

REVENUE LAWS AMENDMENT BILL 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives

The objectives of the Bill are—

- (a) to amend the *Land Tax Act 1915* with effect for assessments for the 1997/98 and subsequent financial years to:
 - ensure that the principal place of residence concessions are available where persons other than the landowner also reside in the property;
 - extend entitlement to the deduction available in respect of the unimproved value of land used solely for the business of agriculture, pasturage or dairy farming to non-resident Australian citizens;
 - increase the statutory deduction for land owned by individuals (who are not trustees or absentees) to \$200,000;
 - increase the exemption threshold in respect of land owned by companies, absentees and trustees to \$100,000;
 - provide a general rebate of 5% of the land tax assessed for all land tax payers.
- (b) To amend the *Pay-roll Tax Act 1971* to increase the pay-roll tax threshold from \$800,000 per annum to \$850,000 per annum on and from 1 January 1998.
- (c) To amend the *Stamp Act 1894* to:
 - simplify the operation of the amendments to the mortgage stamp duty concessions for principal places of residence which were enacted by the *Stamp Amendment Act 1996* (Act

No. 12 of 1996), where further advances are made under mortgages which have attracted the benefit of the concessions;

- provide certainty for taxpayers by clarifying the circumstances in which mortgage stamp duty is chargeable on a security given by a person in connection with a loan or advance by a lender to a borrower.
- (d) To amend the *Tobacco Product (Licensing) Act 1988* to enable the issue of conditional licences and the cancellation of licences during the licence month for breach of licence conditions, contravention of the Act or where, in the Commissioner's opinion, the licensee is not, or is no longer, a fit and proper person to hold a licence.

Reasons for the Bill

Amendments to the *Land Tax Act 1915* are required to:

- Remedy the effect of the 1996 decision of the Land Court in *The Trustee for O'Rourke Seven Trust v. The Commissioner of Land Tax*. Without amendment, the decision would disqualify a landowner from claiming the principal place of residence concession where other persons also reside in the property.
- Extend the entitlement to the deduction available in respect of the unimproved value of land used solely for the business of agriculture, pasturage or dairy farming currently available to resident individuals to non-resident Australian citizens and to remove the impediment to such a claim by a trustee where a beneficiary of the trust is a non-resident Australian citizen.
- Increase the statutory deduction for land owned by individuals (who are not trustees or absentees) to \$200,000;
- Increase the exemption threshold in respect of land owned by companies, absentees and trustees to \$100,000;
- Provide a general rebate of 5% of the land tax assessed for all land taxpayers.

Amendment of the *Pay-roll Tax Act 1971* is required to increase the exemption threshold from \$800,000 to \$850,000 on and from 1 January 1998.

Amendments to the *Stamp Act 1894* are required to:

- Simplify compliance with the mortgage stamp duty concessions for principal places of residence which were enacted by the *Stamp Amendment Act 1996* by reverting to the system for charging duty on further advances to the extent that they exceed the highest amount advanced on which stamp duty has been previously paid.
- Clarify the circumstances in which mortgage stamp duty is chargeable on a security given by a person in connection with a loan or advance by a lender to a borrower.

Amendments to the *Tobacco Products (Licensing) Act 1988* are required to ensure the continued effective operation of the tobacco products licensing scheme by empowering the Commissioner to issue conditional licenses, including conditions to regulate the distribution, sale and purchase of tobacco, and to cancel licences during a licence month to counter opportunities for avoidance by licensees.

Achievement of Objectives

Land Tax Act 1915

The current practice of the Commissioner of Land Tax allows the principal place of residence concession where property is used as the principal place of residence of the owner, all beneficiaries of a trust upon which land is held or home unit company shareholders as the case may be, provided that occupation by other persons does not constitute use of the property for another purpose.

The Land Court, in *The Trustee for O'Rourke Seven Trust v. Commissioner of Land Tax*, considered whether the principal place of residence concession could be claimed for a home owned by a trustee and occupied by the trust beneficiaries and their parents. The Court interpreted *exclusively*, where it appeared in the provision of the *Land Tax Act 1915* under consideration, as requiring that the property be used as a residence of all trust beneficiaries only. Residential use by the parents was a disqualifying factor. While the decision related to trust property, it also has implications for claims by individuals and home unit companies.

