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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

DIESEL FUEL TAXES LEGISLATION AMENDMENT BILL 1982

EXPLANATORY MEMORANDUM

(Circulated by the Authority of the Minister Assisting
the Minister for Industry and Commerce
the Honourable Michael Hodgman MP)

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Purpose of the Bill

This Bill proposes to amend to the Customs Act 1901, the Excise Act 1901 and the Diesel Fuel Taxation (Administration) Act 195 to:

- (I) terminate the existing diesel fuel certificate scheme where in certificates are issued to purchasers of diesel fuel for "off road" use so that those purchasers can obtain the fuel direct from oil companies, agencies or distributors at the duty free price; and
- (II) introduce a new rebate system for diesel fuel which will require all purchases of diesel fuel to be at the duty paid price but which will enable rebates of duty to be able to be claimed by certain persons (as defined) for their "off road" use.

The Bill is part of a package of Budget Bills which includes the Diesel Fuel Tax Amendment Bills (Nos. 1 and 2) 1982.

The categories of persons to whom rebates will be paid are set out in Clauses 5 and 11 of the Bill and include persons who use diesel fuel for "off road" purposes in the agricultural, fishing, mining and forestry industries as well as persons who use diesel fuel at residential premises, at hospitals or nursing homes, at any other institution providing medical or nursing care or at homes for aged persons.

The new rebate system will operate on and from 8pm on 17 August 1982 from which time the diesel fuel certificate scheme will be terminated.

Although the Diesel Fuel Taxation (Administration) Act is to be terminated from that time any purchases of diesel fuel under the certificate scheme made prior to that time will remain subject to the provisions of that Act.

Likewise purchasers who, before that time, purchased diesel fuel at duty inclusive prices will be entitled to a rebate under the arrangements provided for in that Act if they use that fuel for "off road" purposes.

The amendments proposed to the Customs Act and Excise Act will enable the introduction of the new rebate scheme.

Persons in the categories defined in Clauses 5 and 11 of the Bill will, in respect of their purchases of diesel fuel after 8pm on 17 August 1982 be able to claim a rebate of the duty paid on that fuel if such they use the fuel for "off road" purposes.

However, only persons in the residential category will be able to lodge claims involving rebates of under \$100. Claims for persons in the other categories will only be processed if the amount of rebate claimed is in excess of \$100.

Certain investigative powers have been included in the Bill similar to the powers that were contained in the Diesel Fuel Taxation (Administration) Act.

- Clause 1 - Citation of the Act
- Clause 2 - Commencement to be 8pm on 17 August 1982
- Clause 3 - Identifies the Customs Act 1901 as the Principal Act in Part II of the Bill
- Clause 4 - Amends the heading to Division 3 of Part VIII of the Principal Act to include "rebates"
- Clause 5 - Inserts a new section after Section 163 of the Principal Act to provide for a rebate of the duty paid on diesel fuel for "off road" purposes to be paid to persons who use the fuel in mining or primary production, at residential premises, at a hospital or nursing home, at any other institution providing medical or nursing care or at a home for aged persons.

Proposed sub-section 164(2) - provides that an application for a rebate by persons, other than persons in the domestic category, will not be considered by a Collector unless the amount of rebate claimed in the application is equal to or exceeds \$100.

Proposed sub-section 164(3) - provides for the rebate payable in respect of any diesel fuel to be payable at the rate at which duty was paid on the fuel.

Proposed sub-section 164(4) Appropriation Provision.

Proposed sub-section 164(5) - defines a number of terms and expressions for the purposes of this legislation and in particular defines -

the term "agriculture" to mean -

- (a) the cultivation of the soil;
 - (b) the cultivation or gathering in of crops; and
 - (c) the rearing of livestock,
- and includes -
- (d) viticulture, horticulture, pasturage and apiculture;
 - (e) hunting or trapping carried on for the purpose of a business; and
 - (f) other operations (including operations by way of pest or disease control or by way of soil or water conservation) connected with the operations referred to in paragraphs (a), (b), (c), (d) or (e),
- but does not include forestry or fishing operations.

. the term "fishing operations" to mean -

- (a) the taking, catching or capturing of fish;
- (b) the raising of fish; and
- (c) the processing of fish on board vessels,

and includes oyster farming and pearling operations but does not include operations conducted otherwise than for the purpose of a business;

. the term "forestry" to mean -

- (a) the planting or tending, in a plantation or forest, of trees intended for felling; and
 - (b) the thinning or felling, in a plantation or forest, of standing timber,
- and includes the transporting, milling or processing in a forest or plantation, of timber felled in the forest or plantation;

. the term "mining operations" to mean

- (a) exploration, prospecting and mining for minerals; and
- (b) the dressing or beneficiation (at the mining site or elsewhere) of minerals, or ores bearing minerals, as an integral part of operations for their recovery,

and includes -

- (c) other operations connected with exploration, prospecting or mining for minerals that are carried out in or at a place adjacent to the area in which the exploration, prospecting or mining occurs;
- (d) where minerals, or ores bearing minerals, are dressed or beneficiated, at a place other than the mining site, as an integral part of operations for their recovery - the transporting of the minerals or ores from the mining site to the place where they are dressed or beneficiated;
- (e) the liquefying of natural gas;
- (f) where natural gas is liquified at a place other than the mining site - the transporting of the natural gas from the mining site to the place where it is liquified; and

