

AUSTRALIAN CAPITAL TERRITORY

Business Franchise (Tobacco and Petroleum Products) Ordinance 1984

No. 38 of 1984

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SCHEDULE

AUSTRALIAN CAPITAL TERRITORY

Business Franchise (Tobacco and Petroleum Products) Ordinance 1984

No. 38 of 1984

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 26 July 1984.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

TOM UREN
Minister of State for Territories and Local Government

An Ordinance to make provision for the issue of licences to carry on the business of selling tobacco and petroleum products, and for other purposes

PART I—PRELIMINARY

Short title

1. This Ordinance may be cited as the *Business Franchise (Tobacco and Petroleum Products) Ordinance 1984*.¹

Commencement

2. This Ordinance shall come into operation on 1 August 1984.

Interpretation

3. (1) In this Ordinance, unless the contrary intention appears—

- “Commissioner” means the Commissioner for Business Franchises appointed under section 11;
- “diesel fuel” means a petroleum or shale product used or capable of use in propelling a diesel engined road vehicle;
- “group petroleum wholesalers licence” means a group petroleum wholesalers licence referred to in section 27 and in force under this Ordinance;
- “group wholesale tobacco merchant’s licence” means a group wholesale tobacco merchant’s licence referred to in section 26 and in force under this Ordinance;
- “inspector” means an inspector appointed under section 15;
- “licence” means a licence granted under section 26 or 27 and in force under this Ordinance;
- “licensee” means the holder for the time being of a licence;
- “motor spirit” means gasoline and other petroleum or shale spirit having a flash point of less than 23° Celsius when tested in an Abel Pensky closed test apparatus, but does not include aviation gasoline, solvents, special boiling point spirits or liquefied petroleum gas;
- “petroleum products” means motor spirit and diesel fuel;
- “petroleum products licence” means a petroleum wholesalers licence, a group petroleum wholesalers licence or a petroleum retailers licence;
- “petroleum retailers licence” means a petroleum retailers licence referred to in section 27 and in force under this Ordinance;
- “petroleum retailing” means the business of selling petroleum products by retail either alone or in conjunction with any other merchandise, and includes any such business carried on as part of or in conjunction with any other business;
- “petroleum wholesalers licence” means a petroleum wholesalers licence referred to in section 27 and in force under this Ordinance;
- “petroleum wholesaling” means the business of selling motor spirit or the business of selling diesel fuel for use only in propelling diesel engined road vehicles, and includes any such business carried on as part of or in conjunction with any other business, but does not include the business of petroleum retailing;

“premises” includes any place, vehicle, vessel or aircraft;

“record” includes book, account, deed, writing and document and any other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means;

“relevant period” means—

- (a) in relation to an applicant for a retail tobacconist’s licence or for the renewal of a retail tobacconist’s licence—the period of one year ended on 30 June that last preceded 31 August that last preceded the day on and from which the licence or the renewal, if granted, would be in force; and
- (b) in relation to an applicant for a wholesale tobacco merchant’s licence, a group wholesale tobacco merchant’s licence or a petroleum products licence, or for the renewal of any of those kinds of licences, in respect of a particular named month specified in column 1 of the Schedule, means the preceding month specified in column 2 of that Schedule opposite that particular month,

other than any part of that period that occurred before the commencement of this Ordinance;

“retail tobacconist’s licence” means a retail tobacconist’s licence referred to in section 26 and in force under this Ordinance;

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

“tobacco” means tobacco prepared for consumption, and includes any mixture that contains tobacco and is intended to be consumed;

“tobacco licence” means a wholesale tobacco merchant’s licence, a group wholesale tobacco merchant’s licence or a retail tobacconist’s licence;

“tobacco retailing” means the business of selling tobacco by retail either alone or in conjunction with any other merchandise, and includes that business carried on as part of or in conjunction with any other business;

“tobacco wholesaling” means the business of selling tobacco for the purpose of resale either alone or in conjunction with any other

merchandise, and includes that business carried on as part of or in conjunction with any other business;

“Tribunal” means the Administrative Appeals Tribunal;

“value” means—

- (a) in relation to any petroleum products sold—the value attributed to those products pursuant to section 32; and
- (b) in relation to any tobacco sold—the value attributed to that tobacco pursuant to section 30;

“vending machine” means any machine, device or contrivance that is constructed to contain articles that may be obtained by an operation that involves the insertion in the machine, device or contrivance of a coin, token or similar object;

“voting share” has the same meaning as in sub-section 5 (1) of the *Companies Act 1981*;

“wholesale tobacco merchant’s licence” means a wholesale tobacco merchant’s licence referred to in section 26 and in force under this Ordinance.

(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 wholesaling on those premises by the owner of the machine.

(3) A reference in this Ordinance to—

- (a) a petroleum wholesaler;
- (b) a petroleum retailer;
- (c) a person who sells petroleum products; or
- (d) a person who carries on the business of selling petroleum products,

does not extend to a person who, as an agent or employee of a person referred to in paragraph (a), (b), (c) or (d), sells petroleum products or carries on such a business.

(4) A reference in this Ordinance to—

- (a) a person who sells tobacco; or
- (b) a person who carries on the business of selling tobacco,

does not extend to a person who, as an agent or employee of a person referred to in paragraph (a) or (b), sells tobacco or carries on such a business.

(5) A reference in this Ordinance to interstate trade is a reference to trade carried on in the Territory that would be trade and commerce among the States within the meaning of section 92 of the Constitution if the Territory were a State.

(6) A reference in this Ordinance to a holder of a group petroleum wholesalers licence includes a reference to each person whose name is, under section 27, specified in a group petroleum wholesalers licence.

(7) A reference in this Ordinance to a holder of a group wholesale tobacco merchant's licence includes a reference to each person whose name is, under section 26, specified in a group wholesale tobacco merchant's licence.

(8) A reference in this Ordinance to tobacco includes a reference to any wrapping, package or container in which the tobacco is sold, purchased, received or handled.

(9) Where petroleum products are, or tobacco is, sold in the Territory for the purpose of resale outside the Territory, the first-mentioned sale shall, for the purposes of this Ordinance, be taken to have been made in the course of interstate trade.

Membership of a group of wholesale tobacco merchants

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

- (a) that person is one of the persons who constitute a group for the purposes of this Ordinance; and
- (b) there is not in force a determination under sub-section (2) or (3) by the Commissioner that that person is not a member of the group.