Application of the Land Court's decision would result in a significant change in the current practice of the Commissioner of Land Tax and would result in loss of the principal place of residence concession in the majority

of cases. The amendments to the *Land Tax Act 1915* preserve the current practice.

Under the *Land Tax Act 1915*, a deduction is currently available to resident individuals where property is used for the business of agriculture, pasturage or dairy farming. The deduction is not, however, available where the land owner is either an Australian citizen residing overseas or the trustee of a trust in which a beneficiary is an Australian citizen residing overseas. The *Land Tax Act 1915* will be amended to extend the deduction to those land owners by allowing a deduction equal to the value of the qualifying land.

The 1997/98 State Budget provided for initiatives as part of the phasing out of land tax. To give effect to these initiatives, the *Land Tax Act 1915* will be amended to increase the statutory deduction for individuals from \$160,000 to \$200,000. As a result, the deduction for land owned by individuals (who are not trustees or absentees) will increase to, in the case of land used solely for the business of agriculture, pasturage or dairy farming, the greater of the unimproved value of that agricultural land or \$200,000 and, in the case of all other land, \$200,000. The exemption threshold in respect of land owned by companies, absentees and trustees will also be increased to \$100,000 (from \$60,000 for companies and trustees and \$40,000 for absentees).

A general rebate of 5% of the land tax assessed will be newly provided. This rebate applies to all taxpayers regardless of their status or the total taxable value of land owned by them and is in addition to the rebate currently available to certain taxpayers under section 9A of the *Land Tax Act 1915*.

The rebate which is currently provided under the *Land Tax Act 1915* and the new general rebate will be calculated by reference to the gross land tax payable by a taxpayer prior to reduction by a rebate amount. For example:

The taxable value of a company's land is \$140 000 at 30 June 1997. Pursuant to section 9(1) of the *Land Tax Act 1915*, the tax payable in respect of this land, without regard to any rebates, is \$1277.

Under section 9A of the *Land Tax Act 1915*, the company is entitled to a 25% rebate of the land tax which the company would otherwise have to pay. Under section 9AA, a further 5% rebate applies. The tax payable by the company will therefore be \$893.90 (\$1277 - 30% of \$1277).

Pay-roll Tax Act 1971

Generally, employers are liable for pay-roll tax where their total annual wages exceed the exemption threshold. To give effect to an initiative announced in the 1997/98 State Budget, the *Pay-roll Tax Act 1971* will be amended to increase the exemption threshold from \$800,000 to \$850,000 with effect on and from 1 January 1998.

Stamp Act 1894

In general, mortgage duty is imposed only on the highest amount advanced from time to time under a security. For example, if a mortgage is stamped to cover a loan of \$100,000, no further duty is payable provided the loan balance from time to time does not exceed that amount. Redraws and further advances which do not cause the loan balance to exceed that amount do not attract stamp duty.

Prior to the enactment of the *Stamp Act Amendment Act 1996* (Act No. 12 of 1996) this scheme applied also to home mortgages and stamp duty exemptions were treated as duty paid. For example, an exempt initial loan of \$60,000 had the effect of providing future exemptions on further advances for non-qualifying purposes (such as the purchase of a business) provided that the highest amount advanced did not exceed \$60,000. The *Stamp Act Amendment Act 1996* removed this double exemption by imposing duty on all further advances under home mortgages and home refinance mortgages, with a credit being allowed where the amount on which duty had been paid exceeded the balance owing at the time of the further advance (sections 69K and 69L(2) *Stamp Act 1894*).

