



Queensland

# Tobacco Products (Licensing) Act 1988

Reprinted as in force on 1 March 2002

Reprint No. 1B\*

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See 2011 Act No. 8 s 121

\* Minor differences in presentation between this reprint and another reprint with the same number are due to the conversion to new styles. At the same time, footnotes that merely cite a cross-reference to this legislation, or other legislation, were omitted (see AIA, s 14(7)).

# Information about this reprint

This Act is reprinted as at 1 March 2002. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have also been made to use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

## Spelling

The spelling of certain words or phrases may be inconsistent in this reprint or with other reprints because of changes made in various editions of the Macquarie Dictionary (for example, in the dictionary, ‘lodgement’ has replaced ‘lodgment’). Variations of spelling will be updated in the next authorised reprint.

## Dates shown on reprints

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If the date of an authorised reprint is the same as the date shown for an unauthorised version previously published, it merely means that the unauthorised version was published before the authorised version. Also, any revised edition of the previously published unauthorised version will have the same date as that version.

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## Queensland

# Tobacco Products (Licensing) Act 1988

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# Tobacco Products (Licensing) Act 1988

[as amended by all amendments that commenced on or before 1 March 2002]

## An Act to provide for the licensing of persons who carry on the business of selling tobacco and for related purposes

### Part 1 Preliminary

#### 1 Short title

This Act may be cited as the *Tobacco Products (Licensing) Act 1988*.

#### 4 Interpretation

(1) In this Act—

*approved form* see section 53A.

*commissioner* means the person holding the office of commissioner of tobacco products licensing under this Act.

*corporation* means any body corporate, whether formed or incorporated within or outside the State.

*group licence* means a group tobacco wholesaler's licence or a group retail tobacconist's licence.

*licence* means a licence issued or renewed under this Act.

*licensed premises* means premises specified in a licence as premises that are to be used for or in connection with the business carried on under the licence.

*licensee* means the holder of a licence.

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**person** includes a corporation, a company, a body or association whether corporate or unincorporate, and a partnership.

**premises** includes a part of any premises.

**relevant month** means, in relation to a licence that would commence on the first day of a month specified in schedule 1, column 1, the month last occurring before that day and specified in schedule 1, column 2 opposite that month.

**tobacco** means tobacco prepared for consumption and includes any mixture that contains tobacco and is intended to be consumed.

**tobacco retailing** means the business of selling tobacco by retail either alone or in conjunction with any other merchandise and includes such 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 such business carried on as part of or in conjunction with any other business.

**vending machine** means any machine, device, or contrivance that is constructed to contain articles that may be obtained therefrom by an operation that involves the insertion of money, credit cards, debit cards or tokens.

**voting share** has the meaning ascribed to that expression by the Companies (Queensland) Code, section 5(1).

- (2) A reference in this Act to **premises** shall be read and construed as including reference to any building or structure, including a building or structure that is of a temporary nature or that is capable of being moved or transported, and to any vehicle, vessel or aircraft.
- (3) The presence on any premises of a vending machine from which tobacco may be obtained by an operation that involves the insertion of money, credit cards, debit cards or tokens shall be deemed to constitute the carrying on on those premises by the occupier thereof of tobacco retailing unless



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the machine is owned and operated by a licensee in accordance with his or her licence.

- (4) For the purposes of this Act, a person—
  - (a) sells tobacco; or
  - (b) carries on tobacco wholesaling; or
  - (c) carries on tobacco retailing;if another person does so as the person's employee.
- (5) Subsection (4) does not affect the liability of an employee for an offence defined in section 15(1) or 16(1) or (2).
- (6) For the purposes of this Act, a person sells tobacco if the person effects a sale as agent of another person.
- (7) Subsection (6) does not affect the liability of the agent's principal for an offence against section 15(1).
- (8) For the purposes of this Act, a person—
  - (a) sells tobacco; or
  - (b) carries on tobacco wholesaling; or
  - (c) carries on tobacco retailing;if another person does so as the person's agent, unless the firstmentioned person proves that the agent acted beyond the agent's authority and that the person did not directly or indirectly ratify, approve of, or benefit from, the acts of the agent.
- (9) For the purposes of this Act—
  - (a) a person who, in relation to tobacco wholesaling, acts as an agent of a person who carries on tobacco wholesaling also carries on tobacco wholesaling; and
  - (b) a person who, in relation to tobacco retailing, acts as an agent of a person who carries on tobacco retailing also carries on tobacco retailing.
- (10) The authority of a licence—

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- (a) extends to a sale by an agent or employee on behalf of the licensee; and
  - (b) in the case of a tobacco wholesaler's licence—a retail tobacconist's licence, or a group licence, extends to an agent who carries on tobacco wholesaling or tobacco retailing as mentioned in subsection (9).
- (11) A reference in this Act to **tobacco** includes a reference to any wrapping, package or container in which the tobacco is sold, purchased, received or handled.
- (12) A reference in this Act to a **holder of a group licence** includes a reference to each person whose name is, under section 20(3), specified in a group licence.
- (13) A reference in this Act to the issue of a licence includes a reference to the renewal of a licence.
- (14) A reference in this Act to the sale of tobacco is a reference to the sale of tobacco in Queensland.
- (15) If, pursuant to a sale made outside Queensland, tobacco is delivered within or from Queensland, the sale shall, for the purposes of this Act, be treated as having been made in Queensland.

## 5 Meaning of **sell** in certain provisions

In section 4(4), (6) and (8) and in section 15 the expression **sell** includes, without limiting its primary meaning—

- (a) attempting to sell; or
- (b) offering, displaying or exposing for sale; or
- (c) with a view to sale—
  - (i) supplying; or
  - (ii) transporting; or
  - (iii) holding.

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## **6 Act binds Crown**

- (1) This Act binds the Crown not only in right of Queensland but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.
- (2) This Act applies to and in respect of the Crown in any of its capacities to the same extent as if the Crown were, in that capacity, a body corporate.

## **Part 2 Administration**

### **8 Commissioner of tobacco products licensing**

- (1) The commissioner of tobacco products licensing shall be the person from time to time holding the office of the Commissioner of State Revenue appointed under the *Taxation Administration Act 2001*.
- (4) The commissioner may by signed written notice delegate to an appropriately qualified officer of the public service employed in the administration or execution of this Act all or any of the commissioner's powers or functions under this Act, except the commissioner's power of delegation.
- (5) A delegation under subsection (4) may be revoked at any time by the commissioner.
- (6) A power or function, the exercise or performance of which has been delegated under this section may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the terms of the delegation by the delegate.
- (7) A delegation under this section may be made subject to such conditions or such limitations as to the exercise or performance of any of the powers or functions delegated, or as to time or circumstance, as may be specified in the instrument of delegation.

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- (8) Notwithstanding the provisions of subsection (4) or any delegation made under this section, the commissioner may continue to exercise or perform all or any of the powers or functions conferred or imposed on the commissioner by this Act.
- (9) Any act or thing done or suffered by an officer of the public service while acting in the exercise of a delegation under this section, shall have the same force and effect as if the act or thing done had been done or suffered by the commissioner.