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

(3) The Commissioner may by writing under his hand determine that a person who would, but for the determination, be a member of a group for the

purposes of this Ordinance, is not a member of any group for the purposes of this Ordinance if he is satisfied that the person is not carrying on and has no intention of carrying on tobacco wholesaling.

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

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

(6) Notice of a determination under sub-section (3) shall be published in the *Gazette*.

(7) Where there has been a material change in the circumstances of a person to whom a determination under sub-section (2) or (3) relates, the Commissioner may revoke the determination.

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

Membership of a group of petroleum wholesalers

5. (1) For the purposes of this Ordinance, a person is a member of a group of petroleum wholesalers if—

- (a) that person is one of the persons who constitute a group for the purposes of this Ordinance; and
- (b) there is not in force a determination under sub-section (2) or (3) by the Commissioner that that person is not a member of the group.

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

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

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

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

(6) Notice of a determination under sub-section (3) shall be published in the *Gazette*.

(7) Where there has been a material change in the circumstances of a person to whom a determination under sub-section (2) or (3) relates, the Commissioner may revoke the determination.

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

Grouping of corporations

6. For the purposes of this Ordinance, corporations constitute a group if they are related to each other within the meaning of the *Companies Act 1981*.

Grouping where employees used in another business

7. For the purposes of this Ordinance, if—

- (a) an employee of an employer, or 2 or more employees of an employer, performs or perform duties solely or mainly for or in connection with a business carried on by that employer and another person or other persons or by another person or other persons; or
- (b) an employer has, in respect of the employment of, or the performance of duties by, one or more of his employees, an agreement, arrangement or undertaking (whether formal or informal, whether

expressed or implied and whether or not the agreement, arrangement or undertaking includes provisions in respect of the supply of goods or services or goods and services) with another person or other persons relating to a business carried on by that other person or those other persons, whether alone or together with another person or other persons,

that employer and—

- (c) each such other person; or
- (d) both or all of those other persons,

constitute a group.

Grouping of commonly controlled businesses

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

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

(3) For the purposes of sub-section (2), the same person has, or the same persons have together, a controlling interest in each of 2 businesses if that person has, or those persons have together, a controlling interest under any of the following paragraphs in one of the businesses and a controlling interest under the same or another of the following paragraphs in the other business:

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

influence the exercise of, half or more than half of the voting power attached to voting shares issued by the corporation;

- (c) a person has, or persons have together, a controlling interest in a business, being a business carried on by a partnership, if that person or those persons—
 - (i) owns, or own together (whether beneficially or not) half or more than half of the capital of the partnership; or
 - (ii) is, or are together, entitled (whether beneficially or not) to half or more than half of the profits of the partnership;
- (d) a person has, or persons have together, a controlling interest in a business, being a business carried on under a trust, if that person (whether or not as the trustee of another trust) is the beneficiary, or those persons (whether or not as the trustees of another trust) are together the beneficiaries, in respect of half or more than half of the value of the interests in the trust first mentioned in this paragraph;
- (e) a person has a controlling interest in a business if, whether or not he is a trustee of a trust, he is the sole owner of the business, or persons, being 2 or more trustees of a trust, have a controlling interest in a business if they are the owners of the business.

(4) Where a corporation has a controlling interest under sub-section (3) in a business, it shall be deemed to have a controlling interest in any other business in which another corporation that is related to it within the meaning of the *Companies Act 1981* has a controlling interest.

(5) Where—

- (a) a person has, or persons have together, a controlling interest under sub-section (3) in a business; and
- (b) the person or persons who carry on that business has or have such a controlling interest in another business,

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

(6) Where—

- (a) a person is a beneficiary under a trust; or
- (b) 2 or more persons together are beneficiaries under a trust,

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

Smaller groups subsumed into larger groups

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

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

Beneficiaries under discretionary trusts

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

PART II—ADMINISTRATION

Division 1—General

Commissioner for Business Franchises

11. (1) There shall be a Commissioner for Business Franchises who shall be appointed by the Minister.

(2) A person is not eligible to be appointed or hold office as Commissioner unless he is an officer or employee within the meaning of the *Public Service Act 1922*.

(3) The Minister shall issue to a person appointed under sub-section (1) a certificate signed by the Minister to the effect that the person is the Commissioner.

Resignation

12. A person appointed as the Commissioner may resign his office by writing signed by him and delivered to the Minister.

Delegation

13. (1) The Commissioner may, either generally or otherwise as provided by the instrument of delegation, by writing signed by him, delegate to an officer or employee within the meaning of the *Public Service Act 1922* any of his powers under this Ordinance, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Ordinance, be deemed to have been exercised by the Commissioner.

(3) A delegation under this section does not prevent the exercise of a power by the Commissioner.

Acting Commissioner

14. (1) The Minister may appoint a person to act as the Commissioner—

- (a)** during a vacancy in the office of the Commissioner, whether or not an appointment has previously been made to the office; or
- (b)** during any period, or during all periods, when a person appointed as the Commissioner is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) The Minister may at any time terminate the appointment of a person appointed under sub-section (1).

(4) Where a person is acting as the Commissioner in accordance with paragraph (1) (b) and the office of the Commissioner becomes vacant while that person is so acting, then, subject to sub-section (2), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(5) The appointment of a person to act as the Commissioner ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Minister.

(6) While a person is acting as the Commissioner, he has, and may exercise, all the powers, and shall perform all the functions, of the Commissioner under this Ordinance.

(7) The validity of anything done by a person purporting to act under sub-section (1) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in, or in connection with, his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

Inspectors

15. (1) The Minister may, be instrument in writing, appoint persons to be inspectors for the purposes of this Ordinance.

(2) An inspector shall, subject to this Ordinance, perform such duties for the purposes of this Ordinance as the Commissioner directs.

(3) The Minister shall issue to a person appointed under sub-section (1) a certificate signed by the Minister to the effect that the person is an inspector for the purposes of this Ordinance.

Secrecy

16. (1) This section applies to every person who is, or has been, a person engaged in the administration of this Ordinance.

(2) Subject to this section, a person to whom this section applies shall not, either directly or indirectly—

- (a) make a record of, or divulge or communicate to a person, information concerning the affairs of another person acquired by him by reason of his office or employment under, or for the purpose of, this Ordinance; or
- (b) produce to a person a document produced in pursuance of this Ordinance;

otherwise than—

- (c) to a court, tribunal, person or other body having power to take evidence on oath or to a person or body conducting an inquiry under an enactment;

- (d) to a prescribed person; or
- (e) in the performance of a duty under, or in connection with, this Ordinance.

