

1993

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Business Franchise (Liquor) Bill 1993

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Business Franchise (Liquor) Bill 1993

**A BILL
FOR**

**An Act to provide for the payment of fees for
liquor trading**

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Business Franchise (Liquor) Act 1993*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on 17 March 1993.

Interpretation

3. In this Act, unless the contrary intention appears—

“Administration Act” means the *Taxation (Administration) Act 1987*;

5 “approved form” means the form approved by the Commissioner for the purposes of the provision in which the expression occurs;

“authorised University building” means a building which is occupied by—

(a) a University; or

10 (b) a residential college affiliated with a University under a Statute of that University;

being a building in which the sale of liquor is authorised by a Statute of that University;

15 “base quarter”, in relation to a quarter in respect of which a quarterly franchise fee is payable, means the quarter which is 2 quarters previous to that quarter;

“determined amount” means the amount determined by the Minister under subsection 99 (1) of the Administration Act for the purposes of the provision in which the expression occurs;

20 “determined rate” means the rate determined by the Minister under subsection 99 (1) of the Administration Act for the purposes of the provision in which the expression occurs;

“determined type of liquor” means a type of liquor determined by the Minister under section 23;

25 “due date”, in respect of a quarter, means 17 March, 16 June, 16 September or 17 December before that quarter;

“duties” means any tax or duties imposed under a law of the Commonwealth;

“exempt sales” means liquor (whenever purchased) sold by wholesale to—

30 (a) a licensee;

(b) a person who, under the law of a State or another Territory, is authorised to sell liquor;

(c) a permit holder;

(d) a person for duty-free sale;

- (e) a University for sale, or exposure for sale, in an authorised University building;
- (f) the Canberra Theatre Trust for sale, or exposure for sale, in the Canberra Theatre Centre; or
- 5 (g) an exempt person;

“exempt wholesale licence” means an Off Licence declared under section 22;

10 “initial fee”, in relation to an application for a licence, means the fee assessed by the Commissioner under section 11 in relation to the application;

“Liquor Act” means the *Liquor Act 1975*;

“quarter”, in any year, means a period of 3 months ending on the last day of March, June, September or December in that year;

15 “quarterly franchise fee”, in relation to a licence in force during a quarter, means the licence fee under Division 1 of Part II for that quarter;

“wholesale liquor purchases” means—

- (a) liquor purchased for the purpose of sale or exposure for sale;
- 20 (b) in relation to a University—liquor purchased for sale, or exposure for sale, in an authorised University building; or
- (c) in relation to the Canberra Theatre Trust—liquor purchased for sale, or exposure for sale, in the Canberra Theatre Centre.

25 **Liquor Act definitions**

4. Unless the contrary intention appears, a word or expression used in this Act has the same meaning as in the Liquor Act.

Incorporation of *Taxation (Administration) Act 1987*

30 5. The Administration Act is incorporated and shall be read as one with this Act.

Administration

6. The Commissioner has the general administration of this Act.

Exemption of Universities and Canberra Theatre Trust

7. Parts II and III do not apply to—

- (a) a University; or
- (b) the Canberra Theatre Trust.

PART II—LIABILITY FOR FEES

Division 1—Quarterly franchise fees

5 Liability

8. (1) A licensee is liable to pay the quarterly franchise fee for each quarter during which the licence is in force in the name of the licensee, except for—

- 10 (a) the quarter in which the licence is issued and the following quarter; or
- (b) the quarter (if any) in which the licence was transferred to the licensee.

(2) Subsection (1) applies irrespective of whether the licensee holds the licence during the whole or a part of the quarter.

15 Amount payable—general

9. (1) Subject to section 10, the quarterly franchise fee payable by a licensee for a quarter is—

- 20 (a) in the case of an exempt wholesale licence—the determined amount plus the aggregate of the amounts in relation to each determined type of liquor traded under the licence, the amount for each determined type of liquor being calculated in accordance with the formula in subsection (2); or
- (b) in any other case—
 - 25 (i) the determined amount; or
 - (ii) the aggregate of the amounts in relation to each determined type of liquor traded under the licence, each such amount being calculated in accordance with the formula in subsection (2);

whichever is greater.

- 30 (2) For the purposes of subsection (1), the formula is—

$$(WLP-ES) \times DR$$

where—

WLP is the aggregate of amounts (including duties) paid or payable for wholesale liquor purchases of the determined

type of liquor in the base quarter in the course of trading under the licence;

5 **ES** is the aggregate of amounts (including duties) paid or payable for exempt sales of the determined type of liquor in the base quarter in the course of trading under the licence; and

DR is the determined rate for the determined type of liquor.

10 (3) In this section, a reference to liquor traded under the licence is to be read as including a reference to all such liquor irrespective of whether the person liable to pay the quarterly franchise fee was the licensee at the time of such trading.

