

1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**CUSTOMS AND EXCISE LEGISLATION
AMENDMENT BILL (NO. 2) 1995**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industry, Science and Technology,
Senator the Hon. Peter Cook)

CUSTOMS AND EXCISE LEGISLATION
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OUTLINE

The purpose of the Customs and Excise Legislation Amendment Bill (No. 2) 1995 is to amend the Customs and Excise Legislation Amendment Act 1995 (the CELA Act- Act No. 87 of 1995).

The CELA Act amended the provisions of the *Customs Act 1901* and the *Excise Act 1901* relating to the Diesel Fuel Rebate Scheme, as part of the Government's Budget package, to tighten the eligibility criteria for rebates of customs and excise duty paid on purchases of diesel fuel.

The CELA Act was debated in the Senate on 29 and 30 June 1995 and received the Royal Assent on 1 July 1995. During the course of the Senate debate, 28 amendments were successfully moved by the Government to the Bill as introduced and a further 52 amendments were successfully moved by non-Government parties.

In the process of translating the will of the Parliament into a final Royal Assent Bill, a number of transcription errors occurred. Also several substantive problems with the commencement and savings provisions of the CELA Act have been identified which are contrary to the expressed intention of the Senate.

The transcription errors are of a technical drafting nature and are dealt with in items 7 to 18 of the Schedule to the Bill.

The commencement provisions errors occurred in some cases because necessary consequential alterations to the commencement section in the CELA Act were not made, even though it was agreed that particular amendments would commence at particular times. Items 1 and 2 of the Schedule to the Bill effect these corrections.

Items 3 to 6 of the Schedule to the Bill effect the corrections to the application and savings provisions of the CELA Act to restore the state of the law as it existed before 1 July 1995, in particular with regard to sand mining.

FINANCIAL IMPACT STATEMENT

The amendments proposed in this Bill relate to the principal CELA Act and have no additional financial implications to that Act.

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NOTES ON CLAUSES

Clause 1 - Short Title

This clause provides for this Act to be cited as the *Customs and Excise Legislation Amendment Act (No. 2) 1995* (hereinafter the CELA (No. 2) Act).

Clause 2 - Commencement

This clause provides that the CELA (No.2) Act is taken to have commenced on 1 July 1995. This is the same date that the *Customs and Excise Legislation Amendment Act 1995* (hereinafter referred to as the CELA Act) received the Royal Assent.

Clause 3- Schedule

This clause provides that the *Customs and Excise Legislation Amendment Act 1995* is amended as set out in the Schedule.

SCHEDULE**AMENDMENTS OF THE CUSTOMS AND EXCISE
LEGISLATION AMENDMENT ACT 1995****Item 1**

This item amends subsection 2(2) of the CELA Act by omitting the reference to "items 7 and 10" and substituting a reference to items "7, 10 and 11".

Item 11 inserted new subsections 164(8) and 164(9) into the *Customs Act 1901* (the Customs Act) to ensure that agricultural or mining activities undertaken by contractors are also eligible for rebate if carried out by subcontractors. The eligibility of contractors with respect to these specific agricultural and mining activities is taken to have commenced on 1 August 1986.

The effect of the inclusion of item 11 of Schedule 1 of the CELA Act in subsection 2(2) is that this item is also taken to have commenced on 1 August 1986. Without this amendment, subcontractors of persons contracted to carry out specific activities would only be entitled to claim rebate with respect to fuel purchased on and after 29 July 1995 (which is the 28th day after the Royal Assent of the CELA Act).

Item 2

This item effects three amendments to subsection 2(3) of the CELA Act.

Paragraph (a) of this item inserts a reference to items 3 and 3A of Schedule 1 to the CELA Act after item 1. The effect of inserting a reference to item 3 is that this item, which makes diesel fuel for use in firefighting eligible for rebate, is also taken to have commenced on 1 July 1995. Without this amendment, persons would only be entitled to claim rebate for firefighting in respect of diesel fuel purchased on and after 29 July 1995, being the 28th day after the CELA Act received the Royal Assent.

