tobacconist's licence, which authorises the licensee—

5 (i) to carry on tobacco retailing, in so far as it is carried on otherwise than by means of vending machines, on premises specified in the licence; and

10 (ii) to carry on tobacco retailing by means of vending machines on premises specified in the licence or on any other premises;

(d) Section 11 (2) (b)—

After "licence" where lastly occurring, insert "and to carry on tobacco retailing by means of vending machines at any premises".

15 (e) Section 11 (2) (c)—

Omit the paragraph.

(f) Section 11 (3)—

Omit "(other than a tobacco vending machine operator's licence or a group tobacco vending machine operator's licence)".

20 (g) Section 11 (3)—

After "granted", insert "(except in so far as that business may consist of tobacco retailing by means of vending machines)".

(6) (a) Section 12 (1) (d), (e)—

Omit the paragraphs.

25 (b) Section 12 (1A) (a)—

At the end of section 12 (1A) (a), insert "or".

(c) Section 12 (1A) (b)—

Omit "period; or", insert instead "period,".

SCHEDULE 5—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
SALE OF TOBACCO BY VENDING MACHINES—*continued*

- (d) Section 12 (1A) (c)—
Omit the paragraph.
- (e) Section 12 (1B) (a)—
At the end of section 12 (1B) (a), insert “or”.
- 5 (f) Section 12 (1B) (b)—
Omit “period; or”, insert instead “period,”.
- (g) Section 12 (1B) (c)—
Omit the paragraph.
- (h) Section 12 (6A)—
10 Omit the subsection.
- (i) Section 12 (8)—
Omit “(1) (e),”.
- (7) (a) Section 13 (1) (a)—
Omit “July; or”, insert instead “July.”
- 15 (b) Section 13 (1) (b)—
Omit the paragraph.
- (c) Section 13 (2)—
Omit “licence,” where firstly occurring, insert instead “licence
or”.
- 20 (d) Section 13 (2)—
Omit “, a tobacco vending machine operator’s licence or a group
tobacco vending machine operator’s licence”.
- (e) Section 13 (3A)—
Omit the subsection.
- 25 (f) Section 13 (4), (5)—
Omit “or (3A)” wherever occurring.

*Business Franchise Licences (Tobacco) Amendment 1985***SCHEDULE 5—continued****AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
SALE OF TOBACCO BY VENDING MACHINES—continued****(8) Section 16 (2)—**

Omit the subsection.

(9) Section 21 (9)—

Omit “or (3A)”.

5

SCHEDULE 6

(Sec. 6)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS**Reassessed licence fees**

10

1. Notwithstanding this Act, section 14 of the Principal Act, as in force immediately before the date of assent to this Act, continues to apply to and in respect of a reassessment of which notice was given, before the date of assent to this Act, in accordance with that section, as so in force.

Licensees ceasing to trade

15

2. Section 17 of the Principal Act, as amended by this Act, does not apply to or in respect of a person who, before the date of assent to this Act, ceased to carry on a business referred to in that section, as so amended.

Assessed unpaid fees

20

3. Notwithstanding this Act, section 28A of the Principal Act, as in force immediately before the date of assent to this Act, continues to apply to and in respect of an assessment under that section of which notice was given, before the date of assent to this Act, in accordance with that section, as so in force.

Late fees

25

4. Section 28B of the Principal Act, as amended by this Act, applies to and in respect of an amount payable under section 14 or 28A of the Principal Act, as in force immediately before the date of assent to this Act, being an amount—

(a) due and payable before the date of assent to this Act; and

(b) unpaid, as at that date,

but so applies as if the amount were due and payable on that date.

Business Franchise Licences (Tobacco) Amendment 1985

SCHEDULE 6—*continued*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

Vending machine operations

5. A tobacco vending machine operator's licence or a group tobacco vending machine operator's licence in force immediately before the date of assent to this Act shall be deemed to be a retail tobacconist's licence or a group retail tobacconist's licence, as the case requires, in force under and subject to the Principal Act, as amended by this Act, and authorising the retail sale of tobacco by means of vending machines on any premises.

Repeals and amendments

6. On the date of assent to this Act or on the commencement of the Search Warrants Act 1985 (whichever is the later), the Principal Act is amended—
- 10 (a) by omitting section 7A (4) and by inserting instead the following subsection:
- (4) Part III of the Search Warrants Act 1985 applies to a search warrant issued under this section.
- (b) by omitting Schedule 2.
-

**BUSINESS FRANCHISE LICENCES (TOBACCO) AMENDMENT
ACT 1985 No. 185**

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

* * * * *

Act No. 185, 1985

An Act to amend the Business Franchise Licences (Tobacco) Act 1975 to vary the fee payable for a licence under that Act, to make further provision with respect to the term for which such a licence may be granted and for other purposes. [Assented to, 4th December, 1985.]

Business Franchise Licences (Tobacco) Amendment 1985

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 1985".

Commencement

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

(2) Schedules 2 (1) (b), 3 (3) and 5 (4), and section 5 in its application to each of those provisions, shall commence on such day or days as may be appointed by the Governor and 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.

