

# REVENUE AND OTHER LEGISLATION AMENDMENT BILL 1998

## EXPLANATORY NOTES

### GENERAL OUTLINE

#### Policy Objectives

To amend the:

- *Debits Tax Act 1990* to make debits to an account with a cheque drawing facility kept with a non-bank financial institution liable to debits tax and to update the Act for changes to the *Banking Act 1959 (Cwlth)*;
- *Fuel Subsidy Act 1997* to address certain administrative and operational issues;
- *Stamp Act 1894* to remove avoidance opportunities, preserve the operation of certain concessions, provide a stamp duty exemption and make necessary consequential amendments following a review of the *Stamp Duties Regulation 1926*;
- *Land Tax Act 1915* to make necessary consequential amendments following a review of the *Land Tax Regulation 1936*; and
- *Pay-roll Tax Act 1971* to make necessary consequential amendments following a review of the *Pay-roll Tax Regulation 1971*.

Minor amendments are also being made to the *Land Tax Act 1915* and the *Revenue Laws (Reciprocal Powers) Act 1988* to correct errors and update references.

#### Reasons for the Bill

Following recommendations made by the Wallis Report to encourage competition in the provision of financial services in the community, the Commonwealth Government amended the *Cheques and Payment Orders Act 1986 (Cwlth)* to extend cheque issuing rights to building societies, credit

unions and their industry Special Services Providers. Amendment of the *Debits Tax Act 1990* is therefore necessary to make debits to cheque accounts with credit unions, building societies and their Special Service Providers liable to debits tax from the same date that the Commonwealth amendments have effect. The amendments will also update the Act for changes to the *Banking Act 1959 (Cwlth)* creating authorised deposit-taking institutions.

Following the invalidation by the High Court of New South Wales' tobacco franchise fee legislation on 5 August 1997, the Commonwealth implemented safety net arrangements at the request of the States and Territories, including by increasing the rates of the customs and excise duties for fuel. To ensure fuel prices did not increase in Queensland as a result, the *Fuel Subsidy Act 1997* was enacted to provide a legislative framework for the payment of fuel subsidies. The Act has now been operating for 12 months and, during that time, it has been necessary to introduce certain administrative arrangements to ensure the scheme's effective operation. In addition, changes made by the Commonwealth to the definition of fuel products necessitates amendment of the Act to reflect these changes.

The *Fuel Subsidy Act 1997* therefore requires amendment to:

- retrospectively extend the operation of section 108 to require any person (whether or not a manufacturer or importer) who sells fuel, other than under a net sale, to extend the implied terms of trade to the buyer;
- retrospectively modify the off-road diesel consumers' scheme to allow retail quantities of diesel acquired under the licence to be used for on-road purposes in limited circumstances;
- retrospectively reflect changes previously made to the classification of fuel by the Commonwealth; and
- retrospectively allow the Commissioner to extend the time for lodgement of annual returns by bulk end users.

Following recent judicial decisions, amendment of the *Stamp Act 1894* is necessary to address certain avoidance opportunities and to ensure liability for duty in particular cases. Amendment is also required to provide an exemption from duty on the transfer of a particular security.

The *Stamp Act 1894* is therefore to be amended to:

- ensure that conveyance duty under section 56B cannot be avoided on the issue of units in a unit trust scheme to persons other than the public prior to satisfying the tests for a public unit trust scheme;
- ensure that duty remains payable on a contract under section 54 if the property is conveyed other than by that contract and the purchaser benefits financially;
- ensure the liability for duty of share buy backs; and
- exempt from stamp duty the transfers of Suncorp-Metway Exchanging Instalment Notes Series 2.

The *Stamp Duties Regulation 1926*, *Pay-roll Tax Regulation 1971* and *Land Tax Regulation 1936* are currently being reviewed pursuant to the *Statutory Instruments Act 1992* and, where the existence of regulation making power is in doubt, it is necessary to amend the *Stamp Act 1894*, *Pay-roll Tax Act 1971* and *Land Tax Act 1915* to preserve the existing legislative schemes. In particular, the *Stamp Act 1894* requires retrospective amendment to continue the effect of certain Orders in Council which provide for an exemption from stamp duty on applications for registration or transfer of registration of motor vehicles.

