

2000

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

LOW-ALCOHOL LIQUOR SUBSIDIES BILL 2000

EXPLANATORY MEMORANDUM

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Low-alcohol Liquor Subsidies Bill 2000

Summary

On 25 May 2000, the Assembly passed the *Subsidies (Liquor and Diesel) Repeal Act 2000*, to remove the subsidies on diesel and low-alcohol products, with effect from 1 July 2000. The removal of the subsidy was made as a consequence of the possible cross border impacts of NSW removing its subsidy.

On 4 July 2000, the NSW Treasurer, Mr Michael Egan, announced that NSW will continue to subsidise low-alcohol beer until 30 June 2001, in line with an agreement reached with the Commonwealth Treasurer, Mr Peter Costello. The Commonwealth and the States are to meet before 30 June 2001 to negotiate a uniform Commonwealth excise providing a concession for low-alcohol beer.

The ACT Government announced its intention to follow NSW and re-introduce subsidies for low-alcohol beer and wine based on the NSW subsidy scheme for 2000-01.

As in NSW, the subsidy for low-alcohol beer and wine products would be at the rate of 12% of the wholesale value including the new excise duty, but excluding GST, for beer products 3.5% alcohol per volume or less and for low-alcohol undiluted or unadulterated wine of 6.5% alcohol per volume or less.

The Bill also provides for a small but very important change from the previous scheme. The subsidy for low-alcohol wine products will now only be payable on low-alcohol wine 6.5% alcohol/volume or less where the wine product is undiluted or unadulterated. The previous ACT low-alcohol subsidy scheme did not indicate that the wine subsidy was based on undiluted or unadulterated wine, which inadvertently allowed a number of "trendy" mixed wine drinks to fall within the subsidy scheme.

Revenue/Cost Implications

Funding for the subsidy in 2000-2001 of \$1 million has been authorised by Assembly members through an amendment to the Appropriation Bill on 10 July 2000.

However, under legislation the scheme is expected to cost \$750,000 during the period 1 September – 30 June 2001. Subsidy payments under administrative arrangements from July to 31 August are expected to cost a further \$115, 000.

Details of the Bill are attached.



Low-alcohol Liquor Subsidies Bill 2000

Name of Act

Clause 1 is a formal requirement. It refers to the title of the Act as the *Low-alcohol Liquor Subsidies Act 2000*.

Commencement

Clause 2 is a formal requirement. The commencement-date of the Act is to be taken to be 1 September 2000.

Dictionary

Clause 3 provides that the dictionary of terms at the end of the Act is to be read as part of the Act. By way of example, the dictionary defines the following terms:

'defined business associate' is elaborated to encompass not only 'defined influential persons' but also partnerships with less formal business relationships. The intention is to prevent such defined business associates from obtaining registration while the registration of the associated company or business partner or associate has been suspended.

'identity card' refers to the requirement that officers exercising authority under this Act will have a prescribed identity card for the purposes of this Act.

'low-alcohol liquor' means beer that contains between 1.15% and 3.5% by volume ethyl alcohol; or undiluted and unadulterated wine of the grape that contains between 1.15% and 6.5% by volume ethyl alcohol.

'reciprocating state' provides for the exchange of information between the ACT and other jurisdictions in relation to a law dealing with the provision of a subsidy.

Notes

Clause 4 explains that the notes in this Act are explanatory only and are not part of this Act.

Operation of Act

Clause 5 provides that a low-alcohol liquor subsidy is only payable in relation to wholesale sales of low-alcohol liquor between 1 September 2000 and 30 June 2001. The Act will expire on 30 June 2001.

PART 2 – LOW-ALCOHOL LIQUOR SUBSIDY

Division 2.1 – Eligibility for subsidy

General eligibility

Clause 6 provides that the low-alcohol subsidy is payable to a registered ACT supplier in relation to the sale of low-alcohol liquor by wholesale by the supplier to a licensee and upon evidence that duty has been paid for that sale under a Commonwealth tax law.

This would require, as part of a claim for a subsidy, documentary proof to the satisfaction of the commissioner that a subsidy is paid only in relation to low-alcohol liquor on which the appropriate Commonwealth duty has been paid.

Subsidy rate

Clause 7 sets the rate at which the subsidy is to be calculated as 12% of the wholesale value including Commonwealth excise duty, but excluding GST.

Sale in contravention of registration conditions

Clause 8 provides that where low-alcohol liquor is sold by a registered supplier in contravention of a condition of the supplier's registration, then the low-alcohol subsidy is not payable.