To simplify compliance where further advances are made under these securities, the *Stamp Act 1894* will be amended to revert to the practice that existed in relation to home mortgages prior to the enactment of the *Stamp Act Amendment Act 1996*. Sections 69K and 69L(2) and (3) enacted by the *Stamp Act Amendment Act 1996* will continue to apply to further advances between 1 July 1996, being the date of commencement of the *Stamp Act Amendment Act 1996*, and the date of commencement of the *Revenue Laws Amendment Act 1997*. Further advances after the enactment of the *Revenue Laws Amendment Act 1997* will attract duty under the same arrangements that existed prior to the enactment of the *Stamp Act Amendment Act 1996*, so that stamp duty will be levied on the highest amount advanced.

In 1995, the Queensland Court of Appeal in *CitiSecurities Limited v Commissioner of Stamp Duties (Qld)* held that a mortgage given by a guarantor to a person to secure the guarantor's obligation to repay to the person an amount lent or to be lent, advanced or paid to another person was chargeable with duty under the *Stamp Act 1894*.

Issues subsequently arose as to the scope of the decision and the combined effect of the decision and the earlier case of *Ansett Transport Industries (Operations) Pty Ltd v Comptroller of Stamps (Vic)*.

Section 68AA provides certainty for taxpayers by clarifying the circumstances in which mortgage duty will be chargeable on a security given by a person in connection with loans and advances by a lender to a borrower. The object of the amendment is to ensure that securities which directly or indirectly secure the payment or repayment of an amount lent or to be lent, advanced or paid will be liable to duty regardless of whether the holder of the security is the lender or payer or the giver of the security is the borrower or payee.

The section applies where there is a direct or indirect connection between a security which is, or can be, used (directly or indirectly) to recover an amount under a guarantee, indemnity or another instrument creating a contingent liability and a loan by one person to another. A number of consequences follow where such a connection exists:

- The security is taken to be for the payment or repayment of money lent, or to be lent, advanced or paid. This confirms the decisions in *CitiSecurities* and *Ansett* that a security backing a guarantee or indemnity secures both the obligations under the guarantee or indemnity and the obligations of the borrower under a loan or advance to which the security is connected.
- The security is chargeable with the same duty as if the recoverable amount under the security were a separate advance under the security. The process for determining the recoverable amount ensures that the duty imposed on the security as a result of section 68AA is assessed by reference to the part of the loan or advance which is within the ambit of the recoverable amount. Where the security is unlimited, however, the whole of the loan or advance is subject to duty under the section as it would be included or comprised in the recoverable amount

Where section 68AA applies, it remains necessary to apply the other provisions of the *Stamp Act 1894*, such as sections 68(1) or (2), 65(1) or (3) and the head of charge Mortgage Bond Debenture Covenant in the First Schedule of the Act, to determine whether a liability to duty arises.

There may be cases where section 68AA can apply to a number of securities in a chain or group of instruments. To avoid the imposition of double duty in these circumstances, the section provides that duty is not paid more than once in relation to the loan or advance.

Example 1

L lends \$1M to B under a loan agreement. G executes a guarantee in favour of L securing B's obligations to repay the loan. G also executes in favour of L an unlimited real property mortgage to secure G's obligations to L under the guarantee.

The mortgage is a security which may be used directly to recover the amount which may become payable under the guarantee and there is a direct connection between the mortgage and the loan because the mortgage is security both for G's obligations under the guarantee and B's obligations under the loan agreement. The security is a mortgage within section 65 because it is taken to be a security for the payment or repayment of money lent, or to be lent, advanced or paid. The recoverable amount (\$1M) is taken to be an advance under the mortgage. Being an unlimited security, the mortgage will be chargeable in accordance with section 68(2) if duty has not been paid on the loan agreement or the guarantee in respect of the loan.

Example 2

D lends \$2M to E under a loan agreement. F executes a guarantee in favour of D to secure E's obligations under the loan agreement. E executes an unlimited indemnity in favour of F in respect of F's obligations to D under the guarantee. E also executes in favour of F an unlimited mortgage debenture to secure E's obligations under the indemnity to F.

Section 68AA applies to two securities, namely the indemnity and the mortgage debenture. The indemnity can be used directly to recover monies that may become payable under F's guarantee to D. The

mortgage debenture can be used to recover the monies that may become payable under F's guarantee to D and can be used directly to recover the monies payable under E's indemnity to F. In each case, there is a connection between the security and the loan by D to E because each security secures, directly or indirectly, the loan.