## **Achievement of Objectives**

### ***Debits Tax Act 1990***

Debits tax is payable on debits of one dollar or more made to an account with a cheque drawing facility kept with a bank or to a payment order account kept with a non-bank financial institution (NBFI). Currently, a NBFI such as a building society or credit union is not able to issue cheques drawn on the NBFI. Where a NBFI offers an account with a cheque-drawing facility, the facility operates through an agency agreement with a bank and the NBFI, as the bank account holder, is liable for the debits tax.

Following recommendations made by the Wallis Report, the Commonwealth amended the *Cheques and Payment Orders Act 1986* (*Cwlth*) to extend cheque issuing rights to building societies, credit unions and their industry Special Services Providers. At the same time, payment orders were abolished. To ensure that these organisations are subject to the same debits tax obligations as are banks, the Commonwealth also made

consequential amendments to the *Debits Tax Administration Act 1982 (Cwlth)*. The Commonwealth legislation commences on 1 December 1998.

Despite the amendments to the Commonwealth debits tax legislation on which Queensland's own debits tax legislation is based, some further amendments to the *Debits Tax Act 1990* are necessary to make debits to cheque accounts with credit unions, building societies and their Special Service Providers liable to debits tax. These amendments will also commence on 1 December 1998.

The *Banking Act 1959 (Cwlth)* will also change to cover bodies corporate that are authorised deposit-taking institutions ("ADIs"). Commencing on 1 December 1998, the concept of a bank in the *Banking Act 1959 (Cwlth)* will refer only to those ADIs permitted to use the word "bank" in connection with their business. Consequential amendments are required to the *Debits Tax Act 1990* to ensure that debits tax is payable by any ADIs offering cheque account facilities, whether or not they are a bank.

### ***Fuel Subsidy Act 1997***

Following amendments to the *Excise Tariff Act 1921 (Cwlth)* and the *Customs Tariff Act 1995 (Cwlth)* whereby the classification of fuel products to which the *Fuel Subsidy Act 1997* applies was changed, amendment of Schedule 2 of the *Fuel Subsidy Act 1997* is necessary to reflect the new classifications. This amendment will have effect on and from 31 January 1998, being the date that the Commonwealth amendments had effect.

In addition, three administrative arrangements have been implemented under the *Fuel Subsidy Act 1997* to ensure the fuel subsidy scheme's effective operation pending retrospective legislative amendments being effected.

### ***Implied terms***

Under the *Fuel Subsidy Act 1997*, only licensees are entitled to the benefit of a subsidy. A person who resells fuel (a distributor) will not be licensed and must consequently purchase all fuel at the surcharge inclusive price (ie. an additional 8.149 cents/litre). Where a sale of fuel is then made to a licensee, the distributor is required to sell at the subsidised price and, where registered, may claim reimbursement of the subsidy amount from the State each month.

To ensure that distributors are not financially disadvantaged by having to pay the surcharge inclusive price to their suppliers under the normal trade terms yet not receive the subsidy from the State until a later time, section 108 of the *Fuel Subsidy Act 1997* implies terms in fuel sale contracts by manufacturers and importers with distributors. These terms require that the amount of the sale price equal to the surcharge is not payable by the purchaser to the supplier until the fifth business day of the following month.

Section 108 does not currently require adoption of the implied terms by distributors reselling fuel to other distributors, that is where there is more than one distributor in the distribution chain. An administrative arrangement was implemented on 22 December 1997 to require the adoption of implied terms in all contracts with persons who are registered under the *Fuel Subsidy Act 1997*, other than where the sale is a net sale. Section 108 is now being amended to give effect to this arrangement.

#### *On-road use of off-road diesel*

Under the *Fuel Subsidy Act 1997*, a licensed off-road diesel consumer who purchases subsidised diesel must use that fuel in Queensland for off-road purposes only. If any amount of the diesel is used for on-road purposes, the subsidy is required to be repaid and the licensee is taken to have contravened a licence condition. Further, where a diesel seller has reason to believe that a licensee will use the diesel on-road, the seller may refuse to sell the diesel at the subsidised price. Although an off-road diesel consumer who wishes to use diesel for on-road purposes may obtain a bulk end user's licence in relation to that fuel, it is often not an easy matter to determine the volume of diesel to be used for each purpose at the time of purchase.

To minimise the administrative costs for diesel purchasers where diesel is purchased under the off-road diesel consumer's licence and is then used in small quantities in a vehicle used on-road for either a domestic purpose or a purpose associated with the business for which the licence is held, an administrative arrangement was implemented on 10 December 1997. This ensures that a licensee does not contravene a licence condition, a fuel seller may not refuse to sell subsidised diesel and there is no obligation under the Act to repay the subsidy in such cases.