## **Part 3                      Business groups**

### **9                      Membership of a group**

- (1) For the purposes of this Act, a person is a member of a group if—
  - (a) that person is 1 of the persons who constitute a group as prescribed; and
  - (b) there is not in force a determination under subsection (2) or (4) by the commissioner to the effect that such person is not a member of the group.
- (2) The commissioner may determine in writing that a person—
  - (a) who would, but for the determination, be a member of a group for the purposes of this Act; and
  - (b) who in the commissioner’s opinion—
    - (i) has continuously carried on and will continue to carry on the business of selling tobacco independently of the group; and
    - (ii) is not subject to control by any other member of the group;is not a member of the group.

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- (3) The commissioner shall not make a determination under subsection (2) so as to exclude a person from a group if that person is or was on the date of the determination a corporation that, by reason of the Companies (Queensland) Code, section 7(5), is to be deemed for the purposes of that Code to be related to another corporation that is a member of that group.
  - (4) The commissioner may determine in writing that a person who would, but for the determination, be a member of a group for the purposes of this Act is not a member of any group for the purposes of this Act, if the commissioner is satisfied that the person is not carrying on and has no intention of carrying on the business of selling tobacco.
  - (5) A determination made under subsection (2) or (4) shall come into force at the time when it is made 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.
  - (6) Notice of a determination under subsection (2) or (4) shall be given by the commissioner to the person in respect of whom the determination is made and to every member of the group concerned who the commissioner considers to be carrying on tobacco wholesaling or tobacco retailing.
  - (7) The commissioner may at any time revoke a determination made under subsection (2) or (4).
  - (8) Notice of the revocation of a determination made under subsection (2) or (4) shall be given by the commissioner to the person in respect of whom the determination was made and to every member of the group who the commissioner considers to be carrying on tobacco wholesaling or tobacco retailing.

## **10 Grouping of corporations**

For the purposes of this Act, 2 corporations constitute a group if they are by reason of the Companies (Queensland) Code, section 7(5) to be deemed for the purposes of that Code to be related to each other.

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## 11 Grouping where employees used in another business

For the purposes of this Act, where—

- (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 1 or more of the employer's 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 referred to in paragraph (a); or
- (d) both or all of those other persons referred to in paragraph (b);

constitute a group.

## 12 Grouping of commonly controlled businesses

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

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businesses if that person has, or those persons have together, a controlling interest under any of the following paragraphs in 1 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 any of them, being directors or a director entitled to exercise a majority 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 may (whether directly or indirectly) exercise, control the exercise of, or substantially influence the exercise of, 50% or more 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 or not beneficially) 50% or more of the capital of the partnership; or
  - (ii) is, or are together, entitled (whether or not beneficially) to 50% or more 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 50% or more of

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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 the person is a trustee of a trust, the person 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 subsection (3) in a business, it shall be deemed to have a controlling interest in any other business in which another corporation which is, by reason of the Companies (Queensland) Code, section 7(5), to be deemed for the purposes of that Code to be related to it, has a controlling interest.
- (5) Where—
- (a) a person has, or persons have together, a controlling interest under subsection (3) in a business; and
  - (b) the person or persons who carries or 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 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 50% or more of the value of the interests of that trust and the trustee or trustees of that trust has or have under subsection (3) a controlling interest in a business, that beneficiary or those beneficiaries shall, for the purposes of subsection (3), be deemed to have a controlling interest in that business.



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### **13 Small groups subsumed into larger groups**

- (1) Notwithstanding any other provision of this Act (except subsection (2)), where a person is, whether or not by virtue of this subsection, a member of 2 or more groups (each of which is in subsection (2) referred to as a smaller group), all of the members of those groups constitute, for the purposes of this Act, one group.
- (2) Except for the purpose of determining whether a group is constituted under subsection (1), a group that, but for this subsection, would be a smaller group ceases to be a group if its members are members of a group constituted under subsection (1).

### **14 Beneficiaries under discretionary trusts**

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 to the extent of 50% or more of the value of the interests in that trust shall be deemed, for the purposes of this Act, to be a beneficiary in respect of 50% or more of the value of the interests in that trust.

## **Part 4 Offences relating to sale of tobacco**

### **15 Selling without licence**

- (1) A person shall not sell tobacco—
  - (a) except under and in accordance with a licence; or
  - (b) unless the sale is exempt under subsection (2).

Maximum penalty—1650 penalty units or 5 years imprisonment.

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- (2) A sale of tobacco by a person is exempt from subsection (1) if—
  - (a) it is made in the course of tobacco retailing and the tobacco—
    - (i) was purchased from the holder of a licence; or
    - (ii) was previously purchased by another person from the holder of a licence; or
    - (iii) was purchased before 1 February 1989; or
  - (b) the sale is not made in the course of trade or business.
- (3) Where tobacco is sold on any premises in contravention of subsection (1) the occupier of the premises shall be deemed to have sold the tobacco, unless—
  - (a) the sale took place without the occupier's knowledge or connivance; and
  - (b) the occupier took all such steps as were reasonable in the circumstances to prevent the sale being made.

## **16 Wholesaling and retailing without licence**

- (1) A person shall not, carry on tobacco wholesaling except under and in accordance with a tobacco wholesaler's licence or a group tobacco wholesaler's licence.  
Maximum penalty—1650 penalty units or 5 years imprisonment.
- (2) A person shall not purchase tobacco in the course of tobacco retailing—
  - (a) except under and in accordance with a retail tobacconist's licence or a group retail tobacconist's licence; or
  - (b) unless the purchase is exempt under subsection (3).Maximum penalty—1650 penalty units or 5 years imprisonment.

- (3) A purchase of tobacco by a person is exempt from subsection (2) if—
- (a) the purchase is made from the holder of a licence; or
  - (b) the tobacco was previously purchased by another person from the holder of a licence.

## **17 Employee's defence to charges**

- (1) A person is not guilty as an employee of an offence defined in section 15(1) or 16(1) or (2) if the person proves that the person acted under an honest and reasonable belief that—
- (a) where the offence is one defined in section 15(1)—the selling took place under and in accordance with a licence or was exempt;
  - (b) where the offence is one defined in section 16(1)—the tobacco wholesaling took place under and in accordance with a licence;
  - (c) where the offence is one defined in section 16(2)—the tobacco retailing took place under and in accordance with a licence or the purchase was exempt.
- (2) The provisions of the Criminal Code, section 24 do not apply to an offence referred to in subsection (1).

## **18 Use of unlicensed premises**

A licensee shall not carry on tobacco wholesaling or tobacco retailing on premises that are not specified in the licensee's licence as premises to be used for that purpose.

Maximum penalty—100 penalty units or 1 year's imprisonment.

## **Part 5                      Licences**

### **19        Kinds of licences**

A licence shall be 1 of the following—

- (a) a tobacco wholesaler's licence;
- (b) a group tobacco wholesaler's licence;
- (c) a retail tobacconist's licence;
- (d) a group retail tobacconist's licence.

### **20        Applications for licences**

(1) Application may be made, to the commissioner in the approved form, for—

- (a) a tobacco wholesaler's licence—by any person other than a member of a group; and
- (b) a group tobacco wholesaler's licence—by any member of a group on behalf of all or any of the members of the group; and
- (c) a retail tobacconist's licence—by any person other than a member of a group; and
- (d) a group retail tobacconist's licence—by any member of a group on behalf of all or any of the members of the group.