Penalty: \$2,000.

(3) In sub-section (2)—

- (a) “enactment” means an Act, an Ordinance or a law of a State or another Territory; and
- (b) “prescribed person” means—
 - (i) the Commissioner, a Second Commissioner or a Deputy Commissioner within the meaning of the *Taxation Administration Act 1953*;
 - (ii) a Commissioner or other officer of a State or Territory who administers a taxation law of that State or Territory; or
 - (iii) any person authorized in writing by a person referred to in paragraph (a) or (b).

Division 2—Powers of entry and search

Interpretation

17. (1) For the purposes of this Division, a thing is connected with a particular offence if it is—

- (a) a thing that will afford evidence of the commission of the offence; or
- (b) a thing that was used, or is intended to be used, for the purpose of committing the offence.

(2) A reference in this Division to an offence shall be read as including a reference to an offence that there are reasonable grounds for believing has been, or is to be, committed.

Powers of entry, &c.

18. (1) The Commissioner or an inspector may, at any reasonable hour of the day or night, with such assistance as he thinks necessary, enter upon or into any premises to which a licence relates (other than residential premises) for the purposes of determining whether the provisions of this Ordinance or of a corresponding law are being complied with.

(2) Where the Commissioner or an inspector enters upon or into premises in pursuance of sub-section (1), he is not authorized to remain on or in the premises if, on request by or on behalf of the occupier or person apparently in charge of the premises, he does not produce a certificate issued to him under sub-section 11 (3) or 15 (3), as the case requires.

(3) Where the Commissioner or an inspector enters upon or into premises in accordance with sub-section (1), he may—

- (a) inspect the premises and any tobacco or petroleum products on the premises;
- (b) inspect any books, records or documents, and require any person on the premises to furnish any information, relating to the manufacture, distribution or sale of tobacco or petroleum products, whether within or outside the Territory;
- (c) make copies of, or take extracts from, any books, records or documents referred to in paragraph (b); and
- (d) require any person apparently in charge of the premises to supply his name and address.

(4) In this section, “corresponding law” means a law of a State or another Territory imposing a tax on the sale of tobacco or petroleum products.

Powers of entry, &c.—premises generally

19. Subject to section 18, the Commissioner or an inspector may enter upon or into any premises and may search for, and exercise his powers under sub-section 18 (3) in relation to, any thing that he believes on reasonable grounds to be connected with an offence against this Ordinance that is found on or in the premises if, and only if, the search is made and those powers are exercised—

- (a) in pursuance of a warrant issued under section 20; or
- (b) after obtaining the consent of the occupier, or the person apparently in charge of, the premises.

Search warrants

20. (1) Where an information on oath is laid before a Magistrate alleging that there are reasonable grounds for suspecting that there may be upon or in any premises a thing or things of a particular kind connected with a particular offence against a provision of this Ordinance, and the information sets out those grounds, the Magistrate may issue a search warrant authorizing the

Commissioner or the inspector named in the warrant, with such assistance as he thinks necessary and if necessary by force—

- (a) to enter upon or into the premises;
- (b) to search the premises; and
- (c) to exercise any of his powers under sub-section 18 (3) in regard to such a thing.

(2) A Magistrate shall not issue a warrant under sub-section (1) unless—

- (a) the informant or some other person has given to the Magistrate, either orally or by affidavit, such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(3) There shall be stated in a warrant issued under this section—

- (a) a statement of the purpose for which the warrant is issued, which shall include a reference to the nature of the offence in relation to which the entry, search and exercise of powers under sub-section 18 (3) are authorized;
- (b) whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night;
- (c) a description of the kind of things in relation to which the powers under sub-section 18 (3) are authorized; and
- (d) a date, not being later than one month after the date of issue of the warrant, upon which the warrant ceases to have effect.

(4) If, in the course of searching, in accordance with a warrant issued under this section, for things connected with a particular offence against this Ordinance, being things of a kind specified in the warrant, the Commissioner or an inspector finds any thing that he believes on reasonable grounds to be connected with the offence, although not of a kind specified in the warrant, or to be connected with another offence against this Ordinance, and he believes on reasonable grounds that it is necessary to exercise all or any of his powers under sub-section 18 (3) in relation to that thing in order to prevent the committing, continuing or repeating of the offence or that other offence, the warrant shall be deemed to authorize him to exercise those powers in relation to that thing.

Consent to entry

21. (1) Before obtaining the consent of a person for the purposes of section 19, the Commissioner or an inspector shall inform the person that he may refuse to give his consent.

(2) Where the Commissioner or an inspector obtains the consent of a person for the purposes of section 19, he shall ask the person to sign a written acknowledgement—

- (a) of the fact that he has been informed that he may refuse to give his consent;
- (b) of the fact that he has voluntarily given his consent; and
- (c) of the date on which, and the time at which, he gave his consent.

(3) An entry by the Commissioner or an inspector by virtue of the consent of a person is not lawful unless the person voluntarily consented to the entry.

(4) Where it is material, in any proceedings, for a court to be satisfied of the voluntary consent of a person for the purposes of section 19 and an acknowledgment, in accordance with sub-section (2), signed by the person is not produced in evidence, the court shall assume, unless the contrary is proved, that the person did not voluntarily give such a consent.

Obstruction of Commissioner or inspector

22. A person who, without reasonable excuse—

- (a) obstructs or hinders the Commissioner or an inspector in the exercise of his powers under this Ordinance; or
- (b) fails to comply with a reasonable requirement of the Commissioner or an inspector who has entered upon or into any premises in pursuance of this Ordinance,

is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000 or imprisonment for a term not exceeding 6 months, or both.

Certain particulars to be furnished

23. (1) The Commissioner may, by instrument in writing, require—

- (a) a person who is carrying on, or has carried on, or is or was concerned in, a business of dealing with tobacco; or

- (b) a person who, as agent or employee of a person referred to in paragraph (a), has or has had duties or provides or has provided services in connection with a business so referred to,

to furnish to the Commissioner in writing, within such period as is specified in the instrument or such further period as the Commissioner may allow, a statement of such particulars with respect to that tobacco, or any of it, as are so specified, not being particulars relating to any period after the date of the requirement.