Schedules

4. This Act contains the following Schedules:

SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT TO PROVIDE FOR ANNUAL AND MONTHLY RETAILERS' LICENCES

SCHEDULE 2—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO WHOLESALERS' AND RETAILERS' LICENCES

SCHEDULE 3—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS

SCHEDULE 4—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PENALTIES AND PROCEEDINGS FOR OFFENCES

SCHEDULE 5—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE SALE OF TOBACCO BY VENDING MACHINES

Business Franchise Licences (Tobacco) Amendment 1985

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Amendment of Act No. 63, 1975

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

Savings, transitional and other provisions

6. Schedule 6 has effect.

SCHEDULE 1

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT TO PROVIDE FOR ANNUAL AND MONTHLY RETAILERS' LICENCES

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

- (i) In paragraph (a), after "licence" where secondly occurring, insert "(being, in either case, an annual licence)".
- (ii) In paragraph (a), after "period", insert "(as adjusted, if the case requires, in accordance with subsection (1B))".
- (iii) After paragraph (a), insert:

(a1) in relation to a retail tobacconist's licence or a group retail tobacconist's licence (being, in either case, a monthly licence)—the period (as adjusted, if the case requires, in accordance with subsection (1A) or (1B)) consisting of 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) at the end of which the licence, if granted and in force for the whole of its term, would expire; or

Business Franchise Licences (Tobacco) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT TO PROVIDE FOR
ANNUAL AND MONTHLY RETAILERS' LICENCES—*continued*

(b) Section 3 (1A), (1B)—

After section 3 (1), insert:

(1A) Subject to subsection (1B), where a monthly retail tobacconist's licence or a monthly group retail tobacconist's licence is the first such licence held by a person, the period which, but for this subsection, would be the relevant period in relation to the licence shall be adjusted by adding to it the period from 1 July last preceding that period until the commencement of that period.

(1B) Where the period that would, but for this subsection, be the relevant period in relation to a particular retail tobacconist's licence or group retail tobacconist's licence includes any period that formed the whole or part of the relevant period in relation to another such licence previously held by the same person, the firstmentioned period shall be adjusted by subtracting from it the period that formed the whole or part of the relevant period for that other licence.

(c) Section 3 (6)—

After section 3 (5), insert:

(6) For the purposes of this Act, a retail tobacconist's licence or a group retail tobacconist's licence—

- (a) is an annual licence if, as provided by section 16 (1A), it expires on 27 August in any year; or
- (b) is a monthly licence if, as provided by section 16 (1B), it expires at the end of any month.

(2) Section 12 (6)—

After "licence" where secondly occurring, insert "(being, in either case, an annual licence)".

Business Franchise Licences (Tobacco) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT TO PROVIDE FOR
ANNUAL AND MONTHLY RETAILERS' LICENCES—*continued*

(3) Section 16 (1)–(1B)—

Omit section 16 (1), insert instead:

(1) A retail tobacconist's licence or a group retail tobacconist's licence shall be an annual licence or a monthly licence, as may be determined by the Chief Commissioner and endorsed on the licence.

(1A) An annual retail tobacconist's licence or an annual group retail tobacconist's licence shall be in force on and from the day specified in the licence as its commencement day until (unless it sooner ceases to have effect) 27 August next following that day.

(1B) A monthly retail tobacconist's licence or a monthly group retail tobacconist's licence shall be in force on and from the day specified in the licence as its commencement day until the expiry of the month that includes that day.

(4) Section 18—

After section 17, insert:

Commutation of retailers' licences

18. The Chief Commissioner may—

- (a) by notice in writing served on a person who is the holder of an annual retail tobacconist's licence or an annual group retail tobacconist's licence, revoke that licence with effect from the commencement of the day specified for the purposes of paragraph (b); and
 - (b) grant the person a monthly licence commencing on any specified day.
-

SCHEDULE 2

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
WHOLESALE'S AND RETAILERS' LICENCES

(1) (a) Section 10 (1A)—

After section 10 (1), insert:

(1A) Subsection (1) does not apply in respect of a sale by wholesale by the holder of a tobacco retailer's licence of tobacco sold by wholesale to that holder by a person who is the holder of a tobacco wholesaler's licence or a group tobacco wholesaler's licence.

(b) Section 10 (6)—

After section 10 (5), insert:

(6) In any proceedings for an offence under this section, a quantity of tobacco in a person's possession shall, if the quantity exceeds the prescribed quantity, be presumed, until the court is satisfied to the contrary, to be in the person's possession for sale.

(2) (a) Section 12 (1)—

Omit "15 per cent" wherever occurring, insert instead "25 per cent".

(b) Section 12 (1) (b), (c)—

Omit "\$10" wherever occurring, insert instead "\$20 (or, in the case of a monthly licence, \$10)".