(2) Upon receiving an application under subsection (1), the commissioner may, subject to this Act—

- (a) issue a licence; or
- (b) refuse to issue a licence;

to the applicant.

(2A) The commissioner may require an applicant for a licence to provide such further information in relation to the application as the commissioner considers appropriate.

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- (2B) Where a natural person applies for the issue of a licence, the commissioner—
- (a) where the application is made in accordance with this Act and, in the opinion of the commissioner, the applicant—
    - (i) is a fit and proper person to hold a licence;
    - (ii) will not conduct the business of selling tobacco on behalf of any person other than another licensee;
    - (iii) has adequate knowledge and experience to undertake the business of selling tobacco in an efficient, honest and fair manner;is to issue the licence;
  - (b) in any other case—is to refuse to issue the licence.
- (2C) Where a corporation applies for the issue of a licence, the commissioner—
- (a) where the application is made in accordance with this Act and, in the opinion of the commissioner, each director or officer (by whatever name called) concerned in the management of the applicant—
    - (i) is a fit and proper person to conduct, on behalf of the applicant, the business of selling tobacco;
    - (ii) has adequate knowledge and experience to undertake in an efficient, honest and fair manner, on behalf of the applicant, the business of selling tobacco;is to issue the licence;
  - (b) in any other case—is to refuse to issue the licence.
- (2D) In determining whether an applicant is a fit and proper person to hold a licence, the commissioner is to consider amongst other things whether or not the applicant (where the applicant is a natural person) or each director or officer (by whatever name called) concerned in the management of the applicant (where the applicant is a corporation), as the case may be—

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- (a) is an undischarged bankrupt or is taking advantage of the laws relating to bankruptcy;
  - (b) has made any false or misleading statement in the application and whether that person knew when the statement was made that it was false or misleading in a material particular;
  - (c) has omitted to disclose or has not fully disclosed information that is relevant to the application;
  - (d) has been convicted in Queensland of an indictable offence (whether on indictment or by summary proceeding) or elsewhere than in Queensland in respect of an act or omission that if it occurred in Queensland would have constituted an indictable offence;
  - (e) has been convicted in Queensland of an offence against this Act or has been convicted in another State or Territory of an offence against a law of that State or Territory that corresponds to this Act.
- (3) In the case of an applicant for a group licence—
- (a) the commissioner may issue a licence to each member of the group; and
  - (b) the licence shall specify the name of each person who is a member of the group.
- (4) The commissioner shall not issue a licence unless the appropriate prescribed fee has been paid to the commissioner or, with the commissioner's approval, is being paid to the commissioner in instalments.

## **21 Licensed premises to be specified**

- (1) A licence shall specify all the premises that are to be used for or in connection with the business that may be carried on under the authority of the licence.
- (2) If premises not specified in a licence are to be used for or in connection with such business or premises specified in a

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licence as premises to be used for or in connection with such business cease to be so used the licensee—

- (a) shall give a notice in the approved form to the commissioner; and
- (b) shall produce his or her licence to the commissioner with the notice;

and the commissioner shall amend the licence accordingly.

## **22 Duration of licence**

- (1) Each licence of those first issued following the passing of this Act shall commence on 1 February 1989.
- (1A) Each licence issued thereafter—
  - (a) if it is applied for after the first day of a calendar month and it is sought to commence the licence in that month—may be issued so as to commence on a day specified in the licence;
  - (b) in any other case—shall commence on the first day of the calendar month specified in the licence for its commencement.
- (2) A licence shall cease to be in force upon its expiry on the last day of the calendar month in which it commenced, subject, however, to section 23(5).
- (3) A licence shall cease to be in force, if the licensee surrenders it to the commissioner with intent that it should cease to be in force.

## **23 Renewal of licences**

- (1) A renewal of a licence shall commence on the first day of the calendar month specified in the licence for commencement of the renewal.
- (2) A licensee who wishes to renew his or her licence shall, at least 5 business days before the licence expires, apply to the

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commissioner for the renewal of the licence for a further period of 1 month.

- (3) A person to whom subsection (2) applies who fails to comply with the subsection commits an offence against this Act.

Maximum penalty—40 penalty units.

- (4) Upon receiving an application for renewal of a licence the commissioner may, if the appropriate prescribed fee has been paid to the commissioner or, with the commissioner's approval, is being paid to the commissioner in instalments, renew the licence for a further period of 1 month.
- (4A) Section 20(2) to (2D) applies to applications for the renewal of licences as if those applications were applications for licences in the first instance.
- (5) If a licensee has applied for a renewal of his or her licence before the licence expires and has paid the prescribed fee but the commissioner has not renewed the licence or otherwise made a decision in respect of the licensee's application before the licence expires, the licence shall be deemed to have continued in force until the commissioner has made a determination in respect of renewal of the licence but in no case shall such continuance in force exceed a period of 1 month.

## **24 Fees**

- (1) The fees to be paid for the issue of a licence or for a renewal of a licence are as follows—
- (a) for a tobacco wholesaler's licence—an amount equal to 100% of the value of tobacco sold by the applicant during the relevant month (other than tobacco sold to the holder of a tobacco wholesaler's licence or a group tobacco wholesaler's licence);
- (b) for a group tobacco wholesaler's licence—an amount equal to 100% of the value of tobacco sold by all members of the group during the relevant month (other



- than tobacco sold to the holder of a tobacco wholesaler's licence or a group tobacco wholesaler's licence);
- (c) for a retail tobacconist's licence—an amount equal to 100% of the value of tobacco purchased by the applicant in the course of tobacco retailing during the relevant month (other than tobacco purchased from the holder of a tobacco wholesaler's licence, a group tobacco wholesaler's licence, a retail tobacconist's licence or a group retail tobacconist's licence for the purposes of resale);
  - (d) for a group retail tobacconist's licence—an amount equal to 100% of the value of tobacco purchased by the applicant in the course of tobacco retailing during the relevant month (other than tobacco purchased from the holder of a tobacco wholesaler's licence, a group tobacco wholesaler's licence, a retail tobacconist's licence or a group retail tobacconist's licence for the purposes of resale).
- (2) The fee to be paid for the issue of a licence, or for the renewal of a licence, for or in the licence period December 1996 is the fee applicable for the licence on and from 1 December 1996.
- (4) Where an application is made for a licence and tobacco wholesaling or tobacco retailing was not carried on by the applicant during the relevant month or was carried on by the applicant for only part of that month, 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—
- (a) the tobacco that would in the opinion of the commissioner have been handled by the applicant in the course of business, had the applicant been carrying on the business in respect of which the application for the licence was made during the relevant month; and
  - (b) the relevant principles of determining fees under subsection (1); and

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- (c) where the application is made in respect of a licensing period that is less than 1 month—the period that the licence will be in force.