(2) The Commissioner may, by instrument in writing, require—

- (a) a person who is carrying on, or has carried on, or is or has been concerned in, a business of manufacturing, distributing, selling or purchasing petroleum products; or
- (b) a person who, as the agent or employee of a person referred to in paragraph (a), has or has had duties, or provides or has provided services, in connection with a business so referred to,

to furnish to the Commissioner, or to furnish to the Commissioner in writing, within such period as is specified in the instrument or such further period as the Commissioner may allow, such particulars with respect to those petroleum products, or any of them, as are so specified, not being particulars relating to a period after the date of the requirement.

(3) A person shall not, without reasonable excuse, fail to comply with any requirement made of him under sub-section (1) or (2).

Penalty: \$2,000.

(4) Without limiting the meaning of “reasonable excuse” in sub-section (3), it is a reasonable excuse for the purposes of that sub-section if a person—

- (a) could not, by the exercise of reasonable diligence, have complied with the requirement; or
- (b) complied with the requirement to the extent of his ability to do so.

(5) In this section, a reference to dealing with tobacco includes a reference to processing, packaging, distributing, selling and purchasing tobacco.

PART III—LICENCES

Offences relating to the sale of tobacco

24. (1) On or after 1 September 1984, a person other than the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence who carries on tobacco wholesaling is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a body corporate—\$25,000; and
- (b) in the case of a natural person—\$5,000 or imprisonment for 2 years, or both.

(2) On or after 1 September 1984, a person other than the holder of a retail tobacconist's licence who carries on tobacco retailing is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a body corporate—\$15,000; and
- (b) in the case of a natural person—\$2,000 or imprisonment for 12 months, or both.

(3) The holder of a tobacco licence who carries on the business of selling tobacco on premises that are not specified in the licence as premises to be used for that business is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a body corporate—\$10,000; and
- (b) in the case of a natural person—\$2,000 or imprisonment for 12 months, or both.

Offences relating to the sale of petroleum products

25. (1) On or after 1 September 1984, a person other than the holder of a petroleum wholesalers licence or a group petroleum wholesalers licence who carries on petroleum wholesaling is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a body corporate—\$50,000; and
- (b) in the case of a natural person—\$10,000 or imprisonment for 5 years, or both.

(2) On or after 1 September 1984, a person other than the holder of a petroleum retailers licence who carries on petroleum retailing is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a body corporate—\$25,000; and
- (b) in the case of a natural person—\$5,000 or imprisonment for 2 years, or both.

(3) The holder of a licence who contravenes a condition to which the licence is subject is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a body corporate—\$10,000; and
- (b) in the case of a natural person—\$2,000.

(4) Sub-section (1) does not apply in respect of a sale by wholesale within the Territory by the holder of a petroleum retailers licence of petroleum products sold by wholesale to that holder by a person who is the holder of a petroleum wholesalers licence or a group petroleum wholesalers licence.

Grant of licence—tobacco

26. (1) The Commissioner shall—

- (a) upon application made in a form approved by him;
- (b) on receipt of the particulars, if any, required by him to be furnished by the applicant under section 23; and
- (c) upon payment of—
 - (i) the fee assessed by the Commissioner in accordance with section 28; or
 - (ii) where the applicant is an applicant for a retail tobacconist's licence and has made an election under section 29, the first instalment of that fee,

grant to the applicant a tobacco licence.

(2) An application under paragraph (1) (a)—

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

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

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

(3) A licence shall be either—

(a) a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence, which authorizes the licensee to carry on tobacco wholesaling at the premises specified in the licence; or

(b) a retail tobacconist's licence, which authorizes the licensee to carry on tobacco retailing at the premises specified in the licence.

(4) The Commissioner shall, on the grant of a licence, cause the premises which are to be used for, or in connection with, the business in respect of which the licence is granted to be specified in the licence and shall, upon receipt at any time of a request by the holder, or if there is more than 1 holder, any of the holders, of the licence in a form approved by the Commissioner and payment of the prescribed fee (if any), in accordance with the request, add to, substitute for, or delete from, premises so specified, such premises as are specified in the request.

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

(6) A licence shall be in force on and from the date specified in the licence as the date on which the licence shall come into force.

(7) Where the Commissioner refuses to grant a licence, he shall, in writing, inform the applicant of the reasons for the refusal and refund to the applicant any fee paid by the applicant and referred to in paragraph (1) (c).

Grant of licence—petroleum products

27. (1) The Commissioner shall—

(a) upon application made in a form approved by him;

(b) on receipt of the particulars, if any, required by him to be furnished by the applicant under section 23; and

(c) upon payment of the fee assessed by the Commissioner in accordance with section 31,

grant to the applicant a petroleum products licence in a form approved by the Commissioner.

(2) An application under paragraph (1) (a)—

- (a) for a petroleum wholesalers licence—may be made by any person other than a person who is a member of a group of petroleum wholesalers;
- (b) for a group petroleum wholesalers licence—may be made on behalf of all or any of the members of a group of petroleum wholesalers by any member of the group; and
- (c) for a petroleum retailers licence—may be made by any person.

(3) A licence shall be either—

- (a) a petroleum wholesalers licence or a group petroleum wholesalers licence, which authorizes the licensee to carry on petroleum wholesaling at the premises specified in the licence; or
- (b) a petroleum retailers licence, which authorizes the licensee to carry on petroleum retailing at the premises specified in the licence.

(4) The Commissioner shall, on the grant of a licence, cause the premises which are to be used for, or in connection with, the business in respect of which the licence is granted to be specified in the licence and shall, upon receipt at any time of a request by the holder, or if there is more than 1 holder, any of the holders, of the licence in a form approved by the Commissioner and payment of the prescribed fee (if any), in accordance with the request, add to, substitute for, or delete from, premises so specified, such premises as are specified in the request.

(5) The Commissioner shall, on the grant of a group petroleum wholesalers licence, cause the name of each person who is a member of the group of petroleum wholesalers and on whose behalf the application for the licence was made to be specified in the licence.

(6) A licence shall be in force on and from the day specified in the licence as the date from which the licence commences until, unless it sooner ceases to have effect, the last day of the month in which it commenced.

(7) Where the Commissioner refuses to grant a licence, he shall, in writing, inform the applicant of the reasons for the refusal and refund to the applicant any fee paid by the applicant.