Section 68AA(2) applies in each case and section 65(3) will apply to the mortgage debenture. Section 68AA(4) will prevent duty being charged more than once in relation to the loan.

Example 3

Q grants finance facilities to R. S executes in favour of Q a guarantee securing R's obligations under the facilities. T executes in favour of S an indemnity in respect of the obligations of S to Q under the guarantee. T also executes in favour of S a real property mortgage securing the obligations of T under the indemnity but limited to \$500,000. Q lends \$1M to R.

The result is the same as for Example 2 except that the mortgage by T to S is limited so that section 68(1) will operate to limit the duty chargeable on the mortgage to \$500,000. As in the previous example, section 68AA(4) ensures that duty is not imposed more than once on the loan.

Tobacco Products (Licensing) Act 1988

Licence fees payable by licensees under the *Tobacco Products (Licensing) Act 1988* are calculated at 100% of product sold in the month which is two months prior to the licence month, or where business was not carried on by the licensee in the month which is two months prior, the Commissioner's estimate of what the licensee's sales would have been in that month had the licensee been in business. This scheme is susceptible to abuse by licensees for instance by purchasing large quantities of tobacco without paying licence fees based on those sales. For instance, an applicant for a licence may advise that only limited tobacco wholesaling activities are proposed. The licence fee paid by the licensee will reflect the sales which the licensee would have been expected to have made two months prior if the licensee had engaged in the limited activities proposed. Once an unrestricted licence is granted, however, the licensee can purchase large quantities of products without paying licence fees based on the product sold.

The resulting underpayment of licence fees confers on the licensee an unfair advantage over its competitors and results in a loss of revenue.

The Commissioner presently has no power to impose conditions which would prevent this activity by, for example, regulating the type and volume of product sold or purchased. As a result, regulation and monitoring of licensees' activities is difficult. Also, where the Commissioner discovers that a licensee is in breach of the *Tobacco Products (Licensing) Act 1988*, the licence may not be cancelled before its expiry at the end of the current licence month. This allows improper activities to continue until that time.

To counter avoidance opportunities and to better facilitate administration of the *Tobacco Products (Licensing) Act 1988*, the Act will be amended to permit the Commissioner to issue or renew licences which are subject to conditions, including conditions to regulate the distribution, sale and purchase of tobacco.

The *Tobacco Products (Licensing) Act 1988* will also be amended to provide that, where a person breaches a licence condition, the Commissioner may cancel the person's licence but, in appropriate cases, may issue a new licence which takes into account additional factors and revises previous conditions.

Importantly, breach of a licence condition does not constitute an offence against the *Tobacco Products (Licensing) Act 1988*. This ensures that a licensee is not automatically in breach of the Act where, for example, a condition has been imposed on a licence limiting the quantity of tobacco products which a licensee may sell based on the licensee's business plan at the time of applying for the licence, and sales during the licence month exceed the limits prescribed by the licence condition as a result of better than expected commercial activity.

Although breach of a licence condition will not constitute an offence, it is essential that the Commissioner is able to monitor compliance with licence conditions. To ensure that is the case, the *Tobacco Products (Licensing) Act 1988* will impose a positive obligation on a licensee to notify the Commissioner of any breach of a licence condition by providing that a licensee who fails to so inform the Commissioner commits an offence. Where a licensee fails to satisfy this requirement, the Commissioner may institute legal proceedings to prosecute for an offence or may instead impose a penalty equal to three times the additional licence fee which would have been payable had the person been appropriately licensed during the

period of non-notification. This means that, where a decision is made by the Commissioner to prosecute for an offence, any penalty fee assessed by the Commissioner must be remitted and, subject to meeting the prerequisites for refunds in section 27AA of the Act preventing windfall gains, the penalty fee paid must be refunded to the licensee. The Commissioner has a discretion to remit all or part of this fee.