The effect of these arrangements is that primary producers, for instance, are permitted to use some of the diesel acquired under their off-road diesel

consumer's licence to operate their utility or their produce delivery vehicle. However, the arrangements do not, for instance, allow a transport operation which has a business which uses diesel for off-road activities to purchase all of its diesel under the off-road licence where the on-road use is for the separate, transport business.

*The Fuel Subsidy Act 1997* is being amended to give effect to this administrative arrangement.

#### *Failure to lodge returns*

Section 103 currently provides that, where a bulk end user fails to lodge an annual return by 31 July, the licence is automatically cancelled on the following day. This provision ensures that licensees who are no longer entitled to a licence cannot continue purchasing subsidised fuel by failing to bring that ineligibility to the Commissioner's attention.

However, there will be cases where a bulk end user who is entitled to remain licensed may fail to lodge a return by the required time. To avoid the need for a new licence to be issued in these cases and to ensure that the person is not required to repay any subsidy received during the unlicensed period, an administrative arrangement was implemented on 31 July 1998 to allow the Commissioner to extend the time for lodgement of a return and so override the automatic cancellation of the licence.

To give effect to this arrangement, the *Fuel Subsidy Act 1997* is to be amended to require the Commissioner to extend the time for lodgement of a return where the Commissioner is satisfied that the person is entitled to be licensed as a bulk end user. However, the time for lodging a return cannot be extended beyond 31 October. This period has been extended to 30 June 1999 in relation to returns for the year ending 30 June 1998.

Lodgement of a return by the extended date will be sufficient to constitute a request for an extension of time to lodge the return.

Where a person fails to lodge the return by the extended date, the licence will be taken to have been cancelled on the day after the return was originally due. Similarly, where an application for an extension of time to lodge is not made and no return is lodged by 31 October, the licence will be taken to have expired on the day after the return date.

Where the Commissioner refuses to extend the time for lodging a return, an information notice must be given and the decision will be subject to review and appeal under Part 4 of Chapter 6 of the *Fuel Subsidy Act 1997*.

In these cases, the licence will be taken to have expired on the day after the return date.

The *Fuel Subsidy Act 1997* is also being amended to make it clear that there is an obligation to return a licence which is cancelled pursuant to section 103 and to clarify that the person who is required to return a cancelled licence is the former licensee.

### ***Stamp Act 1894***

#### ***Section 56B – Public unit trusts***

Conveyance stamp duty is payable under section 56B of the Stamp Act 1894 on the transfer, allotment or redemption of a unit in a unit trust scheme unless the trust is a public unit trust scheme.

Among the requirements of the definition of public unit trust scheme in section 56B(1) is the necessity for the unit trust scheme to have a minimum prescribed spread of ownership of units. Specifically, a unit trust scheme will not be a public unit trust scheme where fewer than 50 persons are beneficially entitled to units under the scheme or 20 or fewer persons are beneficially entitled to 75% or more of the total issued units in the scheme. As unit trust schemes cannot meet these requirements from the outset, section 56B(1A) provides that a unit trust scheme will be taken to be a public unit trust scheme where the Commissioner is satisfied that units will be issued to the appropriate extent within 12 months of the approval of the deed under the Corporations Law.

The Queensland Court of Appeal decision in *Thakral Fidelity Pty Ltd v Commissioner of Stamp Duties* highlighted that section 56B(1A) does not prevent disposition of units other than to the public within the 12 month period. The amendment rectifies this deficiency. The amended provision will confer public unit trust scheme status on a unit trust scheme from immediately before the first issue to the public if the spread of ownership requirements will be met within one year after that time and all dispositions in the one year period relate to units to be issued to the public.

As noted, the time from which the one year period in section 56B(1A) commences is also to be amended to commence from the first issue to the public. This change is necessary following removal of the approved deed requirements by the *Managed Investments Act 1998* (Cwlth).

*Section 54(7) and (8) – Refund of duty on rescission of contract*

Conveyance stamp duty is charged on a contract for the sale of property. However, sections 54(7) and (7A) provide that duty is not claimable or, if paid, can be refunded, if the contract has been rescinded. Section 54(8) ensures that duty continues to apply where the first contract is replaced by another contract in cases where there is a further sale (“subsale”) of the property as contemplated by the first contract.

