

ARTHUR ROBINSON & HEDDERWICKS
LIBRARY

1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**CUSTOMS AND EXCISE LEGISLATION
AMENDMENT BILL (NO. 1) 1996**

SUPPLEMENTARY EXPLANATORY MEMORANDUM

(Amendments to be moved on behalf of the Government)

(Circulated by authority of the Minister for Small Business and Consumer Affairs,
the Honourable Geoff Prosser, MP)

77804 Cat. No. 96 4584 5 ISBN 0644 434759



9 780644 434751

CUSTOMS AND EXCISE LEGISLATION
AMENDMENT BILL (NO. 1) 1996

OUTLINE

The purpose of this Bill is to amend the *Customs and Excise Legislation Amendment Act 1995* (Act No. 87 of 1995) (the CELA Act) to correct transcription errors and problems with the commencement and the application and savings provisions in the CELA Act which arose in the course of incorporating amendments moved in the Senate last year into that Act.

This Bill also proposed one minor addition to the CELA Act when it was introduced into the Senate on 6 May 1996 to restore Diesel Fuel Rebate eligibility for the extraction of limestone for use in the de-acidification of soil in agriculture, post 1 July 1995.

During the Committee stage of the Bill in the Senate, amendments were moved by the WA Greens to remove the items of the Bill which proposed to restore this category of rebate eligibility. The Senate agreed to these amendments.

The Senate also agreed to amendments moved by the WA Greens to amend the *Income Tax Assessment Act 1936*. This amendment inserted new section 75E into that Act (Schedule 2 refers) which provides for the payment of a cash rebate in respect of activities undertaken to prevent land degradation in years when deductions cannot be made from income due to lack of assessable income.

The Government did not support these amendments. The Government amendments to which this Supplementary Explanatory Memorandum relates will reverse the effect of the amendments to the Bill agreed to by the Senate and will restore the Bill to its terms as originally introduced into the Senate on 6 May 1996.

Financial Impact Statement

The amendment to the Bill concerning the restoration of Diesel Fuel Rebate eligibility for the extraction of limestone for use in soil de-acidification in agriculture is expected to involve an additional cost to revenue of about \$620,000 a year.

CUSTOMS AND EXCISE LEGISLATION
AMENDMENT BILL (NO. 1) 1996

NOTES ON AMENDMENTS

Amendment 1

This amendment amends the Bill by inserting item 2A into Schedule 1 which amends subsection 2(3) of the CELA Act. Item 2A omits the reference to "limestone) and item 9" and substitutes "limestone (other than agricultural use limestone)) and items 8, 9, 12 and 13". Item 2A is identical to item 3 of Schedule 1 of the Bill as originally introduced into the Senate.

The effect of this amendment is that subsection 2(3) of the CELA Act provides for the 1 July 1995 commencement of the amendments in that Act as follows:

"(3) Items 1, 1A, 3, 3A, 4, 5, 6 (insofar as that item refers to sand, sandstone, soil, slate, clay (other than bentonite and kaolin), basalt, granite, gravel and limestone (other than agricultural use limestone)) and items 8, 9, 12 and 13 of Schedule 1, and Schedule 2, commence on the day on which this Act receives the Royal Assent." (The CELA Act received the Royal Assent on 1 July 1995).

The 12 items from Schedules 1 and 2 which are now taken to have commenced on 1 July 1995 are as follows:

- items 1, 4, 5 and 9 of Schedule 1 and item 1 of Schedule 2 - the "residential premises" changes which remove eligibility for rebate of customs and excise duty where diesel fuel is purchased for use at residential premises after 1 July 1995 (item 1 of each Schedule refers), except where the premises are located:
 - on an agricultural property (item 4 refers); or
 - at the place (or at a place adjoining that place) where mining activities are carried out (item 9 refers);

item 1A - the new definition of "agricultural use limestone" inserted by item 9 of this Bill, which restores Diesel Fuel Rebate eligibility for the extraction of limestone where that limestone is for use in the de-acidification of soil in agricultural activities carried out on agricultural properties;

items 3 and 3A - which add "the carrying out of firefighting activities" to the definition of "agriculture" (new paragraph (1a) of the definition). This becomes an additional activity for which the use of diesel fuel is to be eligible for the payment of rebate post 1 July 1995;

- item 6 - the new definition of "minerals", which excludes from eligibility for the payment of rebate diesel fuel for use in the extraction of all the nominated minerals (except bentonite, kaolin, or agricultural use limestone);

item 8 - which adds "the rehabilitation of a place affected by a mining operation" to the definition of "mining operations". This becomes an additional activity (new paragraph (ka) of the definition) for which the use of diesel fuel is to be eligible for the payment of rebate post 1 July 1995; and

- items 12 and 13 - which add to new subsections 164(8) and 164(9) of the Customs Act cross references to the additional agricultural activity of firefighting (item 3 above refers) and the additional mining operation of rehabilitation of places affected by mining operations (item 8 above refers). This will ensure that post 1 July 1995 such activities will also be eligible for rebate if carried out by a subcontractor of a person contracted to carry out the activity.