These amendments ensure that breaches of licence conditions, or potential breaches of licence conditions, come to the attention of the Commissioner so that the Commissioner may cancel the licensee's licence and the licensee may apply for a new licence for the remainder of the month or a new licence month which is more suited to the licensee's circumstances.

The *Tobacco Products (Licensing) Act 1988* will also be amended to allow the Commissioner to cancel a licence during a licence month where the licensee is acting contrary to the Act, or the Commissioner is satisfied that the person is not, or is no longer, a fit and proper person to hold a licence.

The objection and appeal procedures contained in the *Tobacco Products (Licensing) Act 1988* will be extended to allow objections and appeals against the Commissioner's decisions to issue a conditional licence, to cancel a licence and to impose a fee for failure to notify of a breach of a licence condition.

At the same time, the *Tobacco Products (Licensing) Act 1988* will be amended to allow the Commissioner to remit, in whole or in part, the penalty which is imposed under section 44 where persons engage in unlicensed activities. The penalty is currently imposed automatically at three times the fee which would have been payable, which may be onerous in some circumstances.

Consequential amendments will also be made to the *Tobacco Products (Licensing) Act 1988*, including providing that the register of licences kept by the Commissioner will include details of the conditions which apply to issued licences and facilitating applications for part-month licences.

Alternatives to the Bill

The policy objectives can only be achieved by statutory amendment.

Estimated Cost for Government Implementation

Any additional administrative costs are not expected to be significant.

Consistency with Fundamental Legislative Principles

A fundamental legislative principle is that legislation should not adversely affect rights and liberties retrospectively.

The amendments to the *Land Tax Act 1915* to remedy the effects of the decision in *O'Rourke's* case, to extend the agricultural deduction to non-resident Australian citizens and to give effect to the 1997/98 State Budget initiatives will take effect on 29 June 1997 to ensure their effect prior to the time at which taxpayers' landholdings for land tax assessments for the 1997/1998 year are determined. Also, new section 11BA of the *Land Tax Act 1915*, which was recently enacted by the *Body Corporate and Community Management Act 1997*, commences on 13 July 1997. That section must also be amended with effect from 13 July 1997 to overcome the decision in *O'Rourke's* case.

As the *Revenue Laws Amendment Bill 1997* will be introduced into, and considered by, the Parliament after this time, these amendments will have retrospective effect. However, while retrospective revenue legislation is not generally favoured, all of the amendments are favourable to taxpayers and therefore do not adversely affect rights or liberties.

A fundamental legislative principle is that appropriate protection should be provided against self-incrimination.

One of the amendments to the *Tobacco Products (Licensing) Act 1988* imposes a positive obligation upon tobacco licence holders to inform the Commissioner where they have breached a licence condition. Importantly, a licence holder does not commit an offence by breaching a licence condition but only does so by failure to notify the Commissioner of such breach.

It is considered that the *Tobacco Products (Licensing) Act 1988* does not offend against the principle of protection against self-incrimination for the following reasons—

- Breach of a licence condition does not constitute an offence.
- Notification of a breach of a condition by a licence holder gives rise to a discretion on the part of the Commissioner to cancel the

licence for breach of a licence condition if appropriate. It would not result in a prosecution of the licensee for breach.

- The licence holder may apply for a new licence to be issued with immediate effect on the cancellation of a licence.

Notification of breach of a condition would usually serve to correct information previously provided to the Commissioner by the licensee about the licensee's proposed activities. The notification requirement ensures that breaches of licence conditions are promptly brought to the attention of the Commissioner so that, in appropriate cases, the Commissioner may cancel the licence and may, if appropriate, issue a new, more appropriate, licence to the former licence holder. The penalty which applies as an alternative to prosecution action is set at a sufficiently high level to promote voluntary compliance with the requirement to notify of a breach of a condition. However, the Commissioner has the discretion to remit in full or in part this penalty, having regard to the circumstances of each individual case.

It is not considered that the *Revenue Laws Amendment Bill 1997* raises any other fundamental legislative principle issues.