(c) Section 12 (1) (b), (c)—

Omit "(other than tobacco purchased in the course of intrastate trade from the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence);" wherever occurring, insert instead:

, other than tobacco purchased in the course of intrastate trade—

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

Business Franchise Licences (Tobacco) Amendment 1985

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
WHOLESALEERS' AND RETAILERS' LICENCES—*continued*

- (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;

(3) (a) Section 14 (5)—

After "reassessment" where secondly occurring, insert " , together with an amount by way of penalty equal to twice the amount so payable,".

(b) Section 14 (6)—

After section 14 (5), insert:

(6) The Chief Commissioner may, in a particular case, for reasons which to the Chief Commissioner appear sufficient, remit the whole or part of any penalty payable under subsection (5).

(c) Section 14 (7)—

Omit "additional amount is payable", insert instead "amounts are payable by way of additional fee and penalty".

(d) Section 14 (7)—

Omit "the additional amount", insert instead "the amounts".

(e) Section 14 (7)—

Omit "amount by", insert instead "amounts by".

(f) Section 14 (7)—

Omit "amount being", insert instead "amounts being".

(g) Section 14 (7)—

Omit "it shall", insert instead "the amounts shall".

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SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
WHOLESALEERS' AND RETAILERS' LICENCES—*continued*

(4) (a) Section 17 (1)—

Omit the subsection, insert instead:

(1) A holder of a licence who has ceased to carry on the business authorised by the licence shall, within 30 days of ceasing to carry on that business, by notice in writing to the Chief Commissioner, surrender the licence and advise the address of premises where records relating to that business will in future be kept.

Penalty: \$200.

(b) Section 17 (2)—

After “if”, insert “surrendered under subsection (1) or if”.

(5) Section 22—

After “served”, insert “and who has paid any amount payable under section 14 in respect of the reassessment”.

(6) (a) Section 28A (1)—

After “licence” where lastly occurring, insert “, together with an amount by way of penalty equal to twice the amount of the fee assessed for the purposes of this section”.

(b) Section 28A (9)—

Omit “assessed”, insert instead “due and payable”.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
WHOLESALEERS' AND RETAILERS' LICENCES—*continued*

(c) Section 28A (11A)—

After section 28A (11), insert:

(11A) A person by whom any amounts are payable by way of fee and penalty under this section may, within 14 days after the service on the person of notice of the assessment under this section, apply to the Chief Commissioner for approval to pay the amounts by instalments, and if the Chief Commissioner approves of the amounts being so paid, the amounts shall be due and payable by the person by such instalments payable at such times as are specified in the instrument of the Chief Commissioner's approval.

(d) Section 28A (14)—

After section 28A (13), insert:

(14) The Chief Commissioner may, in a particular case, for reasons which to the Chief Commissioner appear sufficient, remit the whole or part of any amount payable under this section.

(7) Section 28B—

After section 28A, insert:

Penalties for late fees in certain cases

28B. (1) If an amount payable under section 14 or 28A (in this section referred to as the "principal amount") is not paid before the expiration of the time allowed by or under the relevant section, there shall be payable to the Chief Commissioner by the person liable to pay the principal amount—

- (a) where the principal amount is paid not later than the 14th day after the time so allowed—interest at the rate of 20 per cent per annum of the principal amount, to be computed from the expiration of that time until (and including) the date of payment; or

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SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
WHOLESALEERS' AND RETAILERS' LICENCES—*continued*

(b) where—

- (i) the principal amount is paid later than that day but not later than 1 month after that day—a penalty equal to 10 per cent;
- (ii) the principal amount is paid later than 1 month after that day but not later than 2 months after that day—a penalty equal to 25 per cent; or
- (iii) the principal amount is paid later than 2 months after that day—a penalty equal to 100 per cent,

of the principal amount.

(2) The provisions of subsection (1) apply to and in respect of the unpaid balance for the time being of any principal amount in the same way as they apply to and in respect of a principal amount for the time being unpaid.

(3) The Chief Commissioner may, in a particular case, for reasons which to the Chief Commissioner appear sufficient, remit the whole or part of any interest or penalty payable under this section.

(4) Any interest or penalty payable under this section may be recovered by the Chief Commissioner, as a debt, in any court of competent jurisdiction.

SCHEDULE 3

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS

(1) (a) Section 7 (1)-(4D)—

Omit section 7 (2)-(4), insert instead:

(1) An inspector shall at all reasonable times have full and free access to all premises, records and documents for any of the purposes of this Act or the regulations and for any such purpose may make extracts from or copies of any such records and documents.

(2) Subsection (1) does not authorise an inspector to enter that part of any premises being used for residential purposes without the consent of the occupier of that part of the premises, but nothing in this section limits the operation of section 7A.