A subsale involves two separate transactions. Under the first transaction, the first purchaser contracts with the vendor to purchase property. Under the second transaction, the first purchaser resells the property prior to completion of the first contract and usually at a profit to the first purchaser.

Where the subsale does not involve rescission of the first contract, stamp duty is payable in respect of both sales. Duty on the first contract could be avoided, however, by rescinding the contract, obtaining a refund of duty, and arranging for the vendor to contract directly with the end purchaser.

In the recent case of *Barob Pty Ltd v Commissioner of Stamp Duties*, the Queensland Court of Appeal held that the second limb of section 54(8) only applies where the first contract makes express provision for its rescission and replacement with another contract.

Section 54 is therefore being amended so that duty will continue to be payable on a contract if there is one or more agreements, contracts or arrangements that result in the property being transferred other than by the first contract or agreement and the original purchaser gains a financial benefit.

A financial benefit received by the first purchaser will include an indirect financial benefit. For example, the first purchaser under the first contract may arrange for the replacement purchaser to purchase the property for the same price as that under the first contract and a fee or some other consideration for the first purchaser agreeing to terminate the first contract. If the fee or consideration were paid to the first purchaser’s spouse, family trust or related company, the first purchaser would have received an indirect financial benefit and duty would remain chargeable on the first contract

The requirement that the first purchaser obtains some financial benefit will ensure that no duty will be payable where the new contract is made to modify the purchasers rather than to effect a subsale. This will be achieved by providing that a financial benefit does not arise merely because the first



purchaser is released from the person's obligations under the first contract or acquires a right or benefit in respect of all or part of the property. For example, a refund of duty on a contract by a wife to purchase a house would not be prevented merely because the contract is replaced by a contract with the husband and wife as joint purchasers or with the couple's family trust.

### Share Buy Backs

Under the *Corporations Law*, companies are able to buy back their own shares in a number of circumstances. Upon completion of a buy back agreement, shares are transferred back to the company and automatically cancelled. Conveyance stamp duty is charged on the transfer of shares in Queensland incorporated companies and on sales and purchases of shares on market where the order is lodged with a Queensland broker including, until the recent Victorian Court of Appeal in *Coles Myer Ltd v Commissioner of State Revenue (Vic)*, share-buy back transfers. That case held that the transfer of shares associated with a company's buy back of its own shares was not a dutiable transfer.

The *Stamp Act 1894* is being amended to ensure that transfers effecting share buy back agreements continue to attract stamp duty as was previously the case.

### Transfers of Suncorp-Metway Exchanging Instalment Series 2 Notes

In a Public Offer Document of 8 October 1998, the Queensland Government has offered for issue Suncorp-Metway Exchanging Instalment Notes Series 2. Under the *Stamp Act 1894*, these securities are marketable securities within paragraph (b) of the definition of that term and also rights in respect of shares within the ordinary meaning of that term in the *Stamp Act 1894*. As such, these securities would be liable for Queensland stamp duty on their transfer.

The *Stamp Act 1894* is being amended to ensure that, on and from the date of first trade of these Suncorp-Metway Notes, stamp duty will not be payable under the *Stamp Act 1894* on their transfer, whether that transfer is effected on or off-market or by the CHESSE electronic register system. As transfers of these Notes will not be within the Conveyance or Transfer head of charge, there will be no obligation to lodge the instruments with the Office of State Revenue.

***Amendments in relation to the review of the Stamp Duties Regulation 1926***

Following a review of the *Stamp Duties Regulation 1926* pursuant to the *Statutory Instruments Act 1992*, it is necessary to amend the *Stamp Act 1894* to either include specific provisions which are currently in the Regulation but which are more appropriate for inclusion in the Act or to provide the necessary regulation making powers to remake particular sections of the Regulation. These amendments will preserve the current legislative scheme.

In particular, the Application for Registration or Application for Transfer of Registration of a Motor Vehicle head of charge is to be amended to preserve the effect of a number of Orders in Council which provide exemption from stamp duty. As the legislative power to make these Orders in Council was removed from the *Stamp Act 1894* on 26 April 1988, these amendments will be taken to have had effect on and from that date to ensure that all exemptions granted since that time were validly provided.

The maximum penalties which may be prescribed for breach of the Regulation is also being increased to 20 penalty units.