## **24A Fees for November 1996**

- (1) Despite section 24, the fee to be paid for the issue of a licence, or for the renewal of a licence, for the licence period November 1996 is as follows—
  - (a) for a tobacco wholesaler's licence—the sum of the amount equal to 75% of the value of tobacco sold by the applicant during the first period and the amount equal to 100% of the value of tobacco sold by the applicant during the second period;
  - (b) for a group tobacco wholesaler's licence—the sum of the amount equal to 75% of the value of tobacco sold by all members of the group during the first period and the amount equal to 100% of the value of tobacco sold by all members of the group during the second period;
  - (c) for a retail tobacconist's licence—the sum of the amount equal to 75% of the value of tobacco purchased by the applicant in the course of tobacco retailing during the first period and the amount equal to 100% of the value of tobacco purchased by the applicant in the course of tobacco retailing during the second period;
  - (d) for a group retail tobacconist's licence—the sum of the amount equal to 75% of the value of tobacco purchased by the applicant in the course of tobacco retailing during the first period and the amount equal to 100% of the value of tobacco purchased by the applicant in the course of tobacco retailing during the second period.
- (2) This section applies whether the licence is issued before or after the commencement.
- (3) In this section—

*first period* means the period from and including the first day to and including the tenth day of September 1996.

*second period* means the period from and including the eleventh day to and including the last day of September 1996.

*tobacco purchased* does not include tobacco purchased from the holder of a tobacco wholesaler's licence, a group tobacco wholesaler's licence, a retail tobacconist's licence or a group retail tobacconist's licence for the purposes of resale.

*tobacco sold* does not include tobacco sold to the holder of a tobacco wholesaler's licence or a group tobacco wholesaler's licence.

## **25 Value of tobacco**

- (1) The Minister may from time to time determine the basis upon which and the means by which a value is to be attributed to tobacco during any relevant month.
- (2) The value so attributed to any product is, for the purposes of this Act, the value of tobacco.

## **26 Sales to interstate purchasers**

If—

- (a) tobacco sold in Queensland is subsequently resold in another State or Territory; and
- (b) by virtue of the resale of the tobacco in the other State or the Territory, a person has paid a fee under a law of that State or Territory that corresponds to this Act;

the commissioner shall refund, to the person who paid it any fee paid to the commissioner under this Act in respect of the sale of the tobacco in Queensland.

## **27 Adjustment of fee**

- (1) 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 in accordance with the principles of assessing fees under section 24.

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- (2) Where on a reassessment of a fee under subsection (1) the fee is reduced, the amount overpaid shall be refunded by the commissioner in accordance with the provisions of subsections (3) to (4A).
- (3) Where—
- (a) during the whole of the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by 1 person—the amount to be refunded shall be refunded to that person; or
  - (b) during the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by different persons for different parts of the period—the amount to be refunded shall be refunded to those persons in proportion to the number of days in the period for which each held the licence.
- (4) Notwithstanding subsection (3), in a case where—
- (a) the licence has not ceased to be in force; and
  - (b) the commissioner has authorised the applicant to pay the licence fee by instalments; and
  - (c) 1 or more of the instalments is yet to become due and payable; and
  - (d) the instalments paid do not exceed the amount of the fee as reassessed;

a refund shall not be made to the holder of the licence in accordance with subsection (3)(a) or (b), but in that case each of the remaining instalments payable in respect of the licence shall be reduced by an amount that bears to the amount that, but for this subsection, would be required to be refunded to that holder under subsection (3) the same proportion as 1 bears to the number of those remaining instalments.

- (4A) However, where the amount that would be required to be refunded exceeds the aggregate amount of the remaining

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instalments the excess shall be refunded in accordance with subsection (3)(a) or (b), whichever is appropriate.

- (5) Where, on a reassessment of a fee under subsection (1), the fee is increased, the additional amount payable by virtue of the reassessment shall be due and payable in accordance with the provisions of subsections (6) and (7).
- (6) For the purposes of subsection (5) where—
- (a) during the whole of the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by 1 person—the additional amount shall be due and payable within 14 days after notice of the reassessment is served on that person; or
  - (b) during the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by different persons for different parts of the period the additional amount shall be due and payable—within 14 days after notice of the reassessment is served on them, by those persons in proportion to the number of days in the period for which each held the licence;

unless, in respect of that additional amount or any part of that additional amount so due and payable by that person or any of those persons, approval has been given under subsection (7) for the payment of that amount or part by instalments.

- (7) A person by whom any additional amount or part is payable under subsection (6) may, within 14 days after the service on the person of notice of the reassessment by virtue of which the additional amount or part became so payable by the person, apply to the commissioner for approval to pay that amount or part by instalments, and if the commissioner approves of the amount or part being so paid, it shall be due and payable by that person by such instalments payable at such times as are specified in the instrument of the commissioner's approval.

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- (8) For the purposes of making the apportionment referred to in subsection (3)(b) or (6)(b), where the licence has not ceased to be in force, the period, in days, for which the licensee who is the holder of the licence at the time of the reassessment has held the licence together with the unexpired period, in days, of the licence shall be deemed to be the period for which that licensee held the licence.

### **27A Rounding down amounts**

If an amount payable under this Act is not a multiple of 5c, the commissioner may reduce the amount to the nearest amount that is a multiple of 5c.

### **27AA Refund of fees**

- (1) The commissioner may refund a fee paid by a person only if the commissioner is satisfied—
- (a) that the person has not received, and will not receive, an amount from someone else for any part of the fee; or
  - (b) if the person has received an amount from someone else for any part of the fee—the person will reimburse, or will take reasonable steps to reimburse, the other person for the amount received.
- (2) If subsection (1)(b) applies to the person—
- (a) the person must—
    - (i) within 90 days after receiving the refund (the *relevant period*), reimburse the other person for the amount received from the other person (the *received amount*); and
    - (ii) within 7 days after the relevant period, give the commissioner written notice that the other person has been reimbursed for the received amount; and
  - (b) if the other person is not reimbursed for the received amount within the relevant period—the person must, within 7 days after the relevant period—

- (i) give the commissioner written notice that the other person was not reimbursed for the received amount; and
- (ii) pay the commissioner the received amount plus interest at the rate of 20% a year calculated from the day the refund was made.

Maximum penalty—50 penalty units.

- (3) If the person does not pay the received amount under subsection (2)(b)(ii), the person must also pay the commissioner interest at the rate of 20% a year calculated from the end of the 7 days mentioned in subsection (2)(b) to the day the received amount is paid.
- (4) An amount payable under subsection (2)(b)(ii) or (3) is a debt payable by the person to the State.
- (5) In this section—

*fee* means a fee under, or purportedly under, this Act.

*part*, of a fee or other amount, includes the whole of the fee or amount.

*pay* a fee means pay the fee voluntarily or under compulsion (whether or not the fee is paid under a mistake of law or fact), and includes recover the fee by legal proceeding.

*receive* an amount for a part of a fee includes obtain a part of the amount through the price charged for goods either in anticipation of a fee to be paid or after the fee is paid.

## **28 Amendment of group licence**

- (1) If during any period when a group licence is in force the composition of the group alters, every member of the group as so altered shall without delay furnish to the commissioner full information to the satisfaction of the commissioner concerning the alteration and shall produce the member's licence to the commissioner for amendment.

Maximum penalty—40 penalty units or 3 months imprisonment.

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- (2) On receipt of information and upon production of a licence in accordance with subsection (1), the commissioner may amend the licence and return it to the holder.

### **30 Register of licensees**

- (1) The commissioner shall cause to be kept a register of licensees.
- (2) The register shall be available at the office of the commissioner for inspection by members of the public during ordinary office hours.