Fees—tobacco licences

28. (1) Subject to this section, the fees to be paid for tobacco licences shall be as follows:

- (a) for a wholesale tobacco merchant's licence—
 - (i) which is in force for any period on or before 31 August 1984—a fee of the specified amount together with an amount equal to the specified percentage of the value of tobacco sold by the applicant in the course of tobacco wholesaling during the relevant period (other than tobacco sold to a person who was in the opinion of the Commissioner engaged principally in tobacco wholesaling);
 - (ii) which is in force for any period after 31 August 1984—a fee of the specified amount together with an amount equal to the specified percentage of the value of tobacco sold by the applicant in the course of tobacco wholesaling during the relevant period (other than tobacco sold to the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence);
- (b) for a group wholesale tobacco merchant's licence—a fee of the specified amount together with an amount equal to the specified percentage of the value of tobacco sold by all persons who are members of the group of wholesale tobacco merchants of which the applicant for the licence or a renewal thereof is a member (whether or not the application was made by them or on their behalf and whether or not they were members of that group during the whole of any part of the relevant period) in the course of tobacco wholesaling during the relevant period;
- (c) for a retail tobacconist's licence—a fee of the specified amount together with an amount equal to the specified percentage of the value of tobacco sold by the applicant in the course of tobacco retailing during the relevant period.

(2) Where an applicant for a wholesale tobacco merchant's licence or a renewal of such a licence was, at any time during the relevant period for the licence or renewal, a member of a group of wholesale tobacco merchants, the tobacco sold by the applicant in the course of tobacco wholesaling during that relevant period shall, for the purposes of paragraph (1) (a), be deemed to have included any tobacco sold by the other or, if more than one, all of the other members of the group in the course of tobacco wholesaling during that period

unless the applicant satisfies the Commissioner that a fee for a wholesale tobacco merchant's licence or a renewal of such a licence has been paid to the Commissioner after having been assessed in respect of the sale of that tobacco during that relevant period.

(3) Where—

- (a) an application is made on behalf of all or any of the members of a group of wholesale tobacco merchants for a group wholesale tobacco merchant's licence or a renewal of such a licence; and
- (b) any member of the group referred to in paragraph (a) was, at any time during the relevant period for the licence or renewal, a member of another group of wholesale tobacco merchants (any one or more of the members of which is not a member of the group referred to in paragraph (a)),

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

(4) For the purposes of paragraphs (1) (a) and (b) and sub-sections (2) and (3), tobacco shall not be treated as having been sold by reason only of its having been sold to the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence.

(5) Where an application is made for a tobacco licence and the applicant did not carry on the business in respect of which the application for the licence was made during the whole of the relevant period, the fee payable in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard to the tobacco that in the opinion of the Commissioner would have been sold by the applicant had he been carrying on that business during the whole of that period, and the relevant principles of determining fees under this section.

(6) Where an application is made for a tobacco licence and the applicant carried on the business in respect of which the application for the licence was made during the whole of the relevant period and the Commissioner is of the opinion that he is unable for any reason accurately to assess the fee payable by the applicant under sub-section (1), the fee payable by the applicant in respect

of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard to the tobacco that in the opinion of the Commissioner was sold by the applicant during that period, and the relevant principles of determining fees under this section.

(7) A fee payable in respect of a licence under sub-section (5) or (6) is payable by the applicant for the licence.

(8) The value of any tobacco sold for delivery and consumption inside the Territory shall be disregarded in determining fees payable under this section.

(9) Notwithstanding any other provision of this section, where a retail tobacconist's licence is to be in force for a period of 11 months or less, the amount of the fee that, but for this sub-section, would be payable shall be reduced, where the licence is to be in force for a period of—

- (a) 11 months or less but more than 10 months—by one-twelfth;
- (b) 10 months or less but more than 9 months—by two-twelfths;
- (c) 9 months or less but more than 8 months—by three-twelfths;
- (d) 8 months or less but more than 7 months—by four-twelfths;
- (e) 7 months or less but more than 6 months—by five-twelfths;
- (f) 6 months or less but more than 5 months—by six-twelfths;
- (g) 5 months or less but more than 4 months—by seven-twelfths;
- (h) 4 months or less but more than 3 months—by eight-twelfths;
- (i) 3 months or less but more than 2 months—by nine-twelfths;
- (j) 2 months or less but more than 1 month—by ten-twelfths; or
- (k) 1 month or less—by eleven-twelfths.

(10) The Commissioner shall not, in assessing a fee under sub-section (2), have regard to any particulars furnished pursuant to a requirement under section 23.

(11) In sub-sections (2) and (3), “applicant”, in relation to a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence, includes any person whose tobacco wholesaling during the relevant period for the licence would be required to be taken into account by reason of paragraph (1) (b) or sub-section (2) or (3) for the purpose of determining the fee

for the licence if the fee was not required to be assessed under either sub-section (5) or (6).

(12) A reference in a provision of this section to a specified amount or a specified percentage is a reference to an amount, or a percentage, specified by the Minister for the purposes of that provision by notice published in the *Gazette*.

(13) A reference in this section to tobacco sold shall be read as a reference to tobacco sold in the course of interstate trade.

(14) The Commissioner shall notify the applicant of the terms of his decision assessing an amount of fees under this section.

(15) A notification under sub-section (14) shall include a statement—

- (a) specifying the assessment, and the findings of material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision;
- (b) that the applicant may, by notice in writing to the Commissioner within 28 days of receipt of the notification, request that the amount of fees be reassessed; and
- (c) that, subject to the *Administrative Appeals Tribunal Act 1975*, a person whose interests are affected by the decision reassessing the fees is entitled to apply to the Tribunal for a review of that decision.

(16) The validity of a decision to which a statement under sub-section (15) relates shall not be taken to be affected by a failure to comply with that sub-section.

Payment of fees by instalments

29. (1) In this section, “prescribed date” means 28 September, 28 October, 28 November, 28 December, 28 January, 28 February, 28 March, 28 April, 28 May, 28 June or 28 July.

(2) An applicant for a retail tobacconist’s licence which is to be in force for more than one month, or a renewal of a retail tobacconist’s licence, may, if the licence fee payable in respect of that licence is in excess of \$120, elect to pay the licence fee by instalments in accordance with this section.