***Land Tax Act 1915 and Pay-roll Tax Act 1971***

The regulations under the *Land Tax Act 1915* and the *Pay-roll Tax Act 1971* are also being reviewed pursuant to the *Statutory Instruments Act 1992*. Similarly to the *Stamp Act 1894*, to preserve the current legislative scheme it is necessary to amend these Acts either to include specific provisions which are currently in the Regulation but which are more appropriate for inclusion in the Act or to provide the necessary regulation making powers to remake particular sections of the Regulations.

The maximum penalties which may be prescribed for breach of the regulations are also being increased to 20 penalty units.

**Alternatives to the Bill**

The policy objectives require statutory amendment to give them ongoing effect.

## **Estimated Cost for Government Implementation**

Any additional administrative costs are not expected to be significant.

## **Consistency with Fundamental Legislative Principles**

### *Retrospective operation of provisions*

A number of the amendments will have retrospective effect.

The amendments to the *Stamp Act 1894* relating to the exemptions for applications for registration and transfer of registration of motor vehicles require retrospective effect to ensure that any exemptions granted on the basis of the specified criteria on and from 26 April 1988 were validly granted.

The amendment to give effect to the stamp duty exemption for transfers of Suncorp-Metway Notes will have retrospective effect to ensure that stamp duty is not payable on and from the date of first trade of the Notes. This initiative has been publicly announced.

In addition, three of the amendments to the *Fuel Subsidy Act 1997* are required to give effect to administrative arrangements, two of which have been in place since December 1997 and the other since 31 July 1998. The other amendment is required to effect changes to the definition of fuel following amendment of the *Excise Tariff Act 1921* (Cwlth) and the *Customs Tariff Act 1995* (Cwlth) on and from 31 January 1998.

All of these arrangements are beneficial to members of the community and most have been publicly communicated. Further, the fuel subsidy scheme has been administered on the basis of the arrangements.

In relation to the amendments to the *Debits Tax Act 1990*, the financial sector is aware of the Commonwealth's plans to extend cheque issuing rights to non-bank financial institutions and that debits tax applies in the same manner as for cheques issued by banks. The industry was one of the main drivers of these reforms. Also, other States and Territories have either amended their debits tax legislation or are in the process of doing so.

These amendments must have retrospective effect to 1 December 1998 to ensure a level playing field for banks, credit unions, building societies and Special Service Providers in relation to debits tax on cheque accounts. If that was not the case, it would be possible for NBFIs to start issuing their own cheques before the *Revenue and Other Legislation Amendment Bill*

1998 is enacted and avoid any liability for debits tax during that time, placing them at an unfair competitive advantage over banks which are liable for debits tax on the same types of account.

Industry has been advised of the intention to effect these amendments on and from 1 December 1998 to accord with the date that the relevant changes to Commonwealth legislation have effect.

*Rights dependent on administrative power*

In relation to the amendment of section 103 of the *Fuel Subsidy Act 1997*, enabling the Commissioner to extend the date for lodgement of a return represents a significant change to the current arrangements whereby a licence is automatically cancelled if it is not lodged by 31 July in a year. The circumstances in which the Commissioner must extend the date for lodgement are clearly established in the Act in relation to the eligibility criteria for a licence and any decision to refuse an extension of time will be subject to review.

Where the Commissioner determines that an extension of time should not be provided, it is appropriate the licence be automatically cancelled. In this regard, the reason for lodging a return is to enable the Commissioner to determine the amount of the licensed quantity of fuel to which the person is entitled for the current financial year, which is irrelevant where a person is not entitled to hold a licence.

*Legislation drafted in an appropriate manner*

The *Debits Tax Act 1990* applies the provisions of the *Debits Tax Administration Act 1982* (Cwlth), with the applied provisions of the Commonwealth legislation taken to be incorporated in, and read as one with, the Queensland legislation. Schedule 2 of the *Debits Tax Act 1990* specifies the necessary modifications of the Commonwealth Act to ensure the effective operation of the Queensland legislation.

Amendment of Schedule 2 is necessary to give effect to the policy objectives of the *Revenue and Other Legislation Amendment Bill 1998*. Although it would have been possible to limit the amendments to those necessary for this purpose, the current format of Schedule 2 is not easily followed because of earlier amendments. Schedule 2 has therefore been consolidated. However, the language of the Schedule has been largely

preserved as it is considered that piecemeal modernisation of the language may have lead to uncertainty, particularly given the relationship between the *Debits Tax Act 1990* and the Commonwealth legislation.