## **Part 6 Objections and appeals**

### **31 Objections**

- (1) A person who is dissatisfied with the assessment of any fee by the commissioner, including a fee under section 44, or with a decision made by the commissioner in the exercise of a discretion conferred on the commissioner by section 20 or 23, may within 30 days after being informed of the assessment or decision send by post to, or lodge with, the commissioner an objection in writing stating fully and in detail the grounds upon which the person relies.
- (2) Notwithstanding subsection (1), a person who is dissatisfied with the reassessment of any fee by the commissioner, including a fee under section 44, made upon an objection by that person to the original assessment of the fee, shall have no further right of objection except to the extent that, by reason of the reassessment, that person has incurred an increased or a fresh liability.
- (3) The commissioner shall consider the objection and—
  - (a) if the objection relates to an exercise of discretion under section 20 or 23—either allow it, or disallow it; or



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- (b) if the objection relates to an assessment—either disallow it, or allow it wholly or in part.
  - (4) The fact that an objection has been made with respect to any assessment shall not, pending a decision on the objection, interfere with or affect the assessment the subject of the objection, and the fee may be recovered as if no objection were awaiting determination.
  - (5) If a person's assessment has been reduced by the commissioner after considering an objection, the commissioner shall refund to the person any amounts paid by the person in excess of the amount of the reassessment.
  - (6) The commissioner shall serve on the objector written notice of the commissioner's decision on the objection to an assessment.
  - (7) The liability to pay a prescribed fee before the issue of a licence is not deferred by reason that an objection is made to an assessment.

## **32 Appeals**

- (1) A person who is aggrieved by a decision of the commissioner on an objection made by the person under section 31, may, within 30 days after service on the person of notice of that decision, in writing request the commissioner to treat the person's objection as an appeal and to forward it to the Supreme Court, and the commissioner shall, as soon as is practicable, forward it accordingly.
- (2) An appeal made in accordance with subsection (1) shall be forwarded to, and shall be heard and determined by, the Supreme Court in accordance with rules of court.
- (3) On appeal—
  - (a) the objector shall be limited to the grounds stated in his or her objection; and
  - (b) the burden of proving that an assessment objected to is excessive lies on the objector.

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- (4) If the person's liability or assessment has been reduced on objection, the reduced liability or assessment shall be the liability or assessment appealed against.

### **33 Pending appeal not to delay payment of fee**

- (1) The fact that an appeal is pending with respect to any assessment shall not defer the liability to pay the assessment the subject of the appeal, and the fee may be recovered as if no appeal were pending.
- (2) If the assessment is altered on appeal, an appropriate adjustment shall be made, for which purpose amounts paid in excess shall be refunded, and amounts short paid shall be recoverable as arrears.

## **Part 7 Enforcement powers**

### **34 Powers of investigation**

- (1) The commissioner may, for the purposes of this Act, authorise in writing an officer engaged in the administration of this Act to be an investigating officer.
- (2) An investigating officer may—
  - (a) conduct inquiries for the purposes specified in subsection (3); and
  - (b) exercise the powers specified in subsection (4) when conducting those inquiries.
- (3) An investigating officer may conduct inquiries—
  - (a) into any matter arising in connection with the administration of this Act;
  - (b) for the purpose of facilitating the assessment of the fee payable by a licensee or the fee to be paid by a person required to be licensed under this Act, or both;

- (c) for the purpose of ascertaining whether a person is required to comply with this Act in any respect or has complied with this Act in every respect.
- (4) Subject to section 35, an investigating officer may, at all reasonable times, exercise the following powers for a purpose specified in subsection (3)—
- (a) to enter and search any premises on which, or on which the officer reasonably suspects, there is any relevant material and, in a case where the premises are a vehicle, vessel or aircraft, stop and detain and give directions as to the movement thereof;
  - (b) to break open and search any package or receptacle in the premises entered;
  - (c) to secure any relevant material against interference, or seize any relevant material and deliver it to the commissioner or a person authorised by the commissioner to receive it;
  - (d) to request any person found on the premises entered to produce any relevant material which at the time of the request is in the possession, under the control, or at the order or disposition, of that person;
  - (e) to require a person to furnish the officer with such information, orally or in writing, as the officer reasonably believes to be within the knowledge or possession of that person and to be relevant to such purpose;
  - (f) if any account, record, book or document to which an investigating officer has access or any account, record, book or document or information produced or furnished to the officer or required by the officer under paragraph (d) or (e) to be produced or furnished to the officer—
    - (i) is not in writing or on paper; or
    - (ii) is not written in the English language; or
    - (iii) is not decipherable on sight;

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- to require the person who has knowledge, custody or control of that information or that record, to produce a statement on paper in the English language and decipherable on sight setting out the information or the contents of that account, record, book or document;
- (g) to make and take away copies of, or extracts or notes from, any account, record, book or document or information furnished in accordance with paragraph (c), (d) or (e) or a statement produced in accordance with paragraph (f);
- (h) to require a person to answer any question relating to—
- (i) any relevant material produced, or required to be produced, in accordance with paragraph (c) or (d); or
  - (ii) any information furnished or required to be furnished in accordance with paragraph (e); or
  - (iii) any statement produced or required to be produced in accordance with paragraph (f);
- (i) to require any person having relevant connection with the investigation to provide the officer and all persons acting in aid of the officer with all reasonable facilities and assistance for the effective conduct of the investigation.
- (5) An investigating officer is entitled to inspect and take copies of or extracts from any public record kept under an Act or law of Queensland without payment of any fee that would be payable but for this section.
- (6) Where the commissioner considers that it would be desirable, for the effective administration of this Act in respect of the conduct of inquiries into a particular matter for a purpose specified in subsection (3), the commissioner may authorise a police officer to conduct those inquiries and the police officer so authorised shall for the purposes of the inquiry into that matter and for the purposes of this Act be deemed to be an investigating officer.

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- (7) In the exercise of a power conferred on the officer by this section an investigating officer may use such force as is necessary.
- (8) In this section—  
*relevant material* means—
- (a) any account, record, book or document—
    - (i) that will, or is reasonably believed to, afford evidence of the commission of an offence against this Act; or
    - (ii) that is, or is reasonably suspected to be, relevant to the assessment of a licence fee under section 24 or 27 or a fee under section 44;
  - (b) any tobacco that—
    - (i) is reasonably suspected to be the subject of an offence or an intended offence against this Act or is on premises that are reasonably suspected to be used in contravention of section 18;
    - (ii) is on any premises on which there is tobacco of a description specified in subparagraph (i).
- (9) A person is not excused from producing any account, record, book or document under subsection (4)(d) on the ground that it contains information that might tend to incriminate the person or make the person liable to a penalty or forfeiture.

### **35 Restriction on entry to investigate**

- (1) An investigating officer who has entered upon land or any premises in the exercise of a power conferred by section 34(4) is not authorised to remain thereon if, on request by the occupier thereof, that officer does not produce a certificate purporting to be issued by the commissioner stating that the officer is an officer authorised by the commissioner, pursuant to section 34(1), to exercise the powers specified in section 34(4) for the conduct of inquiries for the purposes specified in section 34(3).