The effect of inserting a reference to item 3A is that this item is also taken to have commenced on 1 July 1995. Item 3A is proposed to be inserted by **item 10** of the CELA (No. 2) Act and will be explained in greater detail below.

Paragraph (b) of this item omits the reference to item 9 in subsection 2(3) and substitutes a reference to "items 8, 9 and 11A" of Schedule 1 to the CELA Act. The effect of inserting a reference to item 8 is that this item is also taken to have commenced on 1 July 1995. Item 8 extends the rehabilitation circumstances under paragraph (k) of the definition of "mining operations" to include places affected by mining operations in paragraphs (a) and (b) of this definition. Without this amendment, persons would only be entitled to claim rebate for this extended rehabilitation in respect of diesel fuel purchased on and after 29 July 1995, being the 28th day after the CELA Act received the Royal Assent.

The effect of inserting a reference to item 11A is that this item is also taken to have commenced on 1 July 1995. Item 11A is proposed to be inserted by **item 17** of the CELA (No. 2) Act and will be explained in greater detail below.

Paragraph (c) amends subsection 2(3) by omitting the reference to "1 July 1995" and substituting a reference to "the day on which this Act receives the Royal Assent". As the CELA Act received the Royal Assent on 1 July 1995, this is a technical drafting amendment.

Item 3

This item amends subsection 5(2) of the CELA Act by omitting paragraph 5(2)(b) and substituting new paragraphs 5(2)(b) and (c).

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 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. Diesel fuel purchased for use in such mining operations will only cease to be eligible for rebate on and from this day. Therefore, any existing rebate applications that relate to the use of diesel fuel in such mining operations are not to be decided in accordance with the *amended* provisions of the Customs Act and the Excise Act. New subsection 5(3A) contains the provisions that govern the payment of rebate in respect of such applications (see item 4 below).

New paragraph 5(2)(c) also provides that subsection 5(1) does not apply to an application made to the AAT in relation to a rebate application referred to in paragraph (a) or (b). Paragraph 5(2)(a) refers to claims made in respect of diesel fuel for use at residential premises.

Item 4

This item amends the CELA Act by omitting the present subsection 5(3) and substituting new subsections 5(3) and 5(3A).

New subsection 5(3) is similar to the existing subsection 5(3) as it governs the circumstances in which a person has purchased diesel fuel for use by that person at residential premises in an activity referred to in subparagraphs 5(2)(a)(i), (ii) or (iii) before the day on which the CELA Act received the Royal Assent, ie 1 July 1995.

A rebate application may be made in respect of the duty paid on that fuel. If that application is not made, or not finally decided before 1 July 1995, new subsection 5(3) provides that for all purposes connected with the making and deciding of that application and making payments, the Customs Act and the Excise Act have effect as if the amendments set out in items 1, 4, 5 and 9 of Schedule 1 to the CELA Act, and Schedule 2 to the CELA Act, had not been made.

These items in Schedule 1, and Schedule 2, effect the amendments to the "residential premises" category of diesel fuel rebate, narrowing the circumstances in which diesel fuel purchased for use at residential premises will be eligible for rebate with effect from 1 July 1995. The effect of new subsection 5(3), therefore, is that rebate applications in respect of fuel purchased before 1 July 1995 for use at residential premises 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. The rate of rebate that will be payable in respect of such claims will be the rate that continues to apply to the narrower category of "residential premises".

Subsection 5(3) also provides that a person making an application in accordance with this subsection is not otherwise entitled to make an application for rebate for that fuel. Applications for rebate under subsection 5(3) will also be subject to subsection 164(4A) of the Customs Act, ie in respect of all applications for rebate received on or after 1 July 1994, rebate is only payable in respect of diesel fuel purchased within 3 years before an application is received except where a notice of intention has been given before 1 July 1994.