Low-alcohol liquor subsidy – supplier not registered at the time of sale

Clause 9 provides that where low-alcohol liquor is sold by an unregistered supplier then a low-alcohol subsidy is not payable. If however, the commissioner upon application, is satisfied that there are reasonable grounds to justify payment of the low-alcohol subsidy in the given circumstances, then the commissioner shall approve payment of the subsidy.

Low-alcohol liquor subsidy – previously paid

Clause 10 provides that no low-alcohol subsidy is payable in relation to a quantity of low-alcohol liquor where a subsidy has already been paid under administrative arrangements, or under this Act or the *Subsidies (Liquor and Diesel) Act 1998* or where a corresponding subsidy has already been paid in respect of that liquor by another Territory or State. This is to prevent multiple claims for a subsidy in differing jurisdictions in relation to the same amount of low-alcohol liquor.

Division 2.2 – Payment of subsidy

Payment on application

Clause 11 provides that before the end of each month, a registered liquor supplier may apply for a subsidy in relation to low-alcohol liquor sales during the previous month (or during another period approved by the commissioner). The application must be in a form approved by the commissioner. On application the commissioner must pay the subsidy.

The commissioner may, however, refuse to pay a subsidy if the applicant, without reasonable excuse, has not complied with a request under section 12.

Further information about applications

Clause 12 provides that the commissioner may by written notice, direct an applicant for low-alcohol subsidy to furnish further specified information in a prescribed manner in relation to an application.

Deferral of consideration of application

Clause 13 provides that the deferment of an application by a liquor supplier for a low-alcohol subsidy can occur where there is an existing application for a low-alcohol subsidy still under consideration by the commissioner or where there is an investigation under way in relation to the applicant, and until such time as the existing application or investigation is resolved to the satisfaction of the commissioner.

Division 2.3 – Registration of liquor suppliers

Registered suppliers under the Subsidies (Liquor and Diesel) Act 1998

Clause 14 provides that where a person was a registered liquor supplier immediately before the repeal of the *Subsidies (Liquor and Diesel) Act 1998*, that person, subject to certain conditions, is taken to be registered under this Act.

Registration of new liquor suppliers

Clause 15 provides that the registration of liquor suppliers shall be in a form approved by the commissioner. Furthermore, the commissioner may by written notice require an applicant to provide further specified information and that such information is presented in a form approved by the commissioner. This further information will be required so that the commissioner is satisfied that the low-alcohol liquor will be supplied in accordance with this Act and that the applicant is not a defined business associate of a registered liquor supplier whose registration is suspended.

Conditions of registration

Clause 16 provides that the registered supplier of low-alcohol under the scheme is required to adhere to prescribed conditions. These include the keeping of specified records in respect of subsidised low-alcohol for a period of 5 years, making available those records for inspection on demand by a subsidy officer, not providing false or misleading information in respect of any application or request for information and complying with any other conditions as specified by the commissioner. As part of the conditions of registration, suspended suppliers cannot operate via their (registered) business associates whether the association is formed before or after registration.

Variation and suspension of registration

Clause 17 provides that where the commissioner is satisfied that the registered liquor supplier has contravened a condition of registration, the commissioner may either vary the condition of the supplier's registration or suspend the supplier's registration for a period specified under notice.

Division 2.4 –Subsidy repayments

Repayment requirements

Clause 18 provides that if a registered liquor supplier receives an amount of low-alcohol subsidy greater than the amount to which the supplier is entitled, the supplier on receipt of a written notice from the commissioner to that effect, shall repay to the commissioner an amount worked out as stated in the notice.

Repayments – false or misleading information

Clause 19 provides that where a greater subsidy has been paid as a result of false or misleading information given to the commissioner, the supplier must pay to the commissioner -

- a) twice the amount of the subsidy, if that amount (plus interest) is received within 21 days after the date of the repayment notice; or
- b) 3 times the amount of the subsidy, if twice the amount of the subsidy (plus interest) is not received within 21 days after the date of the repayment notice.

Repayments – contravention of registration conditions

Clause 20 provides that where the quantity of low-alcohol liquor in respect of which a subsidy has been paid is sold in contravention of the supplier's conditions of registration the supplier must pay the commissioner -

- a) the amount of the subsidy, if that amount (plus interest) is received within 21 days after the date of the repayment notice; or
- b) 3 times the amount of the subsidy, if the amount of the subsidy (plus interest) is not received within 21 days after the date of the repayment notice.

