

Business Franchise Fees (Safety Net) Act 1997

Act No. 94/1997

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Victoria

No. 94 of 1997

**Business Franchise Fees (Safety Net)
Act 1997[†]**

[Assented to 16 December 1997]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purpose*

The purpose of this Act is—

- (a) to amend the Business Franchise Acts to remove the requirement for petroleum and tobacco wholesalers and retailers to be licensed or pay a licence fee; and

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- (b) to amend the **Liquor Control Act 1987** to remove the requirement for liquor licensees to pay ad valorem licence fees; and
 - (c) to authorise the Treasurer to make certain payments and appropriate the Consolidated Fund for that purpose; and
 - (d) to make consequential amendments to the **Tobacco Act 1987**; and
 - (e) to make miscellaneous amendments to the Business Franchise Acts and the **Liquor Control Act 1987**.

2. Commencement

- (1) Part 4 (except sections 13(5), 18 and 20) is deemed to have come into operation at 3.30 p.m. on 6 August 1997.
 - (2) Parts 2 (except sections 3(2) and 7) and 3 (except section 10) are deemed to have come into operation on 7 August 1997.
 - (3) The remaining provisions of this Act come into operation on the day on which this Act receives the Royal Assent.
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PART 2—BUSINESS FRANCHISE (PETROLEUM PRODUCTS) ACT 1979

3. Definitions

No. 9272.
Reprinted to
No. 80/1994
and
subsequently
amended by
Nos 42/1996,
40/1997 and
49/1997.

- (1) In section 2(1) of the **Business Franchise (Petroleum Products) Act 1979** the definition of "licensed premises" is **repealed**.
- (2) In section 2(1) of the **Business Franchise (Petroleum Products) Act 1979**—
 - (a) after the definition of "diesel fuel" **insert**—

' "**exemption certificate**" means diesel fuel exemption certificate issued under section 19;';
 - (b) after the definition of "petroleum wholesaling" **insert**—

' "**prescribed capacity**", in relation to a tank containing petroleum products, means 3000 litres;'.

4. New section 3A inserted

After section 3 of the **Business Franchise (Petroleum Products) Act 1979** **insert**—

"3A. Transitional provision

Section 4, as in force immediately before the commencement of section 5(a) of the **Business Franchise Fees (Safety Net) Act 1997**, continues to apply in respect of anything done before that commencement."

5. Repeal of licensing and spent provisions

In the **Business Franchise (Petroleum Products) Act 1979**—

- (a) sections 4, 5, 6, 7, 7A, 8, 9, 10, 11, 11A and 12 are **repealed**;

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- (b) in section 13(2)—
 - (i) in paragraph (a) **omit "and"**;
 - (ii) paragraph (b) is **repealed**;
 - (c) sections 14 and 16 are **repealed**.

6. New section 17 inserted

At the end of the **Business Franchise (Petroleum Products) Act 1979** insert—

"17. Treasurer may make payments

- (1) The Treasurer may, from time to time, pay amounts determined by the Treasurer—
 - (a) to persons who sell, or have sold, diesel fuel for use by holders of exemption certificates otherwise than for propelling diesel engined road vehicles on roads;
 - (b) to holders of exemption certificates who purchase, or have purchased, diesel fuel for use otherwise than for propelling diesel engined road vehicles on roads;
 - (c) to persons who carry on, or have carried on, a business of petroleum wholesaling in respect of which duties of excise have been paid to the Commonwealth.
- (2) The Consolidated Fund is appropriated to the necessary extent for the purposes of subsection (1)."

7. New sections 18 to 26 inserted

After section 17 of the **Business Franchise (Petroleum Products) Act 1979** insert—

"18. Treasurer may require information

- (1) For the purpose of determining whether to make a payment under section 17, or the amount of a payment, the Treasurer may require a person referred to in section 17(1)(a), (b) or (c)—
 - (a) to give the Treasurer any information required by the Treasurer; or
 - (b) to produce to the Treasurer any document required by the Treasurer.
- (2) A person must not give any information or produce any document under sub-section (1) that is false or misleading in a material particular.