Amount payable—second quarter following issue of licence

15 10. (1) The quarterly franchise fee for the second quarter following the quarter in which a licence is issued is the amount of a quarterly franchise fee calculated under section 10 on the basis of the Commissioner's estimate of liquor trading under the licence for a typical quarter, having regard to—

(a) in relation to liquor trading under the licence in the base quarter—

20 (i) if the licence took effect from the first day of the base quarter, and liquor trading was continuous during that quarter—the aggregate of amounts paid or payable by the licensee for liquor traded in that quarter, and the nature of such trading; or

25 (ii) if liquor trading was not continuous during the whole of the base quarter—the Commissioner's estimate of the aggregate of amounts likely to have been payable by the licensee for liquor traded in the base quarter if trading had been continuous, and the likely nature of such trading; and

(b) in relation to liquor trading under the licence in the quarter following the base quarter—

30 (i) if liquor trading was continuous during the whole of that quarter—the Commissioner's estimate of the aggregate of amounts paid or payable by the licensee for liquor traded in that quarter, and the nature of such trading; or

35 (ii) if liquor trading was not continuous during the whole of that quarter—the Commissioner's estimate of the aggregate of amounts likely to have been payable by the licensee for liquor traded in that quarter if trading had been continuous, and the likely nature of such trading.

(2) The Commissioner shall notify the relevant licensee in writing of the assessment of a quarterly franchise fee under subsection (1).

(3) A quarterly franchise fee assessed under subsection (1) is due and payable within 14 days of the date of the notice under subsection (2).

5 (4) For the purposes of this Act and the Administration Act, an amount paid to the Territory under subsection 14 (3) is to be taken to be a payment on account of the franchise fee assessed under subsection (1).

Division 2—Initial fees

Liability

10 11. (1) An initial fee in relation to an application for a licence shall be such an amount as is assessed by the Commissioner as being fair and reasonable in the circumstances.

(2) The circumstances referred to in subsection (1) include the following:

- 15 (a) the wholesale value of the total stock of liquor—
- (i) held by the applicant for the purpose of trading on the date of the application; and
 - (ii) estimated as likely to be acquired by the applicant in the quarter in which the licence is to be issued and the following quarter for the purpose of trading;
- 20 (b) the estimated value of that portion of the stock referred to in subparagraphs (a) (i) and (ii) in relation to which a quarterly franchise fee would become payable if the licence were to remain in force in the second and third quarter after the quarter in which it is to be issued;
- 25 (c) the gross income from liquor trading estimated as likely to be received by the applicant in the quarter in which the licence is to be issued and the following quarter;
- (d) initial fees assessed in relation to other applications.

30 (3) The Commissioner shall notify the applicant in writing of the assessment of an initial fee.

Division 3—Refund of fees on surrender

Amounts refunded on surrender

35 12. (1) Subject to subsection (2), where, during a quarter, a licence is cancelled under section 42C of the Liquor Act following an application by the person holding the licence for its surrender or conditional surrender, the

Territory shall pay to that person an amount calculated according to the formula—

$$QFF \times \frac{DRQ}{DQ}$$

where—

- 5 **QFF** is the quarterly franchise fee paid in respect of the licence (whether by that person or a previous licensee) for the quarter;
- DRQ** is the number of days remaining in the quarter on and after the day on which the cancellation takes effect; and
- 10 **DQ** is the total number of days in the quarter.

- (2) Where, during the quarter in which a licence is issued or the following quarter, a licence is cancelled under section 42C of the Liquor Act following an application by the person holding the licence for its surrender or conditional surrender, the Territory shall pay to that person an amount
- 15 calculated according to the formula—

$$IF \times \frac{DRIFP}{DIFP}$$

where—

- IF** is the initial fee paid in respect of the licence (whether by that person or a previous licensee) for the initial fee period;
- 20 **DRIFP** is the number of days remaining in the initial fee period on and after the day on which the cancellation takes effect; and
- DIFP** is the total number of days in the initial fee period.

- (3) In subsection (2)—

- 25 “initial fee period” means the period commencing on the day of issue of the licence and terminating at the expiration of the last day of the quarter following the quarter in which the licence was issued.

Division 4—Unlicensed liquor traders

Liability for fees

- 30 13. (1) A person who purchases liquor for the purpose of sale (or exposure for sale) without an appropriate licence, and without an appropriate permit, is liable to pay the Territory an amount equal to the sum of the initial fee and the quarterly franchise fees which would have been payable under this Act if an appropriate licence had—

- (a) been issued to the person immediately before the date of the first such purchase;
- (b) been in force at the time of any such purchase; and
- (c) expired immediately after the last such purchase.

5 (2) Subsection (1) applies whether or not the person purchasing liquor is convicted of any offence against the Liquor Act.