In the case of the definitions “financial institution” and “ADI” it has been necessary to cross reference these to the relevant definitions in the *Cheques Act 1986* (Cwlth) and the *Banking Act 1959* (Cwlth) respectively as these terms have technical meanings and should be read in the context of the Acts from which they are derived.

The approach adopted for Schedule 2 of the *Debits Tax Act 1990* is considered appropriate as the legislation is technical in nature and not commonly referred to by lay persons. Further, as debits tax is proposed by the Commonwealth to be abolished on 1 January 2001 as part of its national tax reform proposals, substantive modification of the legislation at this time would not have been an efficient use of resources.

#### *Sufficient regard to the institution of Parliament*

Finally, there is currently a regulation making power under the *Stamp Act 1894*, *Land Tax Act 1915* and *Pay-roll Tax Act 1971* to prescribe penalties for breaches of the regulations. While the circumstances in which penalties are to be included for breaches of the new regulations will be limited, there are instances where penalties are appropriate. To be effective, these penalties should be set at a sufficient level to encourage compliance with the regulations. However, at the moment the maximum penalties which may be prescribed are inadequate (e.g. the *Stamp Act 1894* allows a penalty of one penalty unit to be prescribed) and are to be increased so that a maximum penalty of 20 penalty units may be prescribed.

#### *Other provisions*

The remaining amendments included in the *Revenue and Other Legislation Amendment Bill 1998* are not considered to raise fundamental legislative principle issues.

## **Consultation**

In relation to the debits tax changes, the Office of State Revenue has consulted with industry on the proposed amendments.

The issues in relation to section 108 of the *Fuel Subsidy Act 1997* and the on-road use of fuel by off-road diesel consumers were raised by fuel distributors and certain diesel consumers, particularly primary producers, who will be required to hold licences under the Act. In developing the administrative arrangements to address the difficulties identified, consultation was undertaken with the Fuel Industry Liaison Group, which has been formed by the Office of State Revenue, to ensure that the proposals adequately resolved the issues raised. APADA, which is the industry body representative for fuel distributors, and the Queensland Farmers Federation are members of that liaison group.

The stamp duty amendments dealing with rescinded contracts, public unit trusts and share buy backs are designed to overcome avoidance opportunities and protect the revenue base. Consultation on these issues is considered inappropriate.

Other amendments are beneficial to taxpayers and the fuel industry and, in some cases, preserve existing arrangements. Consultation on those amendments is considered unnecessary.

## **NOTES ON PROVISIONS**

*Clause 1* cites the short title of this Act.

*Clause 2* specifies the commencement dates for provisions of the Act.

*Clause 3* provides that Part 2 amends the *Debits Tax Act 1990*.

*Clause 4* insert definitions for “financial institution” and “ADI”.

*Clause 5* amends section 6 of the *Debits Tax Act 1990* to update references in that section to “building society, credit union or similar body” and “bank” in line with changes in Commonwealth legislation.

*Clause 6* replaces Schedule 2 which lists the modifications to the *Debits Tax Administration Act 1982* (Cwlth). Apart from consolidating the Schedule to incorporate previous amendments for easier reference, the new

Schedule inserts a new definition of “financial institution”, amends the definition of “primary account”, omits the definitions of “bank” and “non-bank financial institution”, omits references to payment orders, omits section 3(9) and makes consequential changes to other provisions.

*Clause 7* provides that Part 3 amends the *Fuel Subsidy Act 1997*.

*Clause 8* provides that a seller may refuse to sell under a net sale to an off-road diesel consumer if the seller has reason to believe that the licensee intends to resell the fuel or to use the fuel for a purpose which would make the licensee liable to repay the subsidy under section 19.

*Clause 9* specifies the circumstances in which an off-road diesel consumer will not be required to repay a subsidy. In this regard, although a licensed off-road diesel consumer who has purchased diesel under a net sale uses that fuel for propelling a diesel engine road vehicle, the person will not be required to repay the subsidy where the fuel is supplied from a storage tank directly into a vehicle’s running tank in a quantity of not more than 3000 litres and the diesel is used for either a domestic purpose or a purpose related to the business for which the off-road diesel consumer’s licence is held.

*Clause 10* clarifies that references to fuel in section 27 should be references to diesel.

*Clause 11* clarifies that the person required to return a cancelled off-road diesel consumer’s licence is the former licensee.