(3) Without affecting the generality of subsection (1), an inspector may require any bank manager or other person to do any one or more of the following:

- (a) to produce for inspection by the inspector any records and documents in the custody or under the control of the bank manager or other person, being records and documents relating to, or which the inspector reasonably believes relate to, the carrying on by any specified person of any business of processing, packaging, distributing, transporting, selling or purchasing tobacco or to financial transactions in connection with or arising out of the carrying on by a specified person of any such business;
- (b) to produce to the inspector a statement in writing in the English language setting out particulars of any records in the custody or under the control of the bank manager or other person, being records that are not written or that are not written in English, and which relate to, or which the inspector reasonably believes relate to, the carrying on by any specified person of any business referred to in paragraph (a) or to any financial transactions in connection with or arising out of the carrying on by a specified person of any such business;

SCHEDULE 3—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued

- (c) to answer any question with respect to any records and documents in the custody or under the control of the bank manager or other person or with respect to any statement produced in accordance with paragraph (b).
- (4) An inspector may make extracts from or copies of any statement produced in accordance with subsection (3) (b).
 - (4A) An inspector may—
 - (a) for the purpose of making extracts from or copies of any records or documents to which the inspector is entitled to have access or any statements which are produced to the inspector, take away and retain (for such time as may for that purpose be reasonably necessary) any such records, documents or statements; or
 - (b) where the inspector reasonably believes that any such records, documents or statements are evidence of an offence against this Act or the regulations, take away and retain those records, documents or statements until proceedings for any such offence have been heard and dealt with.
 - (4B) An inspector shall, when taking away any records, documents or statements, tender an appropriate receipt to the person from whose possession they are taken.
 - (4C) A person who—
 - (a) denies an inspector access, or hinders or obstructs the access of an inspector, to any premises, records or documents to which the inspector is entitled to have access;
 - (b) hinders or obstructs an inspector in the exercise of any of the powers and authorities conferred on an inspector by this section; or
 - (c) fails or refuses to comply with any requirement under this section,

SCHEDULE 3—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued

is guilty of an offence against this Act.

Penalty: \$1,000 or imprisonment for 3 months, or both, and in the case of any offence under paragraph (c) an additional penalty not exceeding \$200 for every day on which the offence continues.

(4D) A person—

- (a) is not guilty of an offence under subsection (4C) (a) unless it is established that the person was informed by the inspector, or otherwise knew, that the inspector was entitled to access to the premises, records or documents, as the case may be;
- (b) is not guilty of an offence under subsection (4C) (c) unless it is established that the inspector warned the person that a failure or refusal to comply with the requirement was an offence;
- (c) is not guilty of an offence under subsection (4C) (c) by reason of a failure or refusal to answer a question put to the person by the inspector, if the person satisfies the court that the person did not know, and could not with reasonable diligence ascertain, the answer to the question; and
- (d) is not guilty of an offence under subsection (4C) (a), (b) or (c) unless it is established that the inspector identified himself or herself as an inspector.

(b) Section 7 (5)—

Omit “subsection (2) (b)”, insert instead “subsection (3) (c)”.

(c) Section 7 (5)—

Omit “subsection (3)”, insert instead “subsection (4c)”.

(d) Section 7 (6)—

Omit “subsection (2) (b) (iii)”, insert instead “subsection (3) (c)”.

SCHEDULE 3—continued**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued****(e) Section 7 (8)—**

After section 7 (7), insert:

(8) To the extent to which a member of the police force is not so authorised by any other law, a member of the police force is by this subsection authorised to provide an inspector with such assistance as the inspector may in a particular case require for or in connection with the exercise by the inspector of any of the inspector's powers and authorities under this section.

(2) Section 7A—

After section 7, insert:

Search warrants

7A. (1) In this section, "authorised justice" means—

- (a) a Magistrate; or
- (b) a justice of the peace employed in Local Courts Administration, Attorney General's Department.

(2) An inspector may apply to an authorised justice for a warrant to search any premises (or a part of any premises) being used for residential purposes if the inspector has reasonable grounds to believe that—

- (a) any records or documents are to be found there, being records or documents to which the inspector would have access if they were kept on premises to which the inspector had access; or
- (b) any tobacco is to be found there, being tobacco in a quantity that exceeds 5 kilograms (or, where some other quantity is prescribed, the quantity prescribed).

(3) An authorised justice to whom an application is made under subsection (2) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the inspector to enter and search the premises.

SCHEDULE 3—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued

(4) Schedule 2 has effect.

(5) A person shall not, without reasonable cause, obstruct or hinder a person executing a search warrant under this section.

Penalty : \$2,000 or imprisonment for 2 years, or both.

(3) (a) Section 8 (2)—(2B)—

Omit section 8 (2), insert instead:

(2) The Chief Commissioner may by notice in writing require any person—

- (a) to furnish to the Chief Commissioner such information, in such form, as the Chief Commissioner requires; or
- (b) to attend and give evidence before the Chief Commissioner or before any officer of the Public Service employed in the administration or execution of this Act and authorised by the Chief Commissioner in that behalf,

for the purpose of—

- (c) inquiring into any business of dealing with tobacco;
- (d) inquiring into or ascertaining that person's or any other person's liability or entitlement under any of the provisions of this Act; or
- (e) ascertaining for the purposes of this Act the identity of any person who—
 - (i) may have a liability or entitlement under any of the provisions of this Act; or
 - (ii) may, by reason of being related to or associated or connected with another person, affect the liability of that other person,

SCHEDULE 3—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued

and may by the same or a subsequent notice require that person to produce to the Chief Commissioner, at a specified place and at or within a specified time, any records or documents of any specified kind relating to any such information.