Repayments – failure to provide information

Clause 21 provides that where a registered liquor supplier fails to comply with any part of a notice under section 12 in relation to a application for a subsidy, the supplier must pay the commissioner -

- a) the amount of the subsidy, if that amount (plus interest) is received within 21 days after the date of the repayment notice; or
- b) twice the amount of the subsidy, if the amount of the subsidy (plus interest) is not received within 21 days after the date of the repayment notice.

Repayments – excess subsidy

Clause 22 provides that where there has been an overpayment of a low-alcohol subsidy, the supplier must pay the commissioner -

- a) the amount of the difference between the amount paid and the amount to which the supplier is entitled, if the amount of the difference (plus interest) is received within 21 days after the date of the repayment notice; or
- b) twice the amount of the difference, if the amount of the difference (plus interest) is not received within 21 days after the date of the repayment notice.

The range of penalties in the above clauses are intended to reflect the seriousness of the circumstances which give rise to a repayment of a subsidy. Where there is an innocent overpayment of a subsidy, there are no penalty attached if the repayment is received within 21 days of a repayment notice.

An amount required to be paid under these sections is recoverable by the commissioner on behalf of the ACT in a court of competent jurisdiction as a debt due. The recovery of the debt will be on the basis of the due issue of the repayment notice alone.

Repayments – subsidised liquor sold outside the Territory

Clause 23 provides that where a person sells or offers to sell a quantity of subsidised liquor from outside the Territory, and the person knows the liquor to be subsidised, the person must pay to the commissioner –

- a) the amount of the subsidy, if that amount (plus interest) is received within 21 days after the date of the repayment notice; or
- b) 3 times the amount of the subsidy, if the amount of the subsidy (plus interest) is not received within 21 days after the date of the repayment notice.

This is to cover circumstances where an ACT licensee is also licensed outside the Territory and applying for subsidy in respect of liquor supplied and sold interstate. This clause will also cover eventualities where any number of sequences of on-selling occurs within the Territory.

Interest on repayments

Clause 24 provides that the interest payable on a repayment under this division is worked out by reference to the outstanding amount of the repayment, on a daily basis from the day following the date of the repayment notice and at the rate fixed under section 26 of the *Taxation Administration Act 1999*.

Remission of repayments

Clause 25 provides that upon receipt of a written notice requiring repayment of a subsidy together with any penalty or interest, the applicant may apply to the commissioner for a remission. Where the commissioner considers on reasonable grounds that there are special circumstances, the commissioner may remit, in whole or in part, only the amount of the penalty and/or the amount of interest owing. No remission is available for the amount of the subsidy.

PART 3 – RECORDS OF LICENSEE SALES

Recording low-alcohol liquor sales

Clause 26 provides that a licensee must keep records including prescribed details of all sales of low-alcohol liquor by the licensee other than retail sales. This is for inspection purposes so as to be able to reconcile supplier records with licensee records. There are prescribed penalties for failure to keep these records.

PART 4 – ENFORCEMENT

Division 4.1 – Preliminary

Subsidy offences etc - interpretation

Clause 27 provides that where a thing is connected with a particular subsidy offence then that is included for the purposes of enforcing the provisions of this Act.

Identity cards

Clause 28 provides that subsidy officers acting under this Act must carry a duly authorised identity card issued under this Act, or under the *Subsidies (Liquor and Diesel) Act 1998*, whenever exercising their powers pursuant to this Act. When a person ceases to act as a subsidy officer, the identity card must be surrendered to the commissioner.

Division 4.2 - Inspection and seizure

Entry

Clause 29 that in the case of entering commercial premises during normal business hours for the purposes of this Act, no warrant is required. In all other cases, unless the consent of the occupier is given, a warrant is required.

Consent to enter

Clause 30 provides that before consent to entry can be given, the subsidy officer must produce an identity card issued for the purposes of this Act and inform the person that they have a right to refuse consent. Where consent is given, the occupier will be asked to sign a written acknowledgement of that consent which is retained by the subsidy officer as evidence that consent was in fact given.

Powers of inspection

Clause 31 provides that in order to ensure that subsidies are only paid in accordance with this Act, officers acting with authority and on production of an identity card under this Act, are to have full and free access to any documents pursuant to this Act.