*Clause 12* inserts new section 36A which clarifies that an off-road diesel consumer does not contravene a condition of licence by using the diesel for on-road purposes in specified circumstances.

*Clause 13* clarifies that the person required to return a cancelled retailer’s licence is the former licensee.

*Clause 14* specifies a former licensee’s obligation to return a bulk end user’s licence where the licence is cancelled by the Commissioner or automatically cancelled under section 103. The time within which a licence which is automatically cancelled under section 103 must be returned is dependent on whether or not a person has applied for, or been granted, an extension of time to lodge a return under section 103.

*Clause 15* allows the Commissioner to extend the time for lodging a bulk end user’s return where an application is made for an extension of time. The result is that the automatic cancellation of a licence on failure to

lodge a return by 31 July does not have effect where the return is lodged within the extended period, and no later than 31 October. An extension of time to lodge a return must be granted if the Commissioner is satisfied that the applicant is a person who is entitled to be licensed as a bulk end user. Where an extension of time to lodge is granted but the return is not lodged within the extended period, an extension of time is refused or no return is lodged by 31 October, the licence is taken to have been cancelled on the day after 31 July.

*Clause 16* effects a renumbering of section 104(3).

*Clause 17* extends the benefit of the implied terms in any contract for the sale of fuel, other than a net sale of fuel, to any registered person purchasing fuel under such a contract rather than limiting the benefit to those dealing with manufacturers or importers.

*Clause 18* replaces Part 5 to provide transitional arrangements for the return required to be lodged for the year ending 30 June 1998 pursuant to section 103. This means that the date for lodgement of the return for that year may be extended to 30 June 1999.

*Clause 19* ensures that the Commissioner's decision to refuse to extend the time for lodgement of a bulk end user's return under section 103 is subject to review and appeal.

*Clause 20* replaces schedule 2 to reflect changes made by the Commonwealth to the classification of fuel in the *Excise Tariff Act 1921* (Cwlth) and the *Customs Tariff Act 1995* (Cwlth).

*Clause 21* provides that Part 4 amends the *Land Tax Act 1915*.

*Clause 22* provides that the Commissioner may ask a police officer to perform functions under sections 17B and 45 of the Act.

*Clause 23* amends section 16 of the Act to provide that a return for a joint ownership of land will be required where land is owned by more than one person. Also, the Commissioner may publish a gazette notice advising that a return does not need to be lodged for a relevant year. The notice may apply to an individual and/or joint owner's return.

*Clause 24* amends the Act by requiring a taxpayer to notify the Commissioner if an assessment has not been received by 30 June next following the date of the gazette notice under section 16.

*Clause 25* amends the heading in section 20 of the Act.

*Clause 26* inserts sections 20A and 20B which clarify that the



Commissioner may alter an assessment whilst an appeal is current and specify the actions that the taxpayer may elect to take as a result.

*Clause 27* inserts Part 4A which provides the taxpayer with a right to object to an assessment as an alternative to lodging an appeal. When the Commissioner has considered an objection, the Commissioner must make a decision and communicate that decision to the taxpayer. If the objection is allowed, wholly or in part, the relevant assessment will be altered and notice of the altered assessment served on the taxpayer. If the taxpayer is still dissatisfied with the assessment, the taxpayer will have 30 days from the date of service of notice of the Commissioner's decision on the objection to lodge an appeal under section 27.

*Clause 28* allows a taxpayer to appeal to the Land Court against an assessment on the grounds that the taxpayer is not liable for all or part of the land tax or because the assessment is excessive.

*Clause 29* specifies the time period in which a taxpayer may lodge an appeal against an assessment. The commissioner may extend the time within which a taxpayer may appeal against an assessment where it is appropriate to do so.

*Clause 30* inserts evidentiary provisions dealing with the recognition of the Commissioner's signature on documents and the Commissioner's power to certify copies of, or extracts from, documents in the Commissioner's possession.

*Clause 31* extends the regulation making power under the Act to include a power to make regulations dealing with the giving of documents to the commissioner, the payment of tax and the ability to prescribe a maximum penalty of 20 penalty units for a breach of the regulation.

*Clause 32* provides that Part 5 amends the *Pay-roll Tax Act 1971*.

*Clause 33* inserts evidentiary provisions dealing with the ability to give affidavit evidence, recognition of the Commissioner's signature on documents and the Commissioner's power to certify copies of, or extracts from, documents in the Commissioner's possession.