Penalty: 500 penalty units in the case of a body corporate;
100 penalty units in any other case.

19. Diesel fuel exemption certificates

- (1) A person who has purchased, or intends to purchase, diesel fuel for use otherwise than for propelling diesel engined road vehicles on roads may apply to the Commissioner for a diesel fuel exemption certificate.
 - (2) An application under sub-section (1) must be in the form approved by the Commissioner and must contain—
 - (a) the applicant's name and address; and
 - (b) any other information required by the Commissioner; and
 - (c) a statutory declaration by the applicant or, if the applicant is a corporation, a director of the applicant, verifying the information in the application.
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- (3) The Commissioner must issue an exemption certificate to an applicant under this section unless the Commissioner is satisfied—
- (a) that the application is false or misleading in any material particular; or
 - (b) that the applicant has been convicted of an offence against this Act or an indictable offence involving dishonesty—
- in which case the Commissioner may refuse to issue a certificate.
- (4) An exemption certificate is valid for 3 years from the date of its issue, unless revoked sooner, and may be renewed on application under this section.
- (5) The Commissioner may revoke an exemption certificate by giving written notice to the holder of the certificate if the Commissioner is satisfied—
- (a) that the holder of the certificate has been convicted of an offence against this Act or an indictable offence involving dishonesty; or
 - (b) that the holder of the certificate no longer requires the purchase of diesel fuel for use otherwise than for propelling diesel engined road vehicles on a road.
- (6) A certificate issued to a person by the Commissioner before the commencement of this section—
- (a) that states that the person is a person who requires diesel fuel for use
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otherwise than for propelling diesel
engined road vehicles on roads; and

- (b) that is in force at the commencement of
this section—

is deemed to be an exemption certificate
issued under this section and is valid for 3
years from that commencement, unless
revoked earlier.

20. *Register of exemption certificates*

- (1) The Commissioner must keep a register of
the holders of exemption certificates.
- (2) Any person may inspect the register at the
office of the Commissioner during ordinary
office hours without charge.
- (3) The Commissioner may publish the register,
or extracts from it, in any manner he or she
thinks fit.

**21. *Records to be made and kept by petroleum
retailers and wholesalers***

- (1) A person who carries on the business of
petroleum retailing must make a record of
purchases of petroleum products and keep
each record for a period of 5 years after it
was made.
 - (2) A person who carries on the business of
petroleum wholesaling must make a record
of sales and purchases of petroleum products
and keep each record for a period of 5 years
after it was made.
 - (3) A record under this section must be in the
form, and contain the particulars, required by
the Commissioner.
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- (4) A person must not—
- (a) fail to make or keep a record as required by this section; or
 - (b) include in a record under this section any information that is false or misleading in a material particular.

Penalty: 500 penalty units in the case of a body corporate;
100 penalty units in any other case.

- (5) A record under this section need not be kept for 5 years if the Commissioner authorises its earlier destruction.

22. *Transportation records*

- (1) If petroleum products are to be transported in Victoria by road vehicle in a tank having a capacity that exceeds the prescribed capacity, the person on whose behalf the petroleum products are to be transported must complete a transportation record in respect of the petroleum products and give the record to the carrier at or before the commencement of the transportation.

Penalty: 20 penalty units.

- (2) The transportation record must be in a form approved by the Commissioner and must contain—
- (a) the date and address at which the transportation is to commence;
 - (b) the class and quantity of the petroleum products;

- (c) the name and address of the person on whose behalf the petroleum products are to be transported;
 - (d) if the person on whose behalf the petroleum products are to be transported is not the owner of the petroleum products, the name and address of the owner;
 - (e) the name of the person (if any) to whom the carrier is to transport the petroleum products;
 - (f) the address to which the carrier is to transport the petroleum products;
 - (g) the name and address of the person (if any) who has agreed to purchase the petroleum products.
- (3) A person must not include in a transportation record any information that is false or misleading in a material particular.
Penalty: 20 penalty units.
- (4) At all times while petroleum products are being transported in Victoria by road vehicle in a tank having a capacity that exceeds the prescribed capacity the carrier must ensure that the transportation record relating to the petroleum products is carried in the vehicle.
Penalty: 20 penalty units.