(2A) The Chief Commissioner may require the information or evidence to be given on oath, and either orally or in writing, or to be given by statutory declaration, for which purpose either the Chief Commissioner or the authorised officer may administer an oath.

(2B) The regulations may prescribe scales of expenses to be allowed to persons whose attendance is required under this section.

(b) Section 8 (3)—

Omit “subsection (2)”, insert instead “this section”.

(c) Section 8 (5)—

After section 8 (4), insert:

(5) A person is not excused from complying with a requirement under this section to supply information on the ground that the information might tend to criminate the person or make the person liable to a penalty, but the information supplied by the person shall not be admissible against the person in any proceedings, civil or criminal, except proceedings under subsection (3) or section 25 or proceedings for an offence in connection with the verification by oath of the information.

(4) Sections 8A, 8B—

After section 8, insert:

SCHEDULE 3—continued**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued****Seizure of tobacco**

8A. (1) Where an inspector reasonably believes that any tobacco in a person's possession is evidence of an offence by any person, the inspector may take possession of any such tobacco and cause it to be placed in the custody of the Chief Commissioner, or a proper officer on behalf of the Chief Commissioner, until proceedings for any such offence have been heard and dealt with.

(2) Subsection (1) does not confer on an inspector any right of access to premises distinct from the right of access conferred by section 7 or under section 7A.

(3) An inspector shall, when taking away any tobacco pursuant to subsection (1), tender an appropriate receipt to the person from whose possession the tobacco is taken.

(4) A person who hinders or obstructs an inspector in the exercise of the power conferred on an inspector by subsection (1) is guilty of an offence against this Act.

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

Proceedings in respect of seized tobacco

8B. (1) Where any tobacco has been seized under section 8A, the Chief Commissioner or an officer authorised for the purpose by the Chief Commissioner may make an application to the Supreme Court for an order under subsection (4).

(2) An application under subsection (1) may be heard and dealt with by the Supreme Court in its summary jurisdiction.

(3) Where an application has been made to the Supreme Court under subsection (1) in relation to any tobacco—

(a) the Court may, if it thinks fit, require the Chief Commissioner or officer to give notice of the application to a person who the Court has reason to believe has an interest in the tobacco; and

SCHEDULE 3—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued

- (b) any person who claims to have an interest in the tobacco or any of it is entitled to appear and to adduce evidence at the hearing of the application.

(4) Where, at the hearing of an application under subsection (1), evidence is given that the tobacco was in the possession of a person for sale in the course of carrying on a business of tobacco wholesaling or retailing, the Court—

- (a) may, by order, empower the Chief Commissioner to sell the tobacco in such manner and subject to such directions, if any, as the Court may specify, and to pay the proceeds of sale into Court; or
- (b) on the application of any person appearing to the Court to have an interest in the tobacco—
 - (i) fix the value of the tobacco for the purposes of an order under subparagraph (ii), having regard to the nature of that person's interest in the tobacco; and
 - (ii) order that, upon payment into Court by that person of an amount equal to the value of the tobacco so fixed, the Chief Commissioner shall deliver the tobacco to that person.

(5) Where—

- (a) in any proceedings before a court in which an offence under or arising out of the provisions of section 10 is found to be proven; or
- (b) upon application subsequently made by or on behalf of the Chief Commissioner to the court before which those proceedings were taken,

SCHEDULE 3—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued

the court finds that any tobacco seized under section 8A was in any person's possession for sale in the course of the commission of, or for the purposes of, the offence, that tobacco (or, as the case may be, any money paid into the Supreme Court pursuant to an order under subsection (4) in respect of that tobacco) shall be forfeited to the Crown.

(6) Any tobacco forfeited under subsection (5) may be disposed of by the Minister on behalf of the Crown as the Minister thinks fit.

(7) On the application of a person appearing to the Court to be entitled to any tobacco seized under section 8A or any money paid into Court under this section, the Supreme Court—

(a) if it is of the opinion that proceedings whereby the tobacco or money might be forfeited to the Crown are not likely to be taken; or

(b) in any case with the consent of the Chief Commissioner,

may order that the tobacco or money be delivered or paid to a person appearing to the Court to be entitled to it.

(8) Nothing in this section prevents the Chief Commissioner from at any time causing any tobacco seized under section 8A to be delivered to a person appearing to the Chief Commissioner to be entitled to it.

(5) Schedule 2—

After Schedule 1, insert:

SCHEDULE 3—continued**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued****SCHEDULE 2**

(Sec. 7A (4))

PROVISIONS RELATING TO SEARCH WARRANTS ISSUED UNDER THIS ACT**Interpretation**

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

“authorised justice” has the same meaning as in section 7A;

“occupier”, in relation to any premises, includes a person in charge of the premises;

“occupier’s notice” means an occupier’s notice referred to in clause 4;

“search warrant” means a search warrant issued under section 7A.