- Access is required to documents relating to the supply of low-alcohol liquor by a registered liquor supplier to ensure that the benefit of the subsidy is being passed on.
- Access is required to documents relating to the receipt of low-alcohol liquor by a licensee to permit the investigation of multiple-subsidy fraud.

In addition this clause authorises subsidy officers to seize low-alcohol liquor believed to be connected with an offence against this Act or a relevant interstate subsidy law.

Power to require name and address

Clause 32 provides that, where an officer has reasonable grounds for believing a person has committed an offence against a subsidy law, the occupier of the premises where the investigation is being conducted is required to provide his or her name and address to the officer. A person need not supply these details to the officer if the officer is not able to show an identification card authorised under this Act.

Seizure of low-alcohol liquor

Clause 33 provides that where any quantity of low-alcohol liquor is seized under this Division, a receipt must be issued and the seized goods shall be kept in the custody of the commissioner. If prosecution for an offence under this Act is not instituted within a period of 60 days, then arrangements must be undertaken to return the seized goods within 120 days after the seizure.

Where a seized quantity is not able to be returned or, where a person is convicted for an offence in relation to a seized quantity of goods, then the seized quantity may be disposed of as the Minister directs.

Search warrants

Clause 34 provides that a search warrant can be obtained from a magistrate where the magistrate is satisfied, on the evidence put forward, that there are reasonable grounds for suspecting a thing in connection with a subsidy offence has or may occur. The

warrant will be issued to enable the subsidy officer to enter a place and search the place for things of that kind under prescribed conditions.

Warrants by telephone or other electronic means

Clause 35 provides that in urgent circumstances where the normal execution of a warrant is inappropriate, a warrant may be executed by telephone or other electronic means.

Division 4.3 - Provision of information

Notice requiring information

Clause 36 provides that where the commissioner believes on reasonable grounds that any person is able to provide information with respect to specified matters related to and including the supply of low-alcohol liquor and the payment of any low-alcohol liquor subsidy, then that person may be required under notice, to give information.

The person may be required to give that information in a form prescribed by the commissioner or attend before the commissioner to give that information or produce any such documents as required.

Copies and extracts of documents

Clause 37 provides that where a person is required to provide information in respect of the supply of low-alcohol liquor or the payment of a subsidy with respect to low-alcohol liquor, then copies or extracts of documents presented may be made by the commissioner. This will apply where information is required under any provision of this Act.

Evidence under oath or affirmation

Clause 38 provides that where a person is required to provide information to the commissioner under any provision of this Act, the commissioner may require such information to be given on oath or affirmation.

Self-incrimination

Clause 39 provides that a defence of self-incrimination cannot be used by a person to avoid fulfilling a requirement under this Act. However, any information, answer or document produced because of this Act cannot be used against the person in any criminal proceedings other than for an offence relating to false, misleading or incorrect nature of the information, answer or document.

Requirements to give information

Clause 40 provides that a person shall not without 'reasonable excuse' contravene a requirement of this Act to attend before the commissioner, give written information or produce a document. Nor shall a person contravene the prescribed requirements

Orders to comply with requirements

Clause 41 provides that if a person is found guilty of an offence against section 40, a Court Order may be sought to compel the person to comply with the requirements of the Act.

Where a court makes an order, it may specify the time and place under which the order must be satisfied.

Division 4.4 - Statements and subsidy records

False or misleading statements

Clause 42 provides that in the course of any application, or requirement to give information, or investigation in respect of a subsidy payment under this Act, a person shall not include any information that is false or misleading or omit from a subsidy statement any information without which would make the statement false or misleading.

A 'subsidy statement' means a statement in any form and includes any records that are required to be kept under this Act.

The penalties under this clause only apply where it is reasonable for the person to have known that such information is false or misleading or is responsible for the truth or accuracy of the document produced.

Records offences

Clause 43 provides that where records are required to be made under this Act, it is an offence for a person to keep information in a manner that does not correctly record or explain the matters to which they relate where the person could have reasonably been expected to know that the records were incorrect.

It is also an offence for a person to recklessly or knowingly keep or make a subsidy record in a manner that does not correctly record or explain the matters to which they relate, or perform a defined act with the intention of deceiving the commissioner, hindering the investigation of an offence under this Act, or defeating the purposes of this Act.

Division 4.5 - Other offences

Falsifying or concealing identity

Clause 44 provides that any person who intentionally falsifies or conceals the identity of persons or addresses in relation to a requirement of this Act, is guilty of an offence.