23. *Production of transportation records*

- (1) If an inspector reasonably suspects that petroleum products are being transported by road vehicle in a tank having a capacity that exceeds the prescribed capacity, he or she may search the vehicle.
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(2) If a search under sub-section (1) reveals petroleum products in a tank having a capacity that exceeds the prescribed capacity, the inspector may request the driver of the vehicle to produce the transportation record relating to the petroleum products for inspection.

(3) A driver must comply with a request under sub-section (2).

Penalty: 100 penalty units.

(4) For the purposes of this section a member of the police force, at the request of an inspector, may request or signal the driver to stop the vehicle.

(5) A driver must comply with a request or signal under sub-section (4).

Penalty: 100 penalty units.

24. *Temporary custody of road vehicles*

(1) If the driver of a road vehicle—

(a) does not produce a transportation record to an inspector as required by section 23(3); or

(b) produces a transportation record that the inspector reasonably believes is false or misleading in a material particular—

the inspector may request the driver to drive the vehicle to another place within a reasonable distance, as determined by the inspector, where the petroleum products can be unloaded.

(2) If the driver does not comply with a request under sub-section (1), a member of the police force, at the request of the inspector,

may take charge of the road vehicle for the purpose of driving it, or causing it to be driven, to the other place.

- (3) As soon as practicable after arrival at the other place—
- (a) the inspector must unload, and may seize, the petroleum products; and
 - (b) if the inspector seizes the petroleum products, he or she must tender to the driver a receipt for the petroleum products containing a notice setting out the provisions of section 25.

25. *Forfeiture of petroleum products*

- (1) If a person is convicted of an offence against section 22 or 23, any petroleum products seized from the person under section 24(3) or under section 14(2)(ba) or 15A of the **Business Franchise (Tobacco) Act 1974** are forfeited to, and become the property of, the State.
- (2) The Commissioner, on behalf of the State, may dispose of petroleum products that have become the property of the State in any manner he or she thinks fit.

26. *Offences by persons involved in management of bodies corporate*

- (1) If a body corporate, by act or omission, contravenes a provision of this Act, a person who is concerned in, or takes part in, the management of the body corporate is, subject to sub-section (2), to be taken to have contravened the same provision.
- (2) A person is not to be taken to have contravened the provision if the person satisfies the court that—
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- (a) the body corporate contravened the provision without the person's knowledge; or
 - (b) the person was not in a position to influence the conduct of the body corporate in relation to its contravention of the provision; or
 - (c) the person, if in such a position, used all due diligence to prevent the contravention by the body corporate.
- (3) A person may be convicted of a contravention of a provision of this Act whether or not the body corporate has been convicted of its contravention.
- (4) This section does not affect a liability imposed on a body corporate for an offence committed by it against this Act.
- (5) For the purposes of this section, the following persons are persons who are concerned in, or take part in, the management of a body corporate—
- (a) a director of the body corporate;
 - (b) a secretary of the body corporate;
 - (c) a receiver and manager of property of the body corporate;
 - (d) an official manager or deputy official manager of the body corporate;
 - (e) a liquidator of the body corporate appointed in a voluntary winding up of the body corporate;
 - (f) a trustee or other person administering a compromise or arrangement made between the body corporate and another person or other persons."
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PART 3—BUSINESS FRANCHISE (TOBACCO) ACT 1974

8. *Definitions and secrecy*

In the **Business Franchise (Tobacco) Act 1974**—

- (a) in section 2(1) the definitions of "licence", "licensed premises", "licensee", "listed company", "major shareholder", and "transportation record" are **repealed**;
- (b) in section 5(2) for "this Act" (wherever occurring) **substitute** "the Business Franchise Acts".

No. 8597.
Reprinted as
at 23 January
1997. Further
amended by
No. 40/1997.

9. *Repeal of licensing provisions*

In the **Business Franchise (Tobacco) Act 1974**—

- (a) sections 5A, 6, 7, 7AA, 7AB, 7AC, 7AD, 7AE, 7AF, 7AG, 7AH, 7AI, 7AJ, 7A, 7B, 8, 9, 9AA, 9A, 9B, 9BA, 9C, 9D, 9E, 10, 11, 11A, 11B, 11D, 12, 13, 13A, 13B, 13C, 13D, 18D, 19, 19A and 19AB are **repealed**;
- (b) in section 21A **omit** "7AH or".