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- (2) An investigating officer and any person acting in aid of the officer shall not enter into a dwelling house for the purposes of an investigation under this Act unless—
  - (a) the occupier thereof has consented to the entry; or
  - (b) the officer or person has first obtained, and produces upon the occupier's request, a warrant that authorises the entry.
- (3) Upon the information of an investigating officer that the officer reasonably suspects that there are in any dwelling house records or other things that make it desirable that entry be made into the dwelling house for the purposes of an investigation under this Act, a stipendiary magistrate may issue a warrant, in the approved form, directed to the informant and all persons acting in aid of the officer authorising him, her and them to enter into the dwelling house at all reasonable times for the purpose of conducting his, her or their inquiries under this Act.
- (4) A person to whom a warrant issued under subsection (3) is directed is authorised to enter from time to time the dwelling house specified in the warrant as often as the person thinks such entry to be necessary or desirable for the purposes of the inquiry under this Act for which the warrant was issued.
- (5) In this section—

*dwelling house* includes any part of a building used exclusively as a dwelling, but does not include the curtilage of any building.

### **36 Obstruction etc. of an investigating officer**

A person who—

- (a) obstructs or hinders an investigating officer, or any person acting in aid of such an officer, in the exercise of a power conferred by section 34; or
- (b) fails to comply with a requirement made of the person under section 34; or

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(c) knowingly fails to give effect to section 34(5);  
commits an offence against this Act.

Maximum penalty—40 penalty units or 3 months imprisonment.

### **37 False or misleading statements**

(1) A person shall not give an answer, whether orally or in writing, to a question put to the person by an investigating officer in connection with an inquiry being conducted under this Act, that is false or misleading in a material particular.

Maximum penalty—100 penalty units or 1 year's imprisonment.

(2) A person shall not, in furnishing information to an investigating officer for the purpose of an inquiry being conducted under this Act, make any statement or representation that is false or misleading in a material particular.

Maximum penalty—100 penalty units or 1 year's imprisonment.

(3) It is a defence to a charge of an offence under subsection (1) or (2) to prove that, when the answer, statement or representation was given or made, the defendant believed on reasonable grounds that it was neither false nor misleading.

(3A) The provisions of the Criminal Code, section 24 do not apply to such an offence.

(4) Where a requisition made under section 34(4) is directed to a body corporate that fails to comply with it, each of them, the chairperson of directors, managing director or other governing officer, by whatever name called, and every member of the governing body, by whatever name called, shall be deemed to have failed to comply with that requisition and to have committed an offence against this Act and shall be liable to be proceeded against and punished accordingly.

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- (5) It is a defence to a charge of an offence against this Act brought against a person specified in subsection (4) to prove that the offence was committed without that person's knowledge or connivance and that the person could not by due diligence have prevented the commission of the offence.

### **38 Disposal of tobacco seized**

- (1) Where tobacco is seized under section 34(4)(c), it may, subject to this section, be retained by the commissioner, or a person authorised by the commissioner, and held in such place as the commissioner directs.
- (2) As soon as is practicable after tobacco is seized, the commissioner shall give notice in writing of the seizure to every person in the State appearing to the commissioner to be a person who claims a financial interest in the tobacco.
- (3) A notice under subsection (2) shall set out the effect of this section.
- (4) A person who claims a financial interest in any tobacco referred to in subsection (1) may make a complaint to a justice for an order that the tobacco or any part thereof be released to the person.
- (5) An application under subsection (4) may be made at any time while the tobacco is in the possession of the commissioner, or a person authorised by the commissioner, and notwithstanding that an order is in force under subsection (6)(a).
- (6) A stipendiary magistrate shall hear and determine the complaint and may order that the tobacco to which the complaint relates, or any part of that tobacco, be either—
- (a) retained by the commissioner, or a person authorised by the commissioner, for the purpose of investigation and disposal under subsection (8) or (9); or
  - (b) released to the complainant or a person appearing to be entitled to possession of it, and may impose any conditions to be complied with by a person referred to in



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paragraph (b) before the tobacco is released to the person or while it is in the person's possession under the order.

- (7) A stipendiary magistrate shall not make an order under subsection (6)(b) unless the magistrate is satisfied that the purposes of subsection (9) would not be defeated by the order.
- (8) If no person is convicted of an offence against section 15(1) or 16(1) or (2) in relation to tobacco seized under section 34(4)(c), the commissioner shall release the tobacco to the person or persons appearing to the commissioner to be entitled to possession of it.
- (9) If a person is convicted of an offence against section 15(1) or 16(1) or (2) in relation to tobacco held under subsection (1) or under an order made under subsection (6)(b), the court shall order that the tobacco that is the subject of the offence be forfeited to the Crown.
- (10) Where any tobacco is forfeited to the Crown under this section it shall be dealt with as the Minister directs.

### **39 Power of commissioner to require information**

- (1) The commissioner may, by notice in writing, require any person—
  - (a) to furnish the commissioner with such information as the commissioner requires; or
  - (b) to attend and give evidence before the commissioner or before any officer of the public service employed in the administration or execution of this Act and authorised by the commissioner in that behalf;

for the purpose of inquiring into or ascertaining his, her or any other person's liability or entitlement under any of the provisions of this Act, and may require the person to produce all books, documents and other papers whatsoever in the person's custody or under the person's control relating thereto.

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- (2) The commissioner may require the information or evidence to be given on oath or affirmation, orally or in writing, or to be given by statutory declaration and for that purpose the commissioner or the authorised officer referred to in subsection (1)(b) may administer the oath or take the affirmation.
- (3) The regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.
- (4) Any person who fails to comply with any requirement of the commissioner made of the person under this section commits an offence against this Act.

Maximum penalty—400 penalty units.

- (5) It is a defence to a charge of an offence defined in subsection (4) that consists in a failure to furnish information if the defendant proves to the satisfaction of the court that the defendant did not have knowledge of, and could not with reasonable diligence have ascertained or obtained, the information.
- (6) A person is not excused from furnishing any information or producing any book, document or other paper if required to do so under subsection (1) on the ground that the information, or any information in the book, document or paper, might tend to incriminate the person or make the person liable to a penalty or forfeiture; but the information or contents of the book, document or paper shall not be admissible in proceedings under this Act against that person, other than proceedings for the recovery of any fee under section 24, 27 or 44 or an appeal under section 32.

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## Part 8                      Miscellaneous

### 40      **Accounts etc. to be kept**

- (1) A person who carries on tobacco retailing or tobacco wholesaling shall—
- (a) keep such accounts, records, books and documents as are prescribed, containing such particulars as are prescribed; and
  - (b) preserve each of those accounts, records, books and documents for a period of 5 years after the last entry is made therein.

Maximum penalty—1650 penalty units.

- (2) The holder of a tobacco wholesaler's licence or a group tobacco wholesaler's licence—
- (a) shall issue an invoice in relation to each sale of tobacco by the licensee for the purpose of resale; and
  - (b) shall number each such invoice consecutively in order of issue; and
  - (c) shall make a copy of each such invoice and shall preserve it for a period of not less than 5 years after it is made.

Maximum penalty—1650 penalty units.

- (3) The holder of a retail tobacconist's licence or a group retail tobacconist's licence—
- (a) shall obtain an invoice in respect of each purchase of tobacco by him or her; and
  - (b) shall preserve a copy of each such invoice for a period of not less than 5 years after the purchase was made.

Maximum penalty—1650 penalty units.