New subsection 5(3A) is similar to new subsection 5(3) as it 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. If an application is not made, or is not finally decided, before 1 July 1995, new subsection 5(3A) provides that for all purposes connected with the making and deciding of that application, and the payment of rebate, the Customs Act and the

Excise Act have effect as if the amendment in item 6 (insofar as that item refers to sand, sandstone, soil, slate, clay (other than bentonite or kaolin), basalt, granite, gravel or limestone) of Schedule 1 to the CELA Act had not been made.

Item 6 of Schedule 1 to the CELA Act amended the definition of "minerals" in subsection 164(7) to expressly exclude sand, sandstone, soil, slate, clay (other than bentonite or kaolin), basalt, granite, gravel or limestone from the definition, with effect from 1 July 1995. Therefore, diesel fuel purchased on and after this day for use in a mining operation referred to in a paragraph of the definition of mining operations (other than paragraphs (d), (e), (f), (g), (h) or (i)) and that relates to any of these materials will no longer be eligible for rebate.

The effect of new subsection 5(3A), therefore, is that rebate applications in respect of fuel purchased before 1 July 1995 for use in a mining operation referred to in a paragraph of the definition of mining operations (other than paragraphs (d), (e), (f), (g), (h) or (i)) and that relates to sand, sandstone, soil, slate, clay (other than bentonite or kaolin), basalt, granite, gravel or limestone 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.

Similar to new subsection 5(3), subsection 5(3A) also provides that a person making an application in accordance with this subsection is not otherwise entitled to make an application for rebate for that fuel. Applications for rebate under subsection 5(3A) will also be subject to subsection 164(4A) of the Customs Act, ie in respect of all applications for rebate received on or after 1 July 1994, rebate is only payable in respect of diesel fuel purchased within 3 years before an application is received except where a notice of intention has been given before 1 July 1994.

Item 5

This item amends the CELA Act by inserting new subsection 5(4A). New subsection 5(4A) provides that subsection 5(4) does not apply in relation to a rebate application that is made by a person in respect of diesel fuel purchased 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.

Subsection 5(4) of the CELA Act sets out the provisions that govern the law that is applicable to legal proceedings brought in the Federal Court of Australia and the High Court before the day on which the CELA Act receives the Royal Assent in relation to rebate application. The law that is applicable is the Customs Act and the Excise Act in force on and after that day, ie the amended provisions of these Acts.

New subsection 5(4A) specifically excludes those rebate applications that relate to mining operations referred therein for the same reasons as set out in item 3 above. As sand, sandstone etc are only excluded from the definition of "minerals" on and from 1 July 1995, existing legal proceedings in the Federal Court or High Court in respect of such applications are to be governed by the provisions of the Customs Act and the Excise Act as if the amendments to these Acts had *not* been made.

Item 6

This item omits and substitutes the wording of item 1 of Schedule 1 to the CELA Act. This is a grammatical amendment only and is necessary to remove the duplication of the word "in" in the amended provisions of paragraph 164(1)(b) of the Customs Act.

Item 7

This item amends paragraph (l) of the definition of "agriculture" set out in item 2 of Schedule 1 to the CELA Act by "omitting the phrase "first-mentioned agricultural activity" and substituting the phrase "first-mentioned activity". This is a grammatical amendment only to make the wording of this paragraph consistent with the wording of similar paragraphs in the definition of "agriculture".

Item 8

This item amends paragraph (p) of the definition of "agriculture" set out in item 2 of the Schedule to the CELA Act by omitting the phrase "and silage pits" and substituting the phrase "or silage pits". Paragraph (p) provides for the payment of rebate for the construction or maintenance of sheds, pens, silos and silage pits. This current wording provides that rebate is payable only if all these items are constructed or maintained. The amendment in this item will provide that rebate is payable for the separate construction or maintenance of any of these items.

Item 9

This item amends item 2 of Schedule 1 to the CELA Act by omitting and substituting the note to the proposed definition of "agriculture". The note to the definition indicates those agricultural activities, by reference to the relevant paragraphs of the definition, which are given an expanded meaning by subsection 164(8) of the Customs Act.