10. *Amendment of enforcement provisions*

(1) In the **Business Franchise (Tobacco) Act 1974**—

- (a) in section 14(2)—
 - (i) **omit** "tobacco or" wherever occurring;
 - (ii) in paragraph (c) **omit** "any licensee or";
- (b) in section 14(5)—
 - (i) **omit** "tobacco or" wherever occurring;
 - (ii) for "section 15B" (where twice occurring) **substitute** "section 25 of the

Business Franchise (Petroleum Products) Act 1979";

(c) in section 15(1)(c) **omit** "tobacco or".

(2) In section 15A of the **Business Franchise (Tobacco) Act 1974** for sub-section (1) **substitute—**

"(1) If a magistrate is satisfied by the evidence on oath, whether oral or by affidavit, of the Commissioner that there is reasonable ground for suspecting that there are on particular premises or at a particular place or in or on a particular vehicle any petroleum products, books, papers or other documents that are relevant to the administration or execution of the Business Franchise Acts, the magistrate may issue a warrant authorising any member of the police force, together with any other person named in the warrant—

- (a) to enter the premises, place or vehicle (using such force as is necessary for the purpose);
 - (b) to search for and seize, or secure against interference, any petroleum products, books, papers or other documents that appear to be relevant to the administration or execution of the Business Franchise Acts;
 - (c) if reasonably necessary for the purposes referred to in paragraph (b), to break open any receptacle in or on the premises, place or vehicle;
 - (d) to deliver any petroleum products, books, papers or other documents seized under the warrant to the
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Commissioner or a person authorised
by the Commissioner."

- (3) In section 15A(3) of the **Business Franchise (Tobacco) Act 1974** for "takes possession of" **substitute** "seizes".
- (4) In section 15A of the **Business Franchise (Tobacco) Act 1974** for sub-section (3A) **substitute**—
- "(3A) If a person seizes petroleum products under sub-section (1), he or she—
- (a) if the petroleum products were, immediately before seizure, apparently in the possession or custody of another person, must give that other person a written notice setting out the provisions of section 25 of the **Business Franchise (Petroleum Products) Act 1979**; or
 - (b) if the petroleum products were not, immediately before seizure, apparently in the possession or custody of another person, must leave a written notice setting out the provisions of section 25 of the **Business Franchise (Petroleum Products) Act 1979** in a prominent place on the premises, place or vehicle where the petroleum products were seized."

(5) In section 15A(4) of the **Business Franchise (Tobacco) Act 1974** for "taking of possession" **substitute** "seizure".

(6) In section 19E(1) of the **Business Franchise (Tobacco) Act 1974**—

 - (a) in paragraph (g) **omit** "or" where thirdly occurring;

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(b) after paragraph (h) **insert**—

"(i) a person named in the certificate is, or is not, or at any particular time was, or was not, the holder of an exemption certificate under the **Business Franchise (Petroleum Products) Act 1979**—".

(7) In Schedule 1 to the **Business Franchise (Tobacco) Act 1974**—

- (a) **omit** "tobacco or" wherever occurring;
- (b) for "assessment or collection of a licence fee payable under" **substitute** "administration or execution of the".

11. *New section 23 inserted*

After section 22 of the **Business Franchise (Tobacco) Act 1974** **insert**—

"23. *Transitional provision*

Section 6, as in force immediately before the commencement of section 9(a) of the **Business Franchise Fees (Safety Net) Act 1997**, continues to apply in respect of anything done before that commencement."

PART 4—LIQUOR CONTROL ACT 1987

12. *Amendment of Parts 1 and 2*

In the **Liquor Control Act 1987**—

- (a) in section 3—
 - (i) the definition of "Commissioner of State Revenue" is **repealed**;
 - (ii) in paragraph (a) of the definition of "prescribed liquor" for "3.8" **substitute** "3.5";
- (b) section 4 is **repealed**;
- (c) in section 43(2) paragraph (c) is **repealed**.