(3) The Administration Act applies in relation to this section as if a licence had been issued, remained in force and expired in the manner referred to in paragraphs (1) (a), (b) and (c).

10 PART III—RETURNS AND PAYMENTS

Time for lodgment of returns and payment

14. (1) A licensee shall, on or before the due date in respect of a quarter for which a quarterly franchise fee is payable (whether by the licensee or a person to whom the licence is to be transferred) lodge a return
15 with the Commissioner in the approved form—

(a) specifying—

- (i) the amount (including duties) paid or payable for wholesale liquor purchases of each determined type of liquor in the base quarter in the course of trading under the licence; and
- 20 (ii) the amount (including duties) paid or payable for exempt sales of each determined type of liquor in the base quarter in the course of trading under the licence; and

(b) accompanied by the quarterly franchise fee or, where subsection (3) applies, the estimated amount of that fee.

25 (2) In paragraph (1) (a), a reference to wholesale liquor purchases or exempt sales in the course of trading under the licence is to be read as including a reference to all such purchases and sales irrespective of whether the person lodging the return was the licensee at the time of such trading.

30 (3) The return to be lodged on or before the due date in respect of the second quarter following the issue of a licence shall be accompanied by an amount equal, in the estimation of the licensee lodging the return, to the quarterly franchise fee likely to be assessed under subsection 10 (1).

35 (4) Where a licence is transferred with effect from the first day of a quarter for which a quarterly franchise fee is payable, the amount accompanying the return lodged by the transferor under subsection (1) on the due date in respect of the quarter is, on and after the date of the transfer, to be taken to have been paid on behalf of the transferee.

Suspension and cancellation—failure to pay fees and penalties

15. (1) Where a licensee fails to pay—

- (a) an amount payable under this Act; or
- (b) an amount of penalty tax;

5 on or before the date for payment, the licence is, by force of this subsection, suspended.

(2) Where a licensee fails to pay an amount referred to in paragraph (1) (a) or (b) within 30 days after the date for payment, the licence is, by force of this subsection, cancelled.

10 (3) In this section—

“date for payment” means—

(a) in relation to an amount referred to in paragraph (1) (a)—

(i) the day by which the amount is required to be paid in accordance with this Act; or

15 (ii) where the Commissioner allows further time for payment—the last day so allowed; or

(b) in relation to an amount referred to in paragraph (1) (b)—the day by which the amount is payable in accordance with the Administration Act.

20 **PART IV—FEES PAYABLE BY UNIVERSITIES AND THE CANBERRA THEATRE TRUST**

Application

16. This Part applies to—

- (a) a University; and
- 25 (b) the Canberra Theatre Trust.

Payments

17. (1) A body to which this Part applies shall, on or before the due date in respect of a quarter—

30 (a) lodge a return in the approved form specifying the aggregate of amounts (including duties) paid or payable for wholesale liquor purchases of each determined type of liquor in the base quarter; and

(b) pay the aggregate of amounts in relation to each determined type of liquor calculated in accordance with the formula—

WLP x DR

where—

WLP is the aggregate referred to in paragraph (a) in relation to the determined type of liquor; and

5 **DR** is the determined rate for the determined type of liquor; or the determined amount, whichever is greater.

(2) In subsection (1)—

10 “base quarter”, in relation to a due date, means the quarter that commenced 6 months before the quarter in which the due date falls.

PART V—RECORDS AND CERTIFICATES OF LIQUOR TRANSACTIONS

Division 1—Records

Records of liquor transactions

15 18. (1) For the purposes of this Act, a licensee shall keep a record of each purchase of liquor for sale or exposure for sale to which the licence relates, specifying—

- (a) the date of the purchase;
- 20 (b) the name and address of the person from whom the liquor was purchased;
- (c) the determined type to which the liquor belonged;
- (d) the quantity of liquor purchased; and
- (e) the amount (including duties) paid for the liquor.

25 (2) The holder of an Off Licence shall keep a record of each exempt wholesale liquor sale specifying—

- (a) the date of the sale;
- (b) the name, address and licence number (if any) of the person to whom the liquor was sold;
- (c) the determined type to which the liquor belonged;
- 30 (d) the quantity of liquor sold;
- (e) the amount (including duties) paid by the holder of that Off Licence for the liquor; and

(f) the amount (including duties) paid to the holder of that Off Licence for the liquor.

5 (3) The holder of an Off Licence who sells liquor by wholesale shall keep a record of each retail sale of liquor to which the licence relates, showing—

(a) the date of the sale;

(b) the name, address and licence number (if any) of the person to whom the liquor was sold;

(c) the determined type to which the liquor belonged;

10 (d) the quantity of liquor sold;

(e) the amount (including duties) paid to the holder of that Off Licence for the liquor; and

(f) the sales docket number.

15 (4) A licensee shall keep any other records required by the Commissioner.