The paragraphs of the definition of "agriculture" were re-numbered as a result of the Senate amendments to item 2 of Schedule 1 to the CELA Act. The purpose of the amendment in this item is to insert the correct cross-references in the note to the relevant paragraphs of the definition of the "agriculture" which are to be given an expanded meaning by subsection 164(8).

Item 10

This item amends the CELA Act by inserting new item 3A into Schedule 1. New item 3A amends the note to the definition of "agriculture" in item 2 of Schedule 1 by inserting a reference to paragraph (la) after paragraph (l).

Similar to item 9 above, the purpose of the amendment in this item is to insert a cross-reference in the note to another of the relevant paragraphs of the definition of the "agriculture" which is to be given an expanded meaning by subsection 164(8). This cross reference was not inserted at the time the CELA Act was amended by the Senate to insert paragraph (la) into the definition of "agriculture".

Item 11

This item amends the CELA Act by omitting and substituting item 5 of Schedule 1. The purpose of this amendment is to insert the correct cross-references to relevant paragraphs of the definition of "agriculture" in item 5. This amendment is necessary due to the re-numbering of the paragraphs of the definition of "agriculture" as a result of Senate amendments to the definition.

Item 12

This item amends item 7 of Schedule 1 to the CELA Act by omitting and substituting paragraph (a) of the definition of "mining operations". This is a grammatical amendment only to insert commas after the words "prospecting" and "commence" in paragraph (a).

Item 13

This item amends Schedule 1 to the CELA Act by omitting and substituting item 8.

Item 8 is intended to amend paragraph (k) of the definition of "mining operations" (inserted by item 7 of Schedule 1 to the CELA Act) to extend the rehabilitation circumstances under that paragraph to include places affected by mining operations in paragraphs (a) and (b) of this definition, with effect from 1 July 1995 (see also paragraph (b) of item 2 above). The present wording of item 8, however, does not make grammatical sense when applied to paragraph (k).

This item, therefore, proposes a new item 8 which will completely omit and substitute the terms of paragraph (k) in order to implement the intended effect of item 8.

Item 14

This item amends item 10 of Schedule 1 of the CELA Act by inserting a new definition of "approved catchment area" after the definition of "agricultural activity". This new definition is for the purposes of paragraph (t) of the definition of "agriculture", which allows rebate to be paid in respect of activities undertaken for the purposes of soil or water conservation within an approved catchment area by a person who carries on a core agricultural activity within such an area.

"Approved catchment area" is defined as an area in respect of which a soil or water conservation plan has been adopted by, or has been made between, the persons who carry on core agricultural activities within that area.

Item 15

This item amends the definition of "mining town" in item 10 of Schedule 1 to the CELA Act by inserting the word "principally" before "to house employees" and omitting the phrase "principally administered" and substituting "administered". This is a technical amendment only and places the word "principally" in the position that the Senate intended when the Senate originally agreed to insert the word into the definition.

Item 16

This item amends item 11 of the CELA Act, specifically by amending proposed subsection 164(8) of the Customs Act by omitting the reference to "(h)" and substituting "(i)" and inserting a reference to paragraph "(t)" after "(s)". These are technical amendments only and, similar to item 9 above, the purpose of the amendments in this item is to insert the correct cross-references in subsection 164(8) to the relevant paragraphs of the definition of the "agriculture" to which subsection 164(8) applies. The paragraphs of the definition of "agriculture" were re-numbered as a result of the Senate amendments to item 2 of Schedule 1 to the CELA Act.

Item 17

This item amends the CELA Act by inserting new item 11A into Schedule 1. New item 11A amends proposed subsection 164(8) of the Customs Act by inserting a reference to paragraph (1a) after paragraph (1). Similar to item 16 above, the purpose of the amendment in this item is to insert a cross-reference to another of the relevant paragraphs of the definition of the "agriculture" to which subsection 164(8) is to apply. This cross reference was not inserted at the time the CELA Act was amended by the Senate to insert paragraph (1a) into the definition of "agriculture".