Application for warrant

2. (1) An application for a search warrant shall be made in writing.

(2) An authorised justice shall not issue a search warrant unless—

(a) the application for the warrant sets out the grounds on which the warrant is being sought;

(b) the applicant has given the authorised justice, either orally or in writing, such further information (if any) as the authorised justice requires concerning the grounds on which the warrant is being sought; and

(c) the information given by the applicant is verified before the authorised justice on oath or affirmation or by affidavit.

(3) An authorised justice may administer an oath or affirmation or take an affidavit for the purposes of an application for a search warrant.

Record of proceedings before authorised justice

3. (1) An authorised justice who issues a search warrant shall cause a record to be made of all relevant particulars of the grounds the authorised justice has relied on to justify the issue of the warrant.

(2) Any matter that might disclose the identity of a person shall not be recorded pursuant to this clause if the authorised justice is satisfied that the safety of any person might thereby be jeopardised.

Notice to occupier of premises entered pursuant to warrant

4. (1) An authorised justice shall prepare and furnish an occupier’s notice to the person to whom the authorised justice issues a search warrant.

SCHEDULE 3—continued**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued**

(2) An occupier's notice furnished in relation to a search warrant—

(a) shall specify—

- (i) the name of the person who applies for the warrant;
- (ii) the name of the authorised justice who issued the warrant;
- (iii) the date and the time when the warrant was issued; and
- (iv) the address or other description of the premises the subject of the warrant; and

(b) shall contain a summary of the nature of the warrant and the powers conferred by the warrant.

(3) A person executing a search warrant shall—

- (a) upon entry into or on to the premises or as soon as practicable thereafter, serve the occupier's notice on a person who appears to be an occupier of the premises and to be of or above the age of 18 years; or
- (b) if no such person is then present in or on the premises, serve the occupier's notice on the occupier of the premises, either personally or in such other manner as the authorised justice who issued the warrant may direct, as soon as practicable after executing the warrant.

(4) Service of an occupier's notice pursuant to subclause (3) (b) may be postponed by the authorised justice who issued the search warrant if that authorised justice is satisfied that there are reasonable grounds for the postponement.

(5) Service of an occupier's notice pursuant to subclause (3) (b) may be postponed on more than one occasion, but shall not be postponed on any one occasion for a period exceeding 6 months.

Duty to show warrant

5. A person executing a search warrant shall produce the warrant for inspection by an occupier of the premises if requested to do so by that occupier.

Use of force to enter premises, etc.

6. (1) A person authorised to enter premises pursuant to a search warrant may use such force as is reasonably necessary for the purpose of entering the premises.

(2) A person authorised to search premises pursuant to a search warrant may, if it is reasonably necessary to do so, break open any receptacle in or upon the premises for the purposes of that search.

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SCHEDULE 3—*continued*

**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
*continued***

Use of assistants to execute warrant

7. A person may execute a search warrant with the aid of such assistants as the person considers necessary.

Execution of warrant by day or night

8. (1) A search warrant may be executed by day, but shall not be executed by night unless the authorised justice, by the warrant, authorises its execution by night.

(2) In subclause (1)—

“by day” means during the period between 6 a.m. and 9 p.m. on any day;

“by night” means during any period between 9 p.m. on any day and 6 a.m. on the following day.

Expiry of warrant

9. A search warrant ceases to have effect—

- (a) on the expiration of the period of 1 month after its issue;
- (b) if it is withdrawn by the authorised justice who issued the warrant; or
- (c) when it is executed,

whichever first occurs.

Report to authorised justice on execution of warrant, etc.

10. (1) The person to whom a search warrant is issued shall furnish a report in writing to the authorised justice who issued the warrant—

- (a) stating whether or not the warrant was executed;
- (b) if the warrant was executed—setting out briefly the result of the execution of the warrant (including a brief description of anything seized);
- (c) if the warrant was not executed—setting out briefly the reasons why the warrant was not executed; and
- (d) stating whether or not an occupier's notice has been served in connection with the execution of the warrant.

(2) A report with respect to a search warrant shall be made within 10 days after the execution of the warrant or the expiry of the warrant, whichever first occurs.

Business Franchise Licences (Tobacco) Amendment 1985

SCHEDULE 3—continued

**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued**

Death, absence, etc., of authorised justice who issued warrant

11. Where the authorised justice who issued a search warrant has died, has ceased to be an authorised justice or is absent—

- (a) a report required to be furnished to that authorised justice pursuant to clause 10; or
- (b) a power exercisable by that authorised justice under clause 4 (3) (b) or (4),

shall be furnished to, or may be exercised by, as the case may be, any other authorised justice.

Defects in warrants

12. A search warrant is not invalidated by any defect, other than a defect which affects the substance of the warrant in a material particular.

Telephone search warrant

13. (1) In this clause—

“telephone” includes radio, telex and any other communication device.