Consultation

The amendments to the *Stamp Act 1894* effected by section 68AA are substantially in accordance with a legislative model set out in a Consultation Paper released in September 1996 for public comment. The model upon which section 68AA is based is that supported by the public submissions. The need for the amendment to sections 69K and 69L of the *Stamp Act 1894* arose out of submissions made by the major banks and financial institutions who were subsequently consulted on the amendments.

Consultation on the remaining initiatives was not considered to be necessary and would be inappropriate in relation to the measures to counter avoidance opportunities under the *Tobacco Products (Licensing) Act 1988*.

NOTES ON PROVISIONS

Clause 1 cites the short title of this Act.

Clause 2 sets out the dates for commencement of Part 2.

Clause 3 states that Part 2 comprising clauses 3 to 13 amends the *Land Tax Act 1915*.

Clause 4 amends section 3E to clarify that land may be the principal place of residence of a person even though other persons may also reside in the property.

Clause 5 inserts a new section 9AA conferring upon taxpayers a general rebate of 5% of the tax assessed.

Clause 6 amends section 9A to clarify that the rebate in section 9A is in addition to that in section 9AA and makes a minor correction.

Clause 7 inserts a new section 9AB which provides that both the rebate in section 9A and the rebate in section 9AA are to be calculated by reference to the land tax payable by a taxpayer prior to reduction by either rebate.

Clause 8(1) amends section 11(4) to increase the deduction for land owned by individuals (who are not trustees or absentees) to:

- in the case of land used solely for the business of agriculture, pasturage or dairy farming, the greater of the unimproved value of that land or \$200,000;
- in the case of all other land \$200,000.

Clause 8(2) amends section 11(5) to extend entitlement to the deduction for the value of land used solely for the business of agriculture, pasturage or dairy farming to absentees who are Australian citizens and to trustees of trusts of which an absentee who is an Australian citizen is a beneficiary.

Clause 8(3) deletes the word “exclusively” from sections 11(6A), 11(6D) and 11(6F)(b) as the qualifying conditions for land to be a principal place of residence are established in section 3E.

Clause 8(4) defines “Australian citizen”.

Clauses 9 to 11 omit the word “exclusively” from sections 11B to 11C as the qualifying conditions for land to be a principal place of residence are established in section 3E.

Clause 12(1) omits the word “exclusively” from section 13(1)(h) as the qualifying conditions for land to be a principal place of residence are established in section 3E.

Clauses 12(2) to (4) increase the exemption available in sections 13(1)(i) and section 13(1)(k) for companies and trustees from \$60,000 to \$100,000 and increases the exemption available in section 13(1)(j) for absentees from \$40,000 to \$100,000.

Clause 13 amends section 16(1) to reflect the effect of increased deductions and exemption thresholds on obligations for lodgement of returns.

Clause 14 states that Part 3 comprising clauses 14 to 18 amends the *Pay-roll Tax Act 1971*.

Clauses 15 to 18 amend sections 9(1), 9(4), 11A(2), 11A(2A), 12(1), 16J(1) and 16J(1A) to give effect to an increase in the pay-roll tax threshold from \$800,000 per annum to \$850,000 per annum on and from 1 January 1998.

Clause 19 states that Part 4 comprising clauses 19 to 22 amends the *Stamp Act 1894*.

Clause 20 inserts a new section 68AA which applies where there is a direct or indirect connection between, on the one hand, a loan or advance made by a person to another person and, on the other hand, a security that is or may be used directly or indirectly to recover any amount payable, or that may become payable, under a guarantee, an indemnity or an instrument that creates a contingent liability.

Where the section applies, the security is taken to be a security for the payment or repayment of money lent or to be lent, advanced or paid and is chargeable with duty as if the amount recoverable under the security were a separate advance made under the security.

Section 68AA (3) qualifies the operation of subsection (2) by linking the recoverable amount to the loan or advance and excluding other contingent liabilities.

Section 68AA(4) provides that duty is not payable more than once in relation to a loan.

Section 68AA(5) clarifies that the section operates in addition to section 68(1) or (2), as the case may be.

Clause 21 omits section 69K.

Clause 22 amends section 69L by omitting section 69L(2) and (3), and omitting reference to section 69L(2) from section 69L(4).