(3) Where a retail tobacconist’s licence—

- (a) is to be in force for a period of more than 11 months—the licence fee may be paid by 12 equal instalments, the first instalment being due

and payable before the grant or renewal of the licence and each of the remaining 11 instalments being due and payable respectively on the following prescribed dates (commencing with 28 September) next following the date of issue or renewal of the licence;

- (b) is to be in force for a period of more than 10 months but not more than 11 months—the licence fee may be paid by 11 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 10 instalments being due and payable respectively on the following 10 prescribed dates (commencing with 28 October) next following the date of issue or renewal of the licence;
- (c) is to be in force for a period of more than 9 months but not more than 10 months—the licence fee may be paid by 10 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 9 instalments being due and payable respectively on the following 9 prescribed dates (commencing with 28 November) next following the date of issue or renewal of the licence;
- (d) is to be in force for a period of more than 8 months but not more than 9 months—the licence fee may be paid by 9 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 8 instalments being due and payable respectively on the following 8 prescribed dates (commencing with 28 December) next following the date of issue or renewal of the licence;
- (e) is to be in force for a period of more than 7 months but not more than 8 months—the licence fee may be paid by 8 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 7 instalments being due and payable respectively on the following 7 prescribed dates (commencing with 28 January) next following the date of issue or renewal of the licence;
- (f) is to be in force for a period of more than 6 months but not more than 7 months—the licence fee may be paid by 7 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 6 instalments being due and payable respectively on the following 6 prescribed dates (commencing with 28 February) next following the date of issue or renewal of the licence;
- (g) is to be in force for a period of more than 5 months but not more than 6 months—the licence fee may be paid by 6 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 5 instalments being due and payable

respectively on the following 5 prescribed dates (commencing with 28 March) next following the date of issue or renewal of the licence;

- (h) is to be in force for a period of more than 4 months but not more than 5 months—the licence fee may be paid by 5 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 4 instalments being due and payable respectively on the following 4 prescribed dates (commencing with 28 April) next following the date of issue or renewal of the licence;
- (i) is to be in force for a period of more than 3 months but not more than 4 months—the licence fee may be paid by 4 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 3 instalments being due and payable respectively on the following 3 prescribed dates (commencing with 28 May) next following the date of issue or renewal of the licence;
- (j) is to be in force for a period of more than 2 months but not more than 3 months—the licence fee may be paid by 3 equal instalments, the first instalment being due and payable before the grant of the licence and each of the remaining 2 instalments being due and payable respectively on the following 2 prescribed dates (commencing with 28 June) next following the date of issue or renewal of the licence;
- (k) is to be in force for a period of more than 1 month but not more than 2 months—the licence fee may be paid by 2 equal instalments, the first instalment being due and payable before the grant of the licence and the remaining instalment being due and payable on 28 July next following the date of issue of the licence.

(4) For the purpose of calculating the amount of instalments under sub-section (3), where the quotient obtained by dividing the licence fee by the appropriate number of instalments results in a remaining fraction of a cent, that fraction shall be ignored.

(5) If an instalment payable in respect of a retail tobacconist's licence is not paid on or before the day on which it is due and payable under sub-section (3), the balance of the licence fee becomes due and payable immediately.

(6) The balance of the licence fee in respect of a retail tobacconist's licence becomes due and payable upon the surrender of the licence.

(7) The whole of any part of an amount which is due and payable by any person under this section and which is unpaid is a debt due to the Commonwealth.

Value of tobacco

30. The Minister may, in accordance with the regulations, from time to time determine the value to be attributed to tobacco sold during any period and for the purposes of this Ordinance the value of that tobacco shall be the value so attributed.

Fees—petroleum products licences

31. (1) Subject to this section, the fees to be paid for petroleum products licences shall be the specified amount together with the prescribed amount calculated in accordance with sub-section (2) by reference to the value of motor spirit and diesel fuel sold in the course of interstate trade in the relevant period.

(2) The prescribed amount is—

(a) for a petroleum wholesalers licence, an amount of—

- (i) the prescribed percentages of the value of motor spirit sold by the applicant in the course of petroleum wholesaling; and
- (ii) the prescribed percentage of the value of diesel fuel sold by the applicant in the course of petroleum wholesaling;

(b) for a group petroleum wholesalers licence, an amount of—

- (i) the prescribed percentage of the value of motor spirit sold by the members of the group of petroleum wholesalers of which the applicant is a member in the course of petroleum wholesaling; and
- (ii) the prescribed percentage of the value of diesel fuel sold by the members of the group of petroleum wholesalers of which the applicant is a member in the course of petroleum wholesaling,

whether or not they were members of that group during the whole or any part of the relevant period; or

(c) for a petroleum retailers licence, an amount of—

- (i) the prescribed percentage of the value of motor spirit sold by the applicant in the course of petroleum retailing; and
- (ii) the prescribed percentage of the value of diesel fuel sold by the applicant in the course of petroleum retailing.

(3) Where an applicant for a petroleum wholesalers licence was, at any time during the relevant period for the licence, a member of a group of

petroleum wholesalers, the petroleum products sold by the applicant in the course of petroleum wholesaling during that relevant period shall, for the purposes of paragraph (2) (a), be deemed to have included any petroleum products sold by the other or, if more than one, all of the other members of the group in the course of petroleum wholesaling during that relevant period unless the applicant satisfies the Commissioner that a fee for a petroleum wholesalers licence or a group petroleum wholesalers licence has been paid to the Commissioner after having been assessed in respect of the sale of those petroleum products during that relevant period.

(4) Where—

- (a) an application is made on behalf of all or any of the members of a group of petroleum wholesalers for a group petroleum wholesalers licence; and
- (b) any member of the group referred to in paragraph (a) was, at any time during the relevant period for the licence, a member of another group of petroleum wholesalers (any one or more of the members of which is not a member of the group referred to in paragraph (a)),

the petroleum products sold by members of the first-mentioned group in the course of petroleum wholesaling during that relevant period shall, for the purposes of paragraph (2) (b), be deemed to have included any petroleum products sold by any members of the other group in the course of petroleum wholesaling during that relevant period unless the applicant satisfies the Commissioner that a fee for a petroleum wholesalers licence or a group petroleum wholesalers licence has been paid to the Commissioner after having been assessed in respect of the sale of those petroleum products during that relevant period.

(5) For the purposes of paragraphs (2) (a) and (b) and sub-section (3) and (4), petroleum products shall not be treated as having been sold by reason only of their having been sold to the holder of a petroleum wholesalers licence or a group petroleum wholesalers licence.

(6) Where an application is made for a petroleum products licence and the applicant did not carry on the business in respect of which the application for the licence was made during the whole of the relevant period, the fee payable in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard to the petroleum products that in the opinion of the Commissioner would have been sold by the applicant had he been carrying on that business during the

whole of that relevant period, and the relevant principles of assessing fees under sub-sections (1) to (5) (inclusive).