(2) A person may make application by telephone for a search warrant.

(3) An authorised justice shall not issue a search warrant upon an application made by telephone unless the authorised justice is satisfied that the warrant is required urgently and that it is not practicable for the application to be made in person.

(4) If it is not practicable for an application for a search warrant to be made by telephone directly to an authorised justice, the application may be transmitted to the authorised justice by another person on behalf of the applicant.

(5) An authorised justice who issues a search warrant upon an application made by telephone shall—

- (a) complete and sign the warrant;
- (b) inform the person who made the application of the terms of the warrant and of the date and the time when it was signed; and
- (c) prepare and furnish an occupier’s notice to the person who made the application or inform that person of the terms of an occupier’s notice.

(6) Where a search warrant is issued upon an application made by telephone, the applicant—

- (a) shall complete a form of search warrant in the terms indicated by the authorised justice under subclause (5) and write on it the name of that authorised justice and the date and the time when the warrant was signed; and

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SCHEDULE 3—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
POWERS OF THE CHIEF COMMISSIONER AND INSPECTORS—
continued

(b) where the applicant was not furnished with an occupier's notice—shall complete a form of occupier's notice in the terms indicated by the authorised justice under subclause (5).

(7) A form of search warrant and a form of occupier's notice completed in accordance with subclause (6) shall be deemed to be a search warrant issued, and an occupier's notice prepared and furnished, in accordance with this Act.

SCHEDULE 4

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
PENALTIES AND PROCEEDINGS FOR OFFENCES

(1) Section 8 (3)—

Omit "\$2,500", insert instead "\$20,000".

(2) Sections 10 (1), 23A (1), 31 (4)—

Omit "\$500" wherever occurring, insert instead "\$2,000".

(3) Section 10 (2)-(4)—

Omit "\$250" wherever occurring, insert instead "\$2,000".

(4) Section 23 (1), (1A)—

Omit "\$1,000" wherever occurring, insert instead "\$5,000".

(5) Section 23A (2)—

Omit "Penalty: \$1,000", insert instead "Penalty (subsection (2)): \$5,000".

(6) Section 24 (1)—

Omit "\$2,500", insert instead "\$10,000".

SCHEDULE 4—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
PENALTIES AND PROCEEDINGS FOR OFFENCES—*continued*

(7) Section 25 (1), (2)—

Omit “\$250 or imprisonment for 3 months” wherever occurring, insert instead “\$5,000 or imprisonment for 12 months”.

(8) (a) Section 27 (1)—

Omit the subsection, insert instead:

(1) Proceedings for an offence against this Act or the regulations may be taken before a Local Court constituted by a Magistrate sitting alone or before the Supreme Court in its summary jurisdiction.

(b) Section 27 (1B), (1C)—

After section 27 (1A), insert:

(1B) If proceedings for an offence against this Act or the regulations are taken before a Local Court, the maximum penalty that that Court may impose in respect of the offence is, notwithstanding any provision of this Act, \$10,000 (including any daily penalty) or the maximum penalty provided by this Act or the regulations in respect of the offence, whichever is the lesser.

(1C) If proceedings against this Act or the regulations are taken before the Supreme Court, that Court may impose a penalty not exceeding the maximum penalty provided by this Act or the regulations in respect of the offence.

SCHEDULE 5

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE SALE
OF TOBACCO BY VENDING MACHINES

- (1) (a) Section 3 (1), definition of "group licence"—

Omit ", a group tobacco vending machine operator's licence".

- (b) Section 3 (1), definition of "group tobacco vending machine operator's licence"—

Omit the definition.

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

Omit paragraph (b).

- (d) Section 3 (1), definition of "tobacco retailing"—

- (i) Omit "include—", insert instead "include any business referred to in section 3G.";

- (ii) Omit paragraphs (a) and (b).

- (e) Section 3 (1), definitions of "tobacco vending machine operations", "tobacco vending machine operator's licence"—

Omit the definitions.

- (f) Section 3 (1), definition of "tobacco wholesaling"—

Omit "or the business of tobacco vending machine operations".

- (g) Section 3 (2)—

Omit the subsection, insert instead:

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

- (2) (a) Section 3G (2)—

Omit the subsection.

- (b) Section 3G (3) (a)—

Omit ", or by means of vending machines,".

Business Franchise Licences (Tobacco) Amendment 1985

SCHEDULE 5—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
SALE OF TOBACCO BY VENDING MACHINES—*continued*

(c) Section 3G (3)—

Omit “or by means of vending machines, as the case may be”.

(3) (a) Section 10 (2A)—

Omit the subsection.

(b) Section 10 (4)—

Omit “(other than the holder of a tobacco vending machine operator’s licence or a group tobacco vending machine operator’s licence)”.

(c) Section 10 (4A)—

After section 10 (4), insert:

(4A) Subsection (4) does not apply to the carrying on, by the holder of a retail tobacconist’s licence or group retail tobacconist’s licence, of tobacco retailing by means of vending machines.