No. 97/1987.
Reprinted to
No. 97/1995
and
subsequently
amended by
Nos 35/1996,
44/1996,
84/1996 and
16/1997.

13. *Transfer, renewal, surrender and cancellation of licences*

(1) In the **Liquor Control Act 1987**—

- (a) in section 63(5)—
 - (i) at the end of paragraph (k) **omit** "and";
 - (ii) paragraph (l) is **repealed**;
- (b) in section 69(3)—
 - (i) in paragraph (b) for "paragraphs (k) and (l)" **substitute** "paragraph (k)";
 - (ii) paragraphs (c) and (e) are **repealed**;
 - (iii) at the end of paragraph (d) **omit** "and".

(2) In section 90 of the **Liquor Control Act 1987** for sub-section (3) **substitute**—

"(3) The licence or permit or extended hours permit remains suspended until the licensee or permittee pays the required fee."

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- (3) In section 90 of the **Liquor Control Act 1987**—
- (a) in sub-section (4) for "1 March" **substitute** "30 June";
 - (b) sub-sections (5) and (6) are **repealed**.
- (4) In section 98 of the **Liquor Control Act 1987** sub-sections (2), (6) and (9) are **repealed**.
- (5) At the end of section 99 of the **Liquor Control Act 1987 insert**—
- "(2) An agent or mortgagee authorised under sub-section (1) is subject and liable to the same duties, liabilities, obligations, disqualifications and penalties as if he or she were the licensee or permittee in respect of such premises."
- (6) In section 101 of the **Liquor Control Act 1987** for sub-section (7) **substitute**—
- "(7) If a residential licence is cancelled, the person who held the licence must forthwith give to the Chief Executive Officer the residents' register or a copy of the residents' register kept by the licensee under section 108.
- Penalty: 5 penalty units."

14. *Removal of requirement to keep liquor purchases register*

Section 109 of the **Liquor Control Act 1987** is **repealed**.

15. *New section 113 substituted*

For section 113 of the **Liquor Control Act 1987 substitute**—

'113. *Fees for licences, permits and extended hours permits*

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- (1) The fee for a residential licence, general licence, on-premises licence, packaged liquor licence or club licence (other than a restricted club licence) is \$150 or the prescribed amount, whichever is higher.
 - (2) The fee for a producer's or distributor's licence is—
 - (a) in the case of a licence granted to a vigneron—\$150 or the prescribed amount, whichever is higher;
 - (b) in the case of a licence granted to a producer or distributor of liquor—\$150 or the prescribed amount, whichever is higher.
 - (3) The fee for a limited licence is—
 - (a) if the gross amount paid or payable by the licensee for all liquor, other than prescribed liquor, during the period of the licence is less than \$2000—\$37 or the prescribed amount, whichever is higher;
 - (b) if the gross amount paid or payable by the licensee for all liquor, other than prescribed liquor, during the period of the licence is \$2000 or more—\$150 or the prescribed amount, whichever is higher;
 - (c) in the case of a limited licence granted to an auctioneer—\$150 or the prescribed amount, whichever is higher;
 - (d) if the applicant for the limited licence is the holder of a licence (other than another limited licence)—nil.
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- (4) The fee for a restricted club licence is \$38 or the prescribed amount, whichever is higher.
- (5) The fee for a BYO permit is \$115 or the prescribed amount, whichever is higher.
- (6) The fee for an extended hours permit is the prescribed amount.
- (7) In this section, "**limited licence granted to an auctioneer**" means a licence granted to a person who holds a licence under the **Auction Sales Act 1958**, or to a corporation a director of which holds such a licence, authorising the licensee to sell and dispose of liquor at an auction conducted by the licensee.'.

16. Consequential amendments

In the **Liquor Control Act 1987** sections 114, 115, 116, 117, 118 and 119 are **repealed**.