- (4) This section shall not apply so as to require the preservation of any books, accounts or documents—

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- (a) in respect of which the commissioner has certified that preservation is not required; or
- (b) of a company that has gone into liquidation and has been finally dissolved.

#### **41 Invoices to be endorsed**

The holder of a tobacco wholesaler's licence or group tobacco wholesaler's licence shall endorse on every invoice issued by the holder in relation to the sale of tobacco the words 'Sold by licensed wholesaler—Licence No. ' to include the number of the licence.

Maximum penalty—1650 penalty units.

#### **42 False representations on invoices**

A person shall not issue an invoice in relation to the sale of tobacco—

- (a) which bears the words 'Sold by licensed wholesaler' (or words of like import), unless the person is the holder of a tobacco wholesaler's licence or a group tobacco wholesaler's licence; or
- (b) which, in a manner suggestive of compliance with section 41, bears an incorrect or fictitious licence number.

Maximum penalty—1650 penalty units or 5 years imprisonment.

#### **43 Disclosure of information**

(1) Except as provided by this section or the *Revenue Laws (Reciprocal Powers) Act 1988*, a person shall not disclose information or publish a record obtained by the person or another person in connection with the administration of this Act, unless the disclosure or publication is made—

- (a) with the consent (express or implied) of the person to whose affairs the information or record relates; or

- (b) in connection with the administration of this Act; or
- (c) for the purposes of any legal proceedings (including any report thereon) arising out of this Act.

Maximum penalty—100 penalty units or 6 months imprisonment.

- (2) The commissioner may, if the commissioner is of the opinion that it is necessary to do so for the purpose of enforcing a law that is designed to protect the public revenue of Queensland, disclose information or publish a record referred to in subsection (1) to persons as is necessary to enable those persons to exercise or perform a power or duty conferred or imposed on those persons by law.
- (3) A person shall not disclose information or publish a record communicated to the person under subsection (2) unless the disclosure or publication—
  - (a) is made with the consent of the commissioner; and
  - (b) is to enable a person to exercise or perform, for the purpose referred to in subsection (2), a power or duty conferred or imposed on the person by law.

Maximum penalty—100 penalty units or 6 months imprisonment.

- (4) Neither the commissioner nor an officer engaged in the administration of this Act nor a person authorised by the commissioner to represent the commissioner shall be required to produce in court any application, statement, requisition, assessment, notice or any other document or to disclose to a court the fact that he or she has received any information or the nature thereof or the name of the person who gave such information on any matter or thing coming under his or her notice in the performance of his or her duties under this Act, except when it is necessary to do so for the purposes of the administration of this Act.
- (5) Subsection (1) does not apply to information or a record obtained for the purposes of this Act under a corresponding law within the meaning of the *Revenue Laws (Reciprocal Powers) Act 1988*.

[s 44]

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#### **44 Recovery of fees from unlicensed persons**

- (1) Where a person is required by this Act to hold a licence in respect of any period but does not do so, that person is liable to pay to the commissioner a fee equal to 3 times the fee that would have been payable if the person had applied for and been issued with a licence in accordance with this Act.
- (2) The commissioner may assess the fee referred to in subsection (1) as if the person had applied for a licence, and an assessment shall be for the period in respect of which the person was required by this Act to hold a licence and had failed to do so or for 5 years, whichever is less.
- (3) The provisions of section 24(4) apply for the purpose of making the assessment referred to in subsection (2).
- (4) As soon as is practicable after an assessment is made under subsection (2), notice of the assessment shall be served by the commissioner on the person assessed.

#### **45 Recovery of fees**

- (1) Fees payable under this Act for licences are debts due to the Crown and payable to the commissioner.
- (2) Any licence fees unpaid may be sued for and recovered in any court of competent jurisdiction by the commissioner suing in the commissioner's official name.
- (3) A fee payable under this Act for a group licence is a debt due jointly and severally by every person who is a member of the group during the period for which the licence is issued.
- (4) This section applies to a fee under section 44 as it applies to licence fees.

#### **46 Liability of directors etc. where offence committed by corporation**

- (1) Where an offence is committed against section 15(1) or 16(1) or (2) by a body corporate, every director of the body

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corporate is jointly and severally liable with the body corporate and every other director for the payment of—

- (a) any fine imposed on the body corporate for the offence; and
  - (b) a fee that is payable under section 44.
- (2) In subsection (1)—  
*director* includes any officer (by whatever name called) concerned in the management of the body corporate.
- (3) Nothing in this section affects the operation of the Companies (Queensland) Code, section 556.

#### **47 Offences**

- (1) A person who makes or delivers an application or other document that is false in any particular or makes a false answer, orally or in writing, to any question duly put to the person by the commissioner or any officer duly authorised by the commissioner commits an offence against this Act.

Maximum penalty—400 penalty units or 5 years imprisonment.

- (2) A person who in furnishing any information, giving any notice or keeping any record required by or under this Act to be kept makes or causes to be made any statement or representation that is false or misleading in a material respect commits an offence against this Act.

Maximum penalty—400 penalty units or 5 years imprisonment.

- (3) Where a licensee is convicted of an offence against this section the licensee's licence shall cease to have effect.

#### **48 Evidence of matters certified**

A certificate purporting to be that of the commissioner certifying any 1 or more of the following matters, that is to say—

[s 49]

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- (a) that a person specified in the certificate was or was not duly authorised to exercise a specified function of the commissioner at a time or during a period so specified;
- (b) that a person so specified was or was not the holder of a licence at any time or during a period so specified;

is admissible in any proceedings under this Act as evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

#### **49 Notices of assessment**

- (1) In any proceedings under this Act or for the recovery of any amount due and payable under this Act—
  - (a) a notice of assessment of a fee; or
  - (b) a document purporting to be certified by the commissioner to be a copy of such a notice;

is admissible evidence of the due making of the assessment and that the amount and all particulars of the assessment are correct.

- (2) The notice or copy is conclusive evidence of the matters of which it is admissible evidence, except in proceedings that are an appeal against the assessment, in which case it is prima facie evidence only.
- (3) In this section—  
*assessment* includes reassessment.

#### **50 Institution of proceedings**

- (1) Proceedings for an offence against this Act may be instituted in the official name of the commissioner by any officer of the public service employed in the administration or execution of this Act and authorised to institute proceedings on behalf of the commissioner, and any proceedings instituted in the name of the commissioner shall, in the absence of evidence to the contrary, be deemed to have been instituted by the commissioner's authority.



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- (2) An officer referred to in subsection (1) may appear on behalf of the commissioner in any proceedings for an offence against this Act.

## **51 Proceedings on prosecutions**

All proceedings for offences against this Act shall be taken in a summary manner under the *Justices Act 1888*, and may be commenced within 1 year after the commission of the offence or within 12 months after the offence comes to the knowledge of the complainant, whichever period is the later to expire.

## **52 Service of documents by the commissioner**

- (1) Any notice, form or other document required or authorised by this Act to be served or given by the commissioner shall be deemed to have been duly served or given—
- (a) if delivered personally to, or if left at the place of abode or business (in or out of the State) of the person on or to whom the notice, form or document is to be served or given that is last known to the commissioner; or
  - (b) if sent by prepaid letter post—addressed to the person on or to whom the notice, form or document is to be served or given at the person's place of abode or business (in or out of the State) that is last known to the commissioner.
- (2) The provisions of this section are in addition to and not in derogation of the provisions of the Companies (Queensland) Code, sections 528, 529 and 530.