(g) the production of common salt by means of evaporation, but does not include quarrying operations carried on for the sole purpose of obtaining stone for building, road making or similar purposes; and

the term "residential premises" to mean

- (a) premises used as a house;
 - (b) other premises at which at least one person resides,
- but does not include -
- (c) premises used in the business of a hotel, motel or boarding house or a similar business;
 - (d) premises used as a hospital or nursing home or as any other institution providing medical or nursing care;
 - (e) premises used as a home for aged persons; or
 - (f) premises used as a boarding school;

Proposed sub-clause (2) - provides for the provisions of section 164 (as proposed to be inserted by Clause 5 of the Bill) to only apply in relation to diesel fuel entered for home consumption after the commencement of this Act.

Clause 6 - Amends section 165 of the Principal Act to provide for the recovery of any rebate or portion of a rebate wrongfully paid to a person. Recovery can be made at any time within 12 months from the date on which rebate is paid.

Clause 7 - Inserts a new proposed Section 214A into the Principal Act to provide for the purposes of section 164 (as proposed to be inserted into the Principal Act by Clause 5 of the Bill) powers of entry, inspection and questioning by an authorised officer of persons in relation to their purchase and use of diesel fuel. These powers are similar to the powers contained in the Diesel Fuel (Administration) Act 1957 and are necessary for the effective administration of the new rebate provisions and the protection of the revenue. In particular -

Proposed sub-section 214A(1) - empowers an authorised officer to enter premises where diesel fuel is used or stored or premises where there are kept any accounts, books, or other records relating to the purchase, sale or use of diesel fuel.

Proposed sub-section 214A(2) - provides that entry to premises is only authorised if, upon request by the occupier of the premises or the person in charge of the premises, written identification of the authorised officer is produced to the person making the request.

Proposed sub-section 214A(4) - empowers an authorised officer to require certain persons to attend before him to answer questions and produce documents in relation to the purchase, sale or use of diesel fuel. Sub-section (6) limits the use to which self-incriminating answers given or documents produced may be put.

Proposed sub-section 214A(7) - provides the power for an authorised officer to examine, on oath or affirmation, persons attending before him.

Proposed sub-section 214A(9) - creates offences for refusing or failing to attend, to be sworn or make an affirmation, to answer questions or produce records when required in pursuance of this section - penalty \$1000.

- Clause 8 - Inserts a new provision into Section 273GA of the Principal Act to provide for applications to be able to be made to the Administrative Appeals Tribunal for the review of a decision by a Collector to refuse to pay a rebate under section 164.
- Clause 9 - Identifies the Excise Act 1901 as the Principal Act for the purposes of Part III of the Bill
- Clause 10 - Inserts in the heading to Part VIII of the Principal Act "Refunds"
- Clause 11 - Inserts after section 78 of the Principal Act a new section 78A to provide for rebates of Excise Duty on diesel fuel. This proposed section is similar to the provisions in Clause 5 of the Bill.
- Clause 12 - is a similar provision to that proposed to be inserted by Clause 6 of the Bill and provides for the recovery of overpayments of rebates paid pursuant to the Excise Act 1901.

- Clause 13 - Inserts after section 99 of the Principal Act new provisions into the Excise Act to provide for the same powers accorded officers under proposed new Section 214A of the Customs Act (as to which, see Clause 7)
- Clause 14 - Inserts a new offence into Section 120 of the Principal Act of obtaining any rebate which is not payable.
- Clause 15 - Inserts a new provision into Section 162C of the Principal Act to provide for applications to be able to be made to the Administrative Appeals Tribunal for review of a decision by a Collector to refuse to pay a rebate under Section 78A of the Principal Act.
- Clause 16 - Inserts a new provision into section 164 of the Principal Act to enable a penalty of a fine not exceeding \$250 to be able to be imposed for an offence against the regulations.
- Clause 17 - Identifies the Diesel Fuel Taxation (Administration) Act 1957 as the Principal Act for the purposes of Part IV of the Bill.
- Clause 18 - has the effect of terminating the Diesel Fuel (Taxation) Administration) Act on and from 8pm on 17 August 1982. The provisions of that Act will continue to apply in respect of diesel fuel entered for home consumption before 8pm on 17 August 1982.
- Clause 19 - has the effect of terminating Regulation 126(j) of the Customs Regulations on and from 8pm on 17 August 1982. This regulation only relates to refunds of Customs Duty on diesel fuel under the certificate system.
- Clause 20 - has the effect of terminating paragraph 50(1)(m) of the Excise Regulations on and from 8pm on 17 August 1982. This regulation also only relates to the certificate system.
- Clause 21 - provides that regulations to be made under the Customs Act 1901 for the purposes of Section 164 of that Act and made within the period of 6 months after 8pm on 17 August 1982 may have effect from that time.
- Clause 22 - provides that regulations made under the Excise Act 1901 for the purposes of Section 78A of that Act and made within 6 months from 8pm on 17 August 1982 may have effect from that time.