Clause 23 states that Part 5 comprising clauses 23 to 33 amends the *Tobacco Products (Licensing) Act 1988*.

Clause 24 provides that a licence issued under the Act ceases to be in force at the end of the calendar month in which it is issued, unless it is earlier surrendered by the licensee or cancelled by the Commissioner.

Clause 25 inserts sections 23A to 23D which provide for:

- in *section 23A*, the Commissioner to impose appropriate conditions, including conditions for regulating the distribution, sale and purchase of tobacco, on the issue or renewal of licences. The section requires the Commissioner to notify a licensee of the reasons for imposing conditions and of the licensee's right to lodge an objection against the Commissioner's decision.
- in *section 23B*, an offence against the Act for failing to immediately notify the Commissioner in writing of breach of a licence condition.
- in *section 23C*, the amendment of conditional licences where the Commissioner has allowed an objection against a decision to impose a condition, so that the licence reflects the objection decision.
- in *section 23D*, the cancellation of a licence by written notice to the licensee where the Commissioner is satisfied that there has been a breach of a licence condition or contravention of the Act by any member of a group in the case of a group licensee, or by the licensee in any other case, or where the Commissioner is satisfied that an individual licensee or any person concerned in the management of a corporate licensee is not or is no longer a fit and proper person to hold a licence. The cancellation takes effect on the day the notice is given or on a later day stated in the notice. The section requires the Commissioner to notify a licensee of the reasons for cancellation of a licence and of the licensee's right to lodge an objection against the Commissioner's decision.

Clause 26 provides for the calculation of licence fees payable where a person applies for the issue of a licence for part of a month in circumstances where the applicant has carried on business for the entire relevant month, by apportioning the fees which would have been payable for a full monthly licence according to the number of days in the month for which the licence is sought.

Clause 27 requires that the register of licensees kept by the Commissioner include details of any conditions which are imposed on a licensee's licence.

Clause 28 amends section 31 of the Act to extend the matters which may be the subject of an objection to the Commissioner's decisions to impose conditions on the issue or renewal of a licence, to cancel a licence, and to impose a penalty fee where a licensee fails to notify the Commissioner of a breach of a condition applying to the licensee's licence.

The section requires the Commissioner to consider objections as soon as practicable and to notify a licensee of the reasons for the Commissioner's decision in relation to the objection and of the licensee's right to appeal that decision. The section clarifies that the making of an objection does not affect the relevant assessment or decision pending the making of the objection decision.

If the Commissioner allows an objection against a decision to cancel a licence, the licence will be reinstated for the period of the month of the licence which remains after allowing the objection.

Clause 29 extends the operation of section 34 by including fees imposed under section 44A.

Clause 30 extends the operation of section 39 by including fees imposed under section 44A.

Clause 31 allows the Commissioner to remit all or part of the fee which is payable where a person engages in unlicensed activities.

Clause 32 provides that a licensee who has contravened section 23B by failing to immediately notify the Commissioner of a breach of a licence condition is liable for a penalty fee. The penalty fee is equal to three times the fee which would have been payable if the person had applied for, and been issued with, a licence in respect of the licensees' activities which are in breach of the conditions of the licensee's licence for the period from the date when the licensee breached the licence condition to the date which is the earlier of the date when the Commissioner is informed of the breach of licence condition, the date when the licence is cancelled or the date when the licence expires. The Commissioner has a discretion to remit all or part of the penalty fee.

The Commissioner must as soon as practicable give written notice of the assessment of the penalty fee to the licensee and advise of the licensee's right to lodge an objection against the Commissioner's decision.

The penalty fee is an alternative to prosecution for an offence against section 23B of the Act so that, where a licensee is prosecuted for an offence against section 23B, the Commissioner must remit all of the penalty fee imposed, and in circumstances where the requirements of the Act regarding the making of refunds are satisfied, refund that part of the penalty fee which has been paid.

Clause 33 amends section 45(4) to clarify that a fee under section 44A is a debt due to the Crown and payable to the Commissioner.