(4) Section 10A—

After section 10, insert:

Identification of vending machines

10A. A person who carries on tobacco retailing by means of a vending machine shall display on the machine, in the prescribed manner, the prescribed particulars of the person’s licence.

Penalty: \$1,000.

(5) (a) Section 11 (1A) (c)—

After “tobacconists;”, insert “and”.

(b) Section 11 (1A) (e), (f)—

Omit the paragraphs.

Business Franchise Licences (Tobacco) Amendment 1985

SCHEDULE 5—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
SALE OF TOBACCO BY VENDING MACHINES—*continued*

(c) Section 11 (2) (b)—

Omit the paragraph, insert instead:

(b) a retail tobacconist's licence or a group retail tobacconist's licence, which authorises the licensee—

(i) to carry on tobacco retailing, in so far as it is carried on otherwise than by means of vending machines, on premises specified in the licence; and

(ii) to carry on tobacco retailing by means of vending machines on premises specified in the licence or on any other premises;

(d) Section 11 (2) (b)—

After "licence" where lastly occurring, insert "and to carry on tobacco retailing by means of vending machines at any premises".

(e) Section 11 (2) (c)—

Omit the paragraph.

(f) Section 11 (3)—

Omit "(other than a tobacco vending machine operator's licence or a group tobacco vending machine operator's licence)".

(g) Section 11 (3)—

After "granted", insert "(except in so far as that business may consist of tobacco retailing by means of vending machines)".

(6) (a) Section 12 (1) (d), (e)—

Omit the paragraphs.

(b) Section 12 (1A) (a)—

At the end of section 12 (1A) (a), insert "or".

(c) Section 12 (1A) (b)—

Omit "period; or", insert instead "period,".

Business Franchise Licences (Tobacco) Amendment 1985

SCHEDULE 5—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
SALE OF TOBACCO BY VENDING MACHINES—*continued*

- (d) Section 12 (1A) (c)—
Omit the paragraph.
- (e) Section 12 (1B) (a)—
At the end of section 12 (1B) (a), insert “or”.
- (f) Section 12 (1B) (b)—
Omit “period; or”, insert instead “period,”.
- (g) Section 12 (1B) (c)—
Omit the paragraph.
- (h) Section 12 (6A)—
Omit the subsection.
- (i) Section 12 (8)—
Omit “(1) (e),”.
- (7) (a) Section 13 (1) (a)—
Omit “July; or”, insert instead “July.”
- (b) Section 13 (1) (b)—
Omit the paragraph.
- (c) Section 13 (2)—
Omit “licence,” where firstly occurring, insert instead “licence or”.
- (d) Section 13 (2)—
Omit “, a tobacco vending machine operator’s licence or a group tobacco vending machine operator’s licence”.
- (e) Section 13 (3A)—
Omit the subsection.
- (f) Section 13 (4), (5)—
Omit “or (3A)” wherever occurring.

Business Franchise Licences (Tobacco) Amendment 1985

SCHEDULE 5—continued

**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
SALE OF TOBACCO BY VENDING MACHINES—continued**

- (8) Section 16 (2)—
Omit the subsection.
 - (9) Section 21 (9)—
Omit “or (3A)”.
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SCHEDULE 6

(Sec. 6)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Reassessed licence fees

1. Notwithstanding this Act, section 14 of the Principal Act, as in force immediately before the date of assent to this Act, continues to apply to and in respect of a reassessment of which notice was given, before the date of assent to this Act, in accordance with that section, as so in force.

Licensees ceasing to trade

2. Section 17 of the Principal Act, as amended by this Act, does not apply to or in respect of a person who, before the date of assent to this Act, ceased to carry on a business referred to in that section, as so amended.

Assessed unpaid fees

3. Notwithstanding this Act, section 28A of the Principal Act, as in force immediately before the date of assent to this Act, continues to apply to and in respect of an assessment under that section of which notice was given, before the date of assent to this Act, in accordance with that section, as so in force.

Late fees

4. Section 28B of the Principal Act, as amended by this Act, applies to and in respect of an amount payable under section 14 or 28A of the Principal Act, as in force immediately before the date of assent to this Act, being an amount—

- (a) due and payable before the date of assent to this Act; and
- (b) unpaid, as at that date,

but so applies as if the amount were due and payable on that date.

Business Franchise Licences (Tobacco) Amendment 1985

SCHEDULE 6—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Vending machine operations**

5. A tobacco vending machine operator's licence or a group tobacco vending machine operator's licence in force immediately before the date of assent to this Act shall be deemed to be a retail tobacconist's licence or a group retail tobacconist's licence, as the case requires, in force under and subject to the Principal Act, as amended by this Act, and authorising the retail sale of tobacco by means of vending machines on any premises.

Repeals and amendments

6. On the date of assent to this Act or on the commencement of the Search Warrants Act 1985 (whichever is the later), the Principal Act is amended—

(a) by omitting section 7A (4) and by inserting instead the following subsection:

(4) Part III of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(b) by omitting Schedule 2.