Item 18

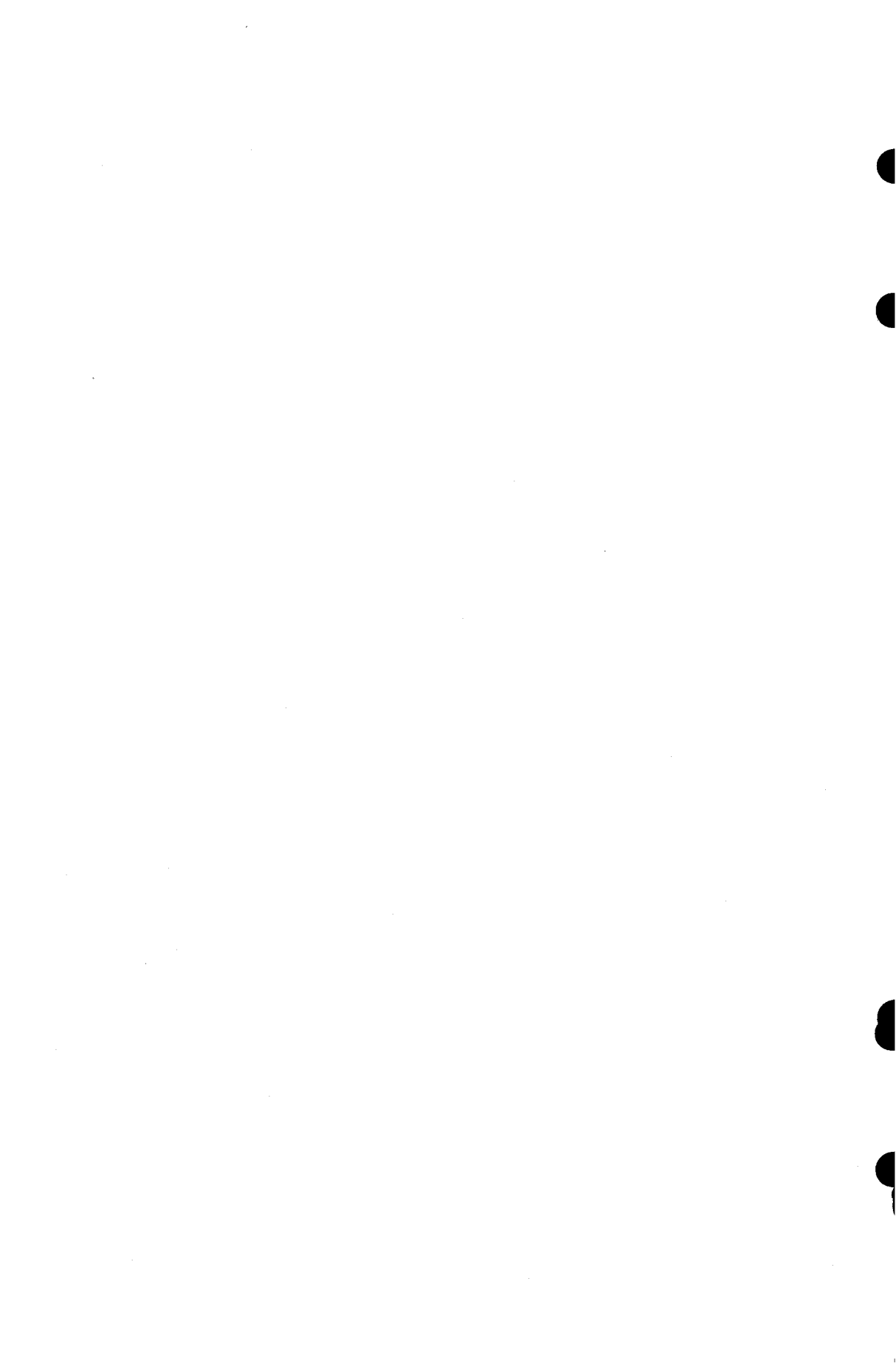
This item omits and substitutes the wording of item 1 of Schedule 2 to the CELA Act. This is a grammatical amendment only and is necessary to remove the duplication of the word "in" in the amended provisions of paragraph 78A(1)(b) of the Excise Act.