Amendment 2

This amendment amends item 4 of the Bill by inserting the phrase "(other than agricultural use limestone)" into new paragraph 5(2)(b) of the CELA Act. This amendment originally formed part of item 5 of the Bill as introduced into the Senate.

Subsection 5(1) of the CELA Act provides that all rebate applications made before, but not decided before, the day on which the CELA Act receives the Royal Assent and all applications made to the Administrative Appeals Tribunal (AAT) before, but not decided before that day in respect of decisions relating to rebate applications, are to be decided under the Customs Act and the *Excise Act 1901* (the Excise Act) as in force on or after that day, that is, under the amended provisions of these two Acts. This is because the CELA Act limits the circumstances in which the use of diesel fuel is eligible with effect from 1 August 1986.

New paragraph 5(2)(b) provides that subsection 5(1) of the CELA Act does not apply to rebate applications that are made by a person prior to 1 July 1995 in respect of diesel fuel purchased by the person for use in a mining operation:

- (a) referred to in a paragraph of the definition of mining operation (other than paragraphs (d), (e), (f), (g), (h) or (i)); and
- (b) that relates to sand, sandstone, soil, slate, clay (other than bentonite or kaolin), basalt, granite, gravel or limestone.

The reason for the exclusion of such applications from subsection 5(1) is that sand, sandstone, soil etc are excluded from the definition of "minerals" only with effect from 1 July 1995.

This amendment qualifies the exemption from subsection 5(1) to state that it applies, *inter alia*, to "limestone (other than agricultural use limestone)". The reason for this qualification is that the eligibility for diesel fuel rebate in respect of agricultural use limestone is to be restored with effect from 1 July 1995. Therefore such applications are to be decided under the amended provisions of the Customs Act and Excise Act.

Amendments 3 and 4

These amendments amend item 5 of the Bill by inserting the phrase "(other than agricultural use limestone)" into new paragraph 5(3A)(b) and 5(3A)(d) of the CELA Act. These amendments originally formed part of item 6 of the Bill as introduced into the Senate

New subsection 5(3A) governs the circumstances where a person has purchased diesel fuel before the day on which the CELA Act received the Royal Assent, ie 1 July 1995, for use in a mining operation:

- (a) referred to in a paragraph of the definition of mining operations (other than paragraphs (d), (e), (f), (g), (h) or (i)); and
- (b) that relates to sand, sandstone, soil, slate, clay (other than bentonite or kaolin), basalt, granite, gravel or limestone.

A person may make an application for rebate in respect of the duty paid on that fuel. The effect of new subsection 5(3A) is that rebate applications in respect of fuel purchased before 1 July 1995 for use in mining operations referred to above which have not been made or finally determined before 1 July 1995 are to be determined in accordance with the provisions of the Customs Act and the Excise Act in force before 1 July 1995. This is because these mining operations ceased to be eligible for diesel fuel rebate with effect from this date.

This amendment qualifies subsection 5(3A) to state that it applies, inter alia, to "limestone (other than agricultural use limestone)". The reason for this qualification is that the eligibility for diesel fuel rebate in respect of agricultural use limestone is to be restored with effect from 1 July 1995. Therefore, applications for rebate in respect of agricultural use limestone are to be made and decided under the amended provisions of the Customs Act and the Excise Act.

Amendment 5

This amendment amends the Bill by inserting new item 7A of Schedule 1 which inserts new item 1A into Schedule 1 of the CELA Act. New item 1A amends subsection 164(7) of the Customs Act by inserting a new definition of "agricultural use limestone". This amendment was originally item 9 of the Bill as introduced into the Senate. This phrase appears in the amended definition of minerals (**amendment 6 below** refers). The combined effect of this amendment and amendment 6 is that Diesel Fuel Rebate eligibility is to be restored, post 1 July 1995, for the extraction of limestone, where that limestone is for use in the de-acidification of soil in agriculture

Amendment 6

This amendment amends item 13 of the Bill by inserting the phrase "(other than agricultural use limestone)" into paragraph (b) of the definition of minerals. This amendment originally formed part of item 15 of the Bill as introduced into the Senate. The purpose of the amendment is to effect the limited restoration of Diesel Fuel Rebate

eligibility for diesel fuel used in extracting limestone. As explained in **amendment 5 above**, limestone which is extracted for use in the de-acidification of soil in agriculture is to be restored to eligibility from 1 July 1995, the date of effect of the changed definition.

Amendment 7

This amendment amends the Bill by omitting Schedule 2. Schedule 2 contains the amendment to the *Income Tax Assessment Act 1936* which formed part of the amendments to the Bill moved by the WA Greens to which the Senate agreed. This amendment therefore omits the amendment to that Act and restores the Bill to its terms as originally introduced into the Senate.

Amendment 8

This amendment amends the title of the Bill by omitting the phrase "and the *Income Tax Assessment Act 1936*". This amendment is a technical amendment which is consequential upon the omission of Schedule 2 to the Bill in **amendment 7** above.