17. New section 119A inserted

At the end of Part 5 of the **Liquor Control Act 1987** insert—

"119A. Treasurer may make payments

- (1) The Treasurer may, from time to time, pay amounts determined by the Treasurer—
 - (a) to licensees in respect of licence fees paid before 6 August 1997 in respect of 1997 licences;
 - (b) to persons who hold, or have held, licences relating to the sale of liquor in respect of which sales taxes have been paid to the Commonwealth.
 - (2) The Consolidated Fund is appropriated to the necessary extent for the purposes of subsection (1)."
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18. New sections 119B and 119C inserted

After section 119A of the **Liquor Control Act 1987** insert—

"119B. Treasurer may require information

- (1) For the purpose of determining whether to make a payment under section 119A, or the amount of a payment, the Treasurer may require a person referred to in section 119A(1)(a) or (b)—
 - (a) to give the Treasurer any information required by the Treasurer; or
 - (b) to produce to the Treasurer any document required by the Treasurer.
- (2) A person must not give any information or produce any document under sub-section (1) that is false or misleading in a material particular.

Penalty: 500 penalty units in the case of a body corporate;
100 penalty units in any other case.

119C. Records to be made and kept by producers and distributors

- (1) A person who holds a producer's or distributor's licence must make a record of sales and purchases of liquor and keep each record for a period of 5 years after it was made.
- (2) A record under this section must be in the form, and contain the particulars, required by the Commissioner of State Revenue.

- (3) A person must not—
- (a) fail to make or keep a record as required by this section; or
 - (b) include in a record under this section any information that is false or misleading in a material particular.
- Penalty: 500 penalty units in the case of a body corporate;
100 penalty units in any other case.
- (4) A record under this section need not be kept for 5 years if the Commissioner of State Revenue authorises its earlier destruction."

19. Recovery of fees

In section 145A(1) of the **Liquor Control Act 1987**—

- (a) paragraph (a) is **repealed**;
- (b) in paragraph (c) **omit** "or 115";
- (c) paragraphs (d), (e), (f), (g), (h), (i) and (j) are **repealed**.

20. Statute law revision

In the **Liquor Control Act 1987**—

- (a) in section 3 the definition of "prescribed area" is **repealed**;
 - (b) section 4B is **repealed**;
 - (c) in section 75(1) **omit** ", association, group of associations";
 - (d) in section 101(5) paragraph (ba) is **repealed**;
 - (e) sections 112A and 112B are **repealed**;
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- (f) in section 145A—
 - (i) in sub-section (1) paragraph (aa) is **repealed**;
 - (ii) sub-section (4A) is **repealed**;
 - (g) section 157A is **repealed**;
 - (h) in section 166(2) for "institution" **substitute** "institution".
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PART 5—TOBACCO ACT 1987

21. Victorian Health Promotion Fund

No. 81/1987.
Reprinted to
No. 42/1995
and
subsequently
amended by
No. 16/1997.

- (1) In section 32 of the **Tobacco Act 1987** for sub-section (3) **substitute—**
- "(3) All money received by the Foundation must be paid into the Fund.
- (3A) There shall be paid out of the Consolidated Fund (which is to the necessary extent appropriated accordingly) into the Victorian Health Promotion Fund, in respect of the financial year commencing on 1 July 1997, an amount of \$21 395 000 in such instalments and at such times as are determined by the Treasurer."
- (2) In section 32(4) of the **Tobacco Act 1987** in paragraphs (a) and (b) **omit "**, being not less than 30 per centum of the Victorian Health Promotion Levy,".
- (3) After section 33(2) of the **Tobacco Act 1987** **insert—**
- "(2A) The amounts included in the budget for a financial year to be paid out of the Fund to sporting bodies and to bodies for the purpose of health promotion must each be not less than 30% of the total money budgeted to be paid into the Fund out of the Consolidated Fund in that year."
- (4) Part 5 of the **Tobacco Act 1987** is **repealed**.
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Notes

NOTES

† *Minister's second reading speech—*

Legislative Assembly: 13 November 1997

Legislative Council: 4 December 1997

The long title for the Bill for this Act was "to amend the **Business Franchise (Petroleum Products) Act 1979**, the **Business Franchise (Tobacco) Act 1974**, the **Liquor Control Act 1987** and the **Tobacco Act 1987** and for other purposes."