(7) Where an application is made for a petroleum products licence and the applicant carried on the business in respect of which the application for the licence was made during the whole of the relevant period and the Commissioner is of the opinion that he is unable for any reason accurately to assess the fee payable under sub-sections (1) to (5) (inclusive), the fee payable in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case, having regard to the petroleum products that in the opinion of the Commissioner were sold by the applicant during the relevant period, and the relevant principles of assessing fees under sub-sections (1) to (5) (inclusive).

(8) The value of any petroleum products sold for delivery and consumption inside the Territory shall be disregarded in assessing fees payable under this section.

(9) The Commissioner shall not, in assessing a fee under sub-section (6), have regard to any particulars furnished pursuant to a requirement under section 23.

(10) In sub-sections (6) and (7), “applicant”, in relation to a petroleum wholesalers licence or a group petroleum wholesalers licence, includes any person whose petroleum wholesaling during the relevant period of the licence would be required to be taken into account by reason of paragraph (2) (b) or sub-section (3) or (4) for the purpose of assessing the fee for the licence if the fee was not required to be assessed under either sub-section (6) or (7).

(11) A reference in a provision of this section to a specified amount or a prescribed percentage is a reference to an amount, or a percentage, specified by the Minister for the purposes of that provision by notice published in the *Gazette*.

(12) The Commissioner shall notify the applicant of the terms of this decision assessing an amount of fees under this section.

(13) A notification under sub-section (12) shall include a statement—

- (a) specifying the assessment, and the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision;

- (b) that the applicant may, by notice in writing to the Commissioner within 28 days of receipt of the notification, request that the amount of fees be reassessed; and
- (c) that, subject to the *Administrative Appeals Tribunal Act 1975*, a person whose interests are affected by the decision reassessing the fees is entitled to apply to the Tribunal for a review of the decision.

(14) The validity of a decision to which statement under sub-section (13) relates shall not be taken to be affected by a failure to comply with that sub-section.

Value of petroleum products

32. For the purposes of this Ordinance, the value of any petroleum product during any relevant period shall be deemed to be such amount as is determined by the Minister in accordance with the regulations in respect of that relevant period, having regard to the wholesale price at which in the opinion of the Minister that petroleum product was sold in the Territory during that relevant period and to such other matters or things as the Minister considers relevant.

Adjustment of fee

33. (1) An applicant for a licence or a person who is or was the holder of a licence may, by notice in writing to the Commissioner, request the Commissioner to reassess the fee assessed in respect of the licence.

(2) Subject to sub-section (3), where, in the opinion of the Commissioner, the fee assessed in respect of any licence was assessed incorrectly, the Commissioner may at any time reassess the fee.

(3) The Commissioner shall not reassess a fee in respect of which an application has been made to the Tribunal under section 37.

(4) A reassessment carried out in pursuance of a request under sub-section (1) shall be carried out within 28 days of receipt by the Commissioner of the request.

(5) A reassessment under this section shall be carried out in accordance with the principles of assessing fees under section 28 or 31, as the case requires.

(6) Where on a reassessment of a fee under this section the fee is reduced, the amount overpaid shall be refunded by the Commissioner.

(7) Where on a reassessment of a fee under this section the fee is increased, the additional amount payable by virtue of the reassessment shall be

due and payable within 14 days after notice of the reassessment is served on the applicant or on the person who is or was the holder of the licence concerned.

(8) Where the additional amount is payable by virtue of a reassessment in respect of a petroleum wholesalers licence or a group petroleum wholesalers licence, the additional amount shall be due and payable (whether or not the licence has ceased to be in force)—

- (a) within 14 days after notice of the reassessment is served on the applicant or the person who is or was the holder of the petroleum wholesalers licence or on any one or more of the persons who are or were holders of the group petroleum wholesalers licence, as the case may be; and
- (b) by the person or, where notice is served on more than one person, by each of the persons on whom the notice is served.

(9) The Commissioner shall notify the applicant or person who is or was the holder of the licence of the terms of his decision reassessing the fee in respect of the licence.

Surrender and termination of licences

34. (1) A holder of a licence may, at any time, by notice in writing to the Commissioner, surrender his licence, and the licence shall thereupon cease to be in force.

(2) A licence shall cease to be in force if any additional amount that is due and payable under section 33 in respect of the licence is unpaid.

Renewal of licences—tobacco

35. (1) A retail tobacconist's licence remains in force for such period, not exceeding 12 months, as is specified in the licence.

(2) Upon application made, from time to time, by the holder of a retail tobacconist's licence to the Commissioner in accordance with the approved form and—

- (a) receipt by the Commissioner of the particulars, if any, required by him to be furnished under section 23; and
- (b) payment of—
 - (i) the fee assessed by the Commissioner in accordance with section 28; or

- (ii) where the applicant has made an election under section 29, the first instalment of that fee,

the licence may be renewed for such period, not exceeding 12 months, as is specified in the licence.

(3) A wholesale tobacco merchant's licence and a group wholesale tobacco merchant's licence shall expire, subject to section 34—

- (a) in the case of a licence that was first in force on a day in a month occurring before the 28th day of the month—on the 27th day of the month in which it was first in force; and
- (b) in any other case—on the 27th day of the next succeeding month after the month during which it was first in force.

(4) A licence referred to in sub-section (3) may, from time to time, upon—

- (a) application made to the Commissioner in a form approved by him;
- (b) receipt by the Commissioner of the particulars, if any, required by him to be furnished under section 23; and
- (c) payment of the fee assessed by the Commissioner in accordance with section 28,

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

(5) Where the Commissioner refuses to renew a licence, he shall, in writing, inform the applicant of the reasons for the refusal and refund to the applicant any fee paid by the applicant and referred to in paragraph (2) (b) or (4) (c), as the case may be.

Certain persons deemed to hold petroleum licences

36. (1) In this section, "licensee" means the holder of a petroleum products licence.

(2) Where a licensee (including a licensee holding a licence deemed by paragraph (b) to have been issued) furnishes to the Commissioner any particulars that would be required as referred to in paragraph 27 (1) (b), and pays the fee that would be payable under paragraph 27 (1) (c), if he applied for a further licence that, from the expiration of the licence pursuant to which he is a licensee, would confer the same authority as the expired licence—

- (a) that licensee shall, if he has not applied for such a further licence, be deemed to have duly so applied; and

- (b) the licence already held by the licensee shall be deemed to be such a further licence issued with effect from the expiration of the licence already held by the licensee unless, before that expiration, the Commissioner informs the licensee that the Commissioner refuses to issue the further licence for which the licensee has, or is by paragraph (a) deemed to have, applied.