## **53 Service of documents on the commissioner**

Any notice, summons, writ or other process and any return, application, notice, statement or form to be served on or given to the commissioner for the purposes of this Act may be served or given by being lodged at the office of the commissioner with an officer of the public service employed in the administration or execution of this Act and authorised

[s 53A]

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in writing by the commissioner to accept service of documents on the commissioner's behalf.

### **53A Approval of forms**

The commissioner may approve forms for use under this Act.

## **54 Regulations**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made for or about the following—
  - (b) records to be kept in respect of matters provided for by this Act;
  - (c) display of licences or duplicate licences on licensed premises;
  - (d) issue of duplicate licences;
  - (e) offences consisting in breaches of the regulations and penalties not exceeding 17 penalty units for any breach of the regulations.

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**Schedule 1      Relevant months for wholesale tobacco merchant's licences, retail tobacconist's licences and group tobacco licences**

section 4(1)

<b>Column 1 Licence period</b>	<b>Column 2 Sales period on which licence fee is based</b>
January	November
February	December
March	January
April	February
May	March
June	April
July	May
August	June
September	July
October	August
November	September
December	October

## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 March 2002. Future amendments of the Tobacco Products (Licensing) Act 1988 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	1995 Act No. 58	28 November 1995	15 December 1995
1A	1996 Act No. 48	1 December 1996	24 February 1997
1B	2001 Act No. 72	1 March 2002	1 March 2002

### 5 Tables in earlier reprints

Name of table	Reprint No.
Changed names and titles	1
Corrected minor errors	1
Obsolete and redundant provisions	1
Renumbered provisions	1

## 6 List of legislation

### **Tobacco Products (Licensing) Act 1988 No. 91**

date of assent 1 December 1988

ss 1–2 commenced on date of assent (see s 2(1))

remaining provisions commenced 15 December 1988 (see s 2(2) and proc pubd gaz 15 December 1988 p 1747)

amending legislation—

### **Corporations (Consequential Amendments) Act 1990 No. 99 s 3.1 sch**

date of assent 12 December 1990

ss 1.1–1.2 commenced on date of assent (see s 1.2(1))

remaining provisions commenced 1 January 1991 (see s 1.2(2) and proc pubd gaz 22 December 1990 p 2270)

### **Tobacco Products (Licensing) Act Amendment Act 1990 No. 102**

date of assent 12 December 1990

commenced on date of assent

### **Statute Law (Miscellaneous Provisions) Act 1992 No. 36 s 2 sch 1**

date of assent 2 July 1992

commenced on date of assent

### **Tobacco Products (Licensing) Amendment Act 1992 No. 53**

date of assent 30 November 1992

s 4(1) commenced 1 December 1992 (see s 2)

remaining provisions commenced on date of assent

### **Licensing Fees Legislation (Liquor and Tobacco Products) Amendment Act 1993 No. 62 pts 1, 3**

date of assent 23 November 1993

commenced on date of assent

### **Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

### **Revenue Laws Amendment Act 1996 No. 48 pts 1, 4**

date of assent 15 November 1996

s 11(1) commenced 1 December 1996 (see s 2(2))

remaining provisions commenced on date of assent

### **Taxation Administration Act 2001 No. 72 ss 1–2, 164 sch 1**

date of assent 13 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2002 (2002 SL No. 12)

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## 7 List of annotations

### Commencement

s 2 om R1 (see RA s 37)

### Arrangement

s 3 om 1992 No. 36 s 2 sch 1

### Interpretation

s 4 def “**approved form**” ins 1995 No. 58 s 4 sch 1  
def “**corporation**” sub 1990 No. 99 s 3.1 sch  
def “**the Minister**” om 1992 No. 36 s 2 sch 1

### Administration

s 7 om 1995 No. 58 s 4 sch 1

### Commissioner of tobacco products licensing

s 8 amd 2001 No. 72 s 164 sch 1

### Selling without licence

s 15 amd 1995 No. 58 s 4 sch 1

### Wholesaling and retailing without licence

s 16 amd 1995 No. 58 s 4 sch 1

### Applications for licences

s 20 amd 1990 No. 102 s 3; 1995 No. 58 s 4 sch 1

### Licensed premises to be specified

s 21 amd 1995 No. 58 s 4 sch 1

### Renewal of licences

s 23 amd 1990 No. 102 s 4

### Fees

s 24 amd 1992 No. 53 s 4; 1995 No. 58 s 4 sch 1; 1996 No. 48 s 11

### Fees for November 1996

s 24A ins 1996 No. 48 s 12  
def “**first period**” ins 1996 No. 48 s 12  
def “**second period**” ins 1996 No. 48 s 12  
def “**tobacco purchased**” ins 1996 No. 48 s 12  
def “**tobacco sold**” ins 1996 No. 48 s 12

### Rounding down amounts

s 27A ins 1992 No. 36 s 2 sch 1

### Refund of fees

s 27AA ins 1993 No. 62 s 5

### Transfers

s 29 om 1990 No. 102 s 5

### Objections

s 31 amd 1990 No. 102 s 6

Endnotes

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**Restriction on entry to investigate**

s 35 amd 1995 No. 58 s 4 sch 1

**Offences**

s 47 amd 1995 No. 58 s 4 sch 1

**Approval of forms**

s 53A ins 1995 No. 58 s 4 sch 1  
amd 1996 No. 48 s 13

**Savings provision about forms**

s 53B prev s 53B ins 1995 No. 58 s 4 sch 1  
exp 28 May 1996 (see prev s 53B(3))  
pres s 53B ins 1996 No. 48 s 14  
AIA s 20A applies (see s 53B(2))  
exp 15 November 1996 (see s 53B(3))

**Regulations**

s 54 amd 1995 No. 58 s 4 sch 1

## 8 List of forms notified or published in the gazette

(The following information about forms is taken from the gazette and is included for information purposes only. Because failure by a department to notify or publish a form in the gazette does not invalidate the form, you should check with the relevant government department for the latest information about forms (see Statutory Instruments Act, section 58(8)).)

**Form TP1 Version 2—Application for a Wholesaler’s/Group Wholesaler’s Licence**

pubd gaz 30 July 1999 p 1896

**Form TP2 Version 2—Application for a Retail/Group Tobacconist’s Licence**

pubd gaz 30 July 1999 p 1896

**Form TP3 Version 2—Application for a Tobacco Wholesaler’s Licence (Monthly Renewal)**

pubd gaz 30 July 1999 p 1896

**Form TP4 Version 2—Application for a Group Tobacco Wholesaler’s Licence (Monthly Renewal)**

pubd gaz 30 July 1999 p 1896

**Form TP5 Version 2—Application for a Retail Tobacconist’s Licence (Monthly Renewal)**

pubd gaz 30 July 1999 p 1896

**Form TP6 Version 2—Application for a Group Retail Tobacconist’s Licence (Monthly Renewal)**

pubd gaz 30 July 1999 p 1896



**Form TP7 Version 2—Notice of Change of Premises**

pubd gaz 30 July 1999 p 1896

**Form TP10 Version 2—Warrant to Enter Dwelling House**

pubd gaz 30 July 1999 p 1896

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