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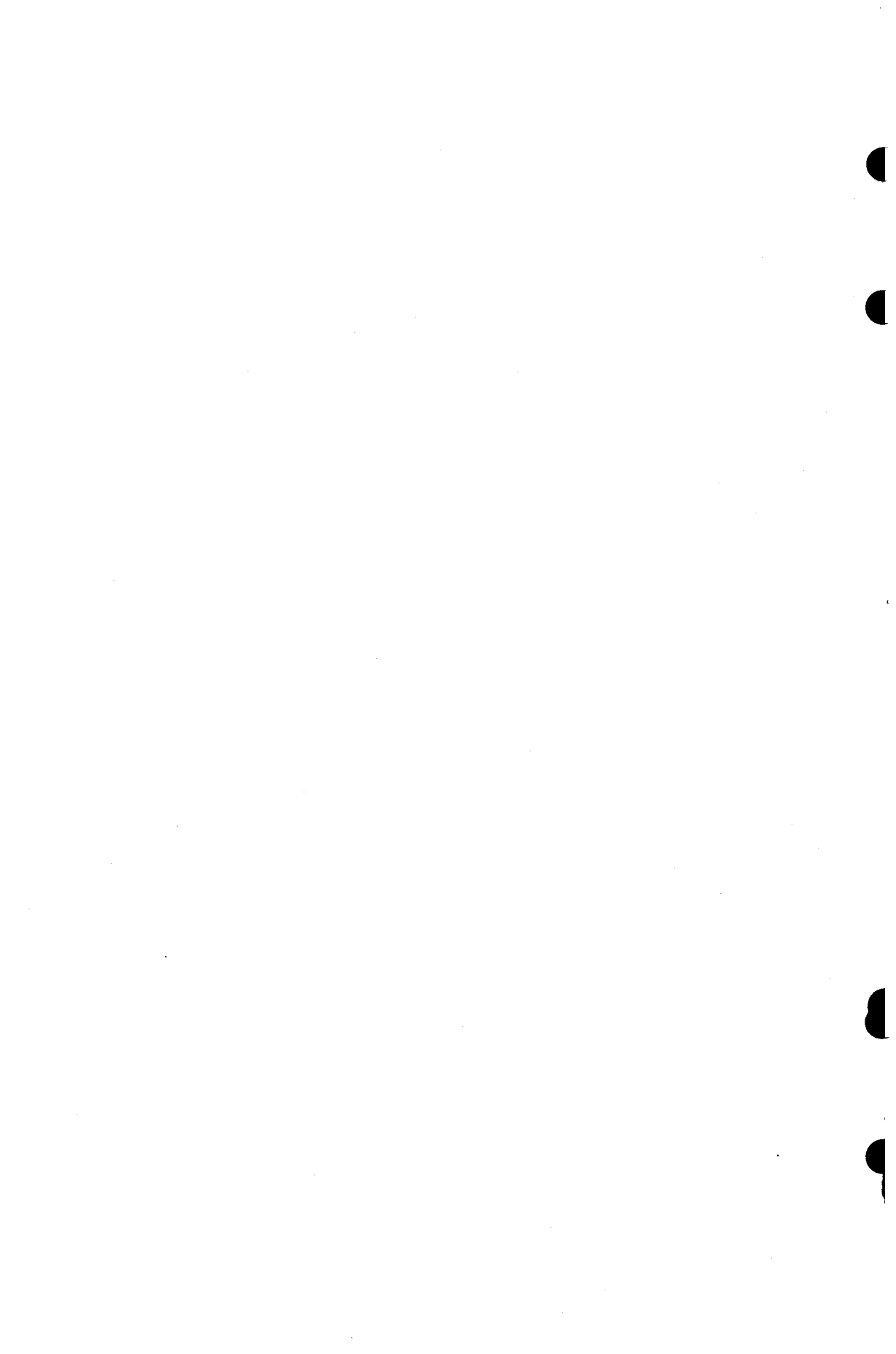


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