PART IV—MISCELLANEOUS

Review of decisions

37. An application may be made to the Tribunal for a review of a decision of the Commissioner—

- (a) making a determination under sub-section 4 (2) or (3) or 5 (2) or (3);
- (b) refusing to revoke a determination under sub-section 4 (7) or 5 (7); or
- (c) reassessing a fee under section 33.

Notification of decisions

38. (1) A notice of a determination under sub-section 4 (2) or (3) or 5 (2) or (3), of a refusal to revoke a determination under sub-section 4 (7) or 5 (7), or of a reassessment under section 33, shall include a statement setting out the decision specifying the determination, the refusal or the reassessment, as the case requires, and the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

(2) A statement under sub-section (1) shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, a person whose interests are affected by the decision to which the statement relates is entitled to apply to the Tribunal for a review of the decision.

(3) The validity of a decision to which a statement under sub-section (1) relates shall not be taken to be affected by a failure to comply with sub-section (2).

Records to be kept

39. (1) Subject to sub-section (2), a person who carries on the business of selling tobacco or petroleum products shall keep such records as are prescribed containing such particulars as are prescribed relating to tobacco or petroleum products, as the case requires, and shall preserve each of those records for a period of 5 years after the last entry was made in it.

Penalty: \$1,000.

(2) This section does not apply so as to require the preservation of any records—

- (a) in respect of which the Commissioner has notified the person carrying on the business that preservation is not required; or
- (b) of a company which has gone into liquidation and which has been finally dissolved.

Invoice to be endorsed

40. (1) A holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence shall endorse or cause to be endorsed on every invoice issued by him for or in relation to the sale of tobacco the words "SOLD BY LICENSED WHOLESALER—A.C.T. LICENCE No." followed by the number of the licence.

Penalty: \$500.

(2) A person shall not, in connection with the sale of tobacco, issue an invoice which bears—

- (a) the words "SOLD BY LICENSED WHOLESALER" (or words of like import) unless he is the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence; or
- (b) the matter "A.C.T. LICENCE No." (or matter of like import) followed by a number, unless he is the holder of a wholesale tobacco merchant's licence or a group wholesale tobacco merchant's licence bearing that number.

Penalty: \$1,000.

(3) A holder of a petroleum wholesalers licence or a group petroleum wholesalers licence shall endorse or cause to be endorsed on every invoice issued by him for or in relation to the sale of petroleum products the words "SOLD BY LICENSED WHOLESALER—A.C.T. LICENCE No." followed by the number of the licence.

Penalty: \$2,000.

(4) A person shall not, in connection with the sale of petroleum products, issue an invoice which bears—

- (a) the words “SOLD BY LICENSED WHOLESALER” (or words of like import) unless he is the holder of a petroleum wholesalers licence or a group petroleum wholesalers licence; or
- (b) the matter “A.C.T. LICENCE No.” (or matter of like import) followed by a number, unless he is the holder of a petroleum wholesalers licence or a group petroleum wholesalers licence bearing that number.

Penalty: \$5,000.

Recovery of unpaid fees from unlicensed persons

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

(2) The Commissioner may assess the amount of the fee as if the person had applied for the licence, notwithstanding that the Commissioner may have made or purported to have made such an assessment.

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

(4) Any amount assessed under this section which is unpaid is a debt due to the Commonwealth.

(5) Proceedings may not be commenced for the purpose of recovering an amount assessed under this section until the expiration of one month after service of notice of the assessment under sub-section (3).

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

(7) The provisions of section 33 apply to and in respect of an amount assessed under this section in the same way as they apply to and in respect of a licence fee assessed under section 28 or 31.

Proceedings on prosecutions

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

(2) An information for an offence against this Ordinance or the regulations may not be laid without the approval in writing of the Minister.

(3) An information laid for an offence against this Ordinance or the regulations shall, in the absence of evidence to the contrary, be deemed to have been laid with the approval in writing of the Minister.

Evidentiary certificate

43. A certificate signed by the Commissioner and stating that—

- (a) the person specified in the certificate was or was not an inspector at the time or during the period specified in the certificate; or
- (b) the person specified in the certificate was or was not the holder of a licence of the kind specified in the certificate at the time or during the period specified in the certificate,

is evidence of the matters stated in the certificate.

Giving of notices, &c.

44. (1) A document that is required by this Ordinance to be lodged with or given to, the Commissioner may be so lodged or given—

- (a) by delivering the document to the Commissioner personally; or
- (b) by leaving the document at the office of the Commissioner with a person apparently employed at that office.

(2) A document that is required by this Ordinance to be given to a body corporate may be so given—

- (a) by delivering the document to a director, manager or secretary of the body corporate;
- (b) by leaving the document at the registered office in the Territory of the body corporate;
- (c) by leaving the document at an office or place of business of the body corporate in the Territory with a person apparently employed at that office or place of business and apparently not less than 16 years of age; or
- (d) by sending the document by post to the body corporate at its registered office in the Territory.

(3) A document that is required by this Ordinance to be given to a person other than the Commissioner or a body corporate may be so given—

- (a) by delivering the document to him personally;

- (b) by leaving the document at his last known place of residence or business with a person apparently resident or employed at that place and apparently not less than 16 years of age; or
- (c) by sending the document by post addressed to him at his last known place of residence or business.

Regulations

45. (1) The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters required or permitted by this Ordinance to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance, and, in particular, may make regulations—

- (a) requiring persons, or persons belonging to classes of persons, specified in the regulations to furnish to the Commissioner, within the times specified in the regulations, such information relating to sales, purchases or stocks of, or dealings with tobacco, or petroleum products, as is indicated by the regulations; and
- (b) exempting, absolutely or to a specified extent, and whether or not subject to conditions, persons from the operation of all or any specified provisions of this Ordinance.

(2) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorize any matter or thing to be from time to time determined, applied or regulated by any specified person or body.

(3) The regulations may impose a penalty not exceeding \$500 for offences against the regulations.

SCHEDULE

Sub-section 3 (1)

RELEVANT PERIODS FOR LICENCES

Column 1	Column 2
July	May
August	June
September	July
October	August

November	September
December	October
January	November
February	December
March	January
April	February
May	March
June	April

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 31 July 1984.