*Clause 34* amends the regulation making power under the Act to include powers to make regulations dealing with documents given to the Commissioner by an employer or other person, the payment of tax and the ability to prescribe a maximum penalty of 20 penalty units for a breach of the regulation.

*Clause 35* provides that Part 6 amends the *Stamp Act 1894*.

*Clause 36* provides that a warrant used for the purposes of section 29A(3) of the Act is required to be in the approved form.

*Clause 37* inserts section 31AB which overcomes the decision in *Coles Myer Ltd v Commissioner of State Revenue (Vic)* in relation to all share buy backs whether on or off market. The new section ensures that a share buy back or an agreement for buying back shares under the *Corporations Law* Part 2J.1, Division 2 is chargeable with duty as if it was a transfer of the shares that gives effect to the sale and purchase of the shares to another person.

*Clause 38* provides that the return lodged pursuant to section 31H is required to be in the approved form. The clause also amends section 31H(6) to allow a State or Territory or any country to be declared by regulation.

*Clause 39* removes section 35A(4) as the requirement for a person who ceases to carry on a credit business and rental business to notify the Commissioner is now provided for in the new section 35AA.

*Clause 40* inserts new section 35AA, which specifies requirements relating to certificates of registration pursuant to section 35A of the Act.

*Clause 41* amends section 35B to require a person who has not carried on any rental business or credit business during a particular month to lodge a statement in the approved form showing the rental or credit business as “Nil”.

*Clause 42* provides that the note or memorandum required to be lodged pursuant to section 35E of the Act is to be in the approved form.

*Clause 43* provides that the statement lodged pursuant to section 46C of the Act is required to be in the approved form.

*Clause 44* omits the second limb of section 54(8) and inserts new subsections (9) and (10). The new provisions ensure that duty continues to be payable on certain contracts or agreements for sale or transfer despite subsections (7) and (7A) which apply when a contract or agreement is rescinded.

Subsection (9) applies where the purchaser under a contract or agreement receives a direct or indirect financial benefit under arrangements which

result in all or part of the property being conveyed other than by that contract or agreement.

#### Example 1

A contract for the sale of property from A to B for \$100,000 provides that the contract may be cancelled by B if B arranges for another person to enter into a contract to buy the property from A. B subsequently finds another purchaser, C, for the property at a price of \$150,000. A new contract is signed between A and C for \$100,000. B receives the profit component of \$50,000 from C.

Subsection (9) will ensure that duty continues to apply to the contract between A and B and that subsections (7) and (7A) will not apply.

#### Example 2

A contract for sale of property for \$100,000 from X to Y is executed. Y finds another buyer, Z, willing to pay \$150,000. Y negotiates an arrangement whereby X and Z will enter into a new contract for the original sale price of \$100,000 and Y's company receives the profit component of \$50,000. Again, subsection (9) will ensure that duty applies to the first contract between X and Y as Y has received an indirect financial benefit.

New subsection (10) provides that a financial benefit does not arise merely because the first purchaser is released from obligations under the first contract or acquires a right or benefit in respect of all or part of the property.

*Clause 45* replaces section 56B(1A) to ensure that a unit trust scheme will be taken to be a public unit trust scheme if the Commissioner is satisfied that the spread of ownership requirements in the definition of public unit trust scheme in section 56B(1) will be satisfied within one year of the date of first issue to the public and that all units issued in that period are issued to the public. In these circumstances, the unit trust scheme acquires public unit trust scheme status during the start up period.

*Clause 46* amends the regulation making power under section 83 of the Act to include powers to make regulations for the imposition of fees, the payment of duty and the ability to prescribe a maximum penalty of 20 penalty units for a breach of the regulation.

*Clause 47* provides that Suncorp-Metway Exchanging Instalment Notes Series 2 are not, and never were, marketable securities or rights in respect of shares and also clarifies that this does not apply once the Notes become

shares. As a result, transfers of these Notes are not liable for duty. The clause also validates certain exemptions provided in respect of the application for registration or application for transfer of registration of motor vehicles on and from 26 April 1988.

*Clause 48* provides for certain exemptions in respect of the application for registration or application for transfer of registration of motor vehicles.

*Clause 49* effects minor amendments to the *Land Tax Act 1915* and the *Revenue Laws (Reciprocal Powers) Act 1988*.