Obstruction

Clause 45 provides that it is an offence for a person to obstruct a subsidy officer in the exercise of the officer's powers under this Act.

PART 5 – RECIPROCAL ENFORCEMENT OF INTERSTATE SUBSIDY SCHEMES

Investigation of referred matters

Clause 46 provides that if an interstate officer refers a matter relating to the administration of the relevant interstate subsidy scheme, in writing, to the commissioner for investigation, the commissioner has the power to authorise an investigation into the matter in the ACT by either a tax officer as defined by the Taxation Administration Act 1999 or an interstate officer of the referring jurisdiction.

Disclosure of information to reciprocating States

Clause 47 provides that information obtained under the Act in relation to a subsidy application or investigation may be given to an authorised officer of a reciprocating jurisdiction for the purposes of administering a subsidy scheme of that jurisdiction.

PART 6 – ADMINISTRATIVE REVIEW

Division 6.1 – Reviewable decisions

Reviewable decisions

Clause 48 provides that this part applies to reviewable decisions by the commissioner detailed in columns 1 and 2 of an item in Schedule 1 to this Act.

This clause also requires the commissioner to give written notice of the reviewable decision to the person (the *affected person*) mentioned in column 3 of the item in Schedule 1. The notice must state the reasons for the decision, that the person may object to the decision and the requirements under this Part for making an objection

Division 6.2 – Objections

How to lodge an objection to a reviewable decision

Clause 49 confers a right of objection on an affected person who is dissatisfied with a decision of a kind listed in Schedule 1 and provides the detail required for lodging an objection.

Grounds for objection

Clause 50 sets the requirements for objections generally and also provides that on objection or appeal the burden of establishing the affected person's case by evidence rests with that person. This is because the affected person has the best knowledge of his or her own affairs.

Time for lodging objection

Clause 51 allows an affected person 60 days to lodge an objection from the date of service of the notice advising of the decision.

Objections lodged out of time

Clause 52 gives the commissioner the discretion to accept an objection which is lodged after the 60 day limit, with or without imposing conditions on the affected person making the application for late lodgement.

Determination of objection

Clause 53 requires the commissioner to consider and make a determination on the objection, however the person who considers the objection must be a different person from the person who made the decision in the first place.

Notice of determination

Clause 54 requires the commissioner to notify his or her decision to the objector in writing, giving an explanation if the objection is disallowed fully or in part.

Recovery of repayments pending objection or appeal

Clause 55 gives the commissioner the power to take recovery action for any amount payable under a repayment notice which is the subject of an objection or appeal prior to the outcome being known.

Division 6.3 - Appeals to the Tribunal

Right of appeal to the Administrative Appeals Tribunal

Clause 56 gives an affected person the right to apply to the tribunal for a review of a determination of an objection to a reviewable decision, a decision to refuse to permit a

late objection to be made to a reviewable decision or a decision to permit a late objection only on conditions.

Sub-clause 56(2) provides, however, that this right to apply to the tribunal does not apply to items 3 and 4 of Schedule 1.

Grounds of appeal

Clause 57 provides that at an appeal both the appellant and the respondent, in support of their cases, may introduce new grounds from those covered during the objection process.

Giving effect to decision on appeal

Clause 58 gives the commissioner 60 days to take any necessary action to conclude matters resulting from the Tribunal's decision. However, the commissioner is not required to give effect to any decision by the Tribunal until the appeal process has been exhausted or the time for lodging a further appeal has expired.

PART 7 – MISCELLANEOUS

Acts and omissions of representatives

Clause 59 provides for definitions of *representative* and *state of mind* in order to deal with the prosecution for any offence against this Act, or if it is otherwise relevant for this Act, to prove a person's state of mind about an act or omission.

If it is relevant to prove a person's state of mind about an act or omission, it is sufficient to show that the act done or omission made by a representative was within the scope of the representative's actual or apparent authority and the representative had the state of mind

An act done or omitted to be done on behalf of a person by a representative within the scope of his or her actual or apparent authority is taken to be done or omitted to be done also by the person, unless the person proves that the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

Criminal liability of officers of corporation

Clause 60 provides that where it can be shown that a corporation commits an offence against this Act, any person who is concerned in, or takes part in, the management of the corporation shall be taken to have committed the offence and is punishable accordingly. However, the onus is on such persons to show that that did not knowingly participate in any way that contributed to the offence.

Regulations

Clause 61 provides that Regulations may be made under this Act.