(5) A licensee shall keep a record made pursuant to this section for a period of not less than 6 years after the date of the relevant transaction.

(6) A licensee shall not, without reasonable excuse, contravene subsection (1), (2), (3), (4) or (5).

20 Penalty for contravention of subsection (6): \$2,000.

Division 2—Certificates

Annual lodgment

19. On or before 1 August in each year, a licensee shall lodge with the Commissioner a certificate in the approved form specifying—

25 (a) the aggregate of amounts (including duties) paid or payable by the licensee for wholesale liquor purchases in the previous financial year to which the licence relates; and

30 (b) the aggregate of amounts (including duties) paid or payable by the licensee for exempt sales in the previous financial year to which the licence relates.

Penalty: \$2,000.

Lodgment on transfer or termination of licences

20. (1) Within 14 days after a licence—

(a) is transferred; or

(b) ceases to be in force (except by virtue of its suspension);

the transferor or former licensee (as the case requires) shall lodge with the Commissioner a certificate in the approved form specifying—

5 (c) the aggregate of amounts (including duties) paid or payable by the transferor or former licensee for wholesale liquor purchases in the final period to which the licence relates; and

(d) the aggregate of amounts (including duties) paid or payable by the transferor or former licensee for exempt sales in the final period to which the licence relates.

10 Penalty: \$2,000.

(2) In subsection (1)—

“final period”, in relation to a licence, means—

15 (a) where the licence is transferred or terminated in the month of July or on 1 August—the period beginning on 1 July in the preceding calendar year and ending on the transfer date or termination date; or

(b) in any other case—the period beginning on 1 July in the financial year in which the transfer date or termination date falls and ending on the transfer date or termination date.

20 Universities and the Canberra Theatre Trust

21. (1) This section applies to—

(a) a University; and

(b) the Canberra Theatre Trust.

25 (2) On or before 1 August in each year, a body to which this section applies shall lodge a certificate in the approved form specifying the aggregate of amounts (including duties) paid or payable for wholesale liquor purchases in the previous financial year.

Penalty for contravention of subsection (2): \$2,000.

PART VI—ROLE OF EXECUTIVE

30 Exempt wholesale licences

22. The Minister may, by notice in the *Gazette*, declare an Off Licence held by a person to be an exempt wholesale licence.

Determination of types of liquor

23. (1) The Minister may, by notice in the *Gazette*, determine different types of liquor for the purposes of this Act.

5 (2) A determination under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Regulations

24. The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- 10 (a) required or permitted by this Act to be prescribed; or
(b) necessary or convenient to be prescribed;

for giving effect to this Act.

PART VII—REPEAL, TRANSITIONAL, SAVING

Repeal

25. The *Liquor Tax Act 1991* is repealed.

15 **Transitional**

26. (1) In this section—

“June quarter” means the quarter ending on 30 June 1993;

“repealed Act” means the *Liquor Tax Act 1991*.

20 (2) The liability of a licensee to pay an amount under paragraph 10 (b) or 15 (b) (as the case may be) of the repealed Act on or before 17 March 1993 is extinguished.

25 (3) Any amount paid by a licensee under paragraph 10 (b) or 15 (b) of the repealed Act before 17 March 1993 in satisfaction of the licensee’s liability under the repealed Act to pay that amount on or before that date is to be taken to have been paid on account of the licensee’s liability under section 13 of this Act to pay the quarterly franchise fee, or an estimate of the quarterly fee, as the case may be, on 17 March 1993 for the June quarter.

30 (4) The liability of a licensee to pay an amount under paragraph 11 (1) (b) of the repealed Act on or before 17 March 1993 in relation to a licence transferred between 1 January 1993 and 16 March 1993 (inclusive) is extinguished.

35 (5) Any amount paid by a licensee under paragraph 11 (1) (b) of the repealed Act before 17 March in relation to a licence transferred between 1 January 1993 and 16 March 1993 (inclusive) is to be taken to have been paid on account of the licensee’s liability under section 14 of this Act to pay

the quarterly franchise fee, or an estimate of the quarterly franchise fee, as the case may be, on 17 March 1993 for the June quarter.

Saving—continuing licences

5 27. (1) Notwithstanding the repeal of the *Liquor Tax Act 1991*, where a continuing licence ceases to be in force between 17 March 1993 and 1 July 1993 (inclusive), section 16 of that Act continues to apply to the former licensee.

10 (2) Notwithstanding the repeal of the *Liquor Tax Act 1991*, where a continuing licence is transferred between 17 March 1993 and 1 July 1993 (inclusive), section 17 of that Act continues to apply to the transferee.

(3) In this section—

“continuing licence” means a licence—

- 15 (a) in force immediately before 1 January 1992; and
 (b) in relation to which no election has taken effect under section 26 of the *Liquor Tax Act 1991*.