

2000

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Low-alcohol Liquor Subsidies Bill 2000

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2000

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FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Low-alcohol Liquor Subsidies Bill 2000

A BILL

FOR

**An Act to subsidise the sale of low-alcohol liquor by
wholesale**

The Legislative Assembly for the Australian Capital Territory
enacts as follows:

PART 1—PRELIMINARY

1 Name of Act

This Act is the *Low-alcohol Liquor Subsidies Act 2000*.

2 Commencement

5 This Act is taken to have commenced on 1 September 2000.

Note The provisions of an Act providing for its name and commencement automatically commence on the date of notification of the Act (see *Interpretation Act 1967*, s 10B).

3 Dictionary

10 The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

15 For example, the signpost definition '*repayment*—see subsection 18 (1).' means that the expression '*repayment*' is defined in that subsection.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Interpretation Act 1967*, s 11F and s 11G).

4 Notes

20 A note included in this Act is explanatory and is not part of this Act.

Note See *Interpretation act 1967*, s 12 (1), (4) and (5) for the legal status of notes.

5 Operation of Act

25 (1) Low-alcohol liquor subsidy is payable, subject to this Act, in relation to sales by wholesale of low-alcohol liquor between 1 September 2000 and 30 June 2001.

(2) This Act expires on 1 July 2001.

Note After 30 June 2001, low-alcohol liquor subsidy will still be payable under this Act in relation to sales by wholesale of low-alcohol liquor between 1 September 2000 and 30 June 2001 (see *Interpretation Act 1967*, s 41).

PART 2—LOW-ALCOHOL LIQUOR SUBSIDY

Division 2.1—Eligibility for subsidy

6 General eligibility

5 Subject to this Part, low-alcohol liquor subsidy is payable to a registered liquor supplier in relation to the sale by the supplier of low-alcohol liquor if—

- (a) the liquor is sold by wholesale to a licensee; and
- (b) Commonwealth duty has been paid for that sale.

7 Subsidy rate

10 (1) The rate of low-alcohol liquor subsidy payable under this Act is an amount equal to 12% of the wholesale value of the liquor.

(2) The wholesale value of the liquor is taken to—

- (a) include Commonwealth duty payable in relation to the liquor by the person claiming low-alcohol liquor subsidy; and
- 15 (b) exclude GST payable in relation to the liquor by the person claiming low-alcohol liquor subsidy.

8 Sale in contravention of registration conditions

20 Low-alcohol liquor subsidy is not payable in relation to the sale of liquor by a registered liquor supplier if the liquor is sold in contravention of a condition of the supplier's registration.

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

25 Low-alcohol liquor subsidy is not payable in relation to the sale of liquor by a registered liquor supplier if the supplier was not registered at the time of the sale, unless, on an application for subsidy under section 11 (Payment on application), the commissioner considers on reasonable grounds that payment is justified in the circumstances.

10 Low-alcohol liquor subsidy—previously paid

Low-alcohol liquor subsidy is not payable in relation to the sale of liquor if subsidy in relation to the liquor has previously been paid—

- (a) under this Act; or
- 5 (b) under an interstate subsidy scheme; or
- (c) under the *Subsidies (Liquor and Diesel) Act 1998*, or under administrative arrangements put into effect by the Territory to continue the low-alcohol liquor subsidy scheme under that Act after its repeal.

10 *Note* The *Subsidies (Liquor and Diesel) Act 1998* was repealed by the *Subsidies (Liquor and Diesel) Repeal Act 2000* No 24.

Division 2.2—Payment of subsidy

11 Payment on application

15 (1) Before the end of each month, a registered liquor supplier may apply for a subsidy in relation to sales by wholesale of low-alcohol liquor by the supplier during the previous month, or during a period approved by the commissioner on application by the supplier.

(2) An application must be in a form approved by the commissioner, and accompanied by any documents required by the commissioner.

20 (3) On application, the commissioner must pay a low-alcohol liquor subsidy to the supplier in relation to liquor sales for which the subsidy is payable under Division 2.1.

(4) However, the commissioner may refuse to pay a low-alcohol liquor subsidy to a supplier if the applicant has, without reasonable excuse, failed
25 to comply with a direction in a notice under section 12 requiring further information or documents.

(5) In this section:

month means 1 of the 12 months of the year.

12 Further information about applications

30 (1) The commissioner may, by written notice to an applicant for a low-alcohol liquor subsidy, direct the applicant to give the commissioner further

stated information or to produce particular documents in connection with the application.

(2) The notice may direct the information or documents to be given or produced—

- 5 (a) in a form, and within a period, stated in the notice; or
(b) personally by the applicant on a date, at a time, and to a person, stated in the notice.

(3) The commissioner may direct further information to be given under this section whether or not—

- 10 (a) any subsidy has been paid to the applicant because of the application; or
(b) any later application has been received from the applicant, or any subsidy paid to the applicant because of the later application.

13 Deferral of consideration of application

15 The commissioner may defer the consideration of an application by a liquor supplier for low-alcohol liquor subsidy in relation to the sale of liquor during a particular period if the commissioner has not yet made a decision in relation to an application by the same supplier for a subsidy in relation to the sale of liquor during any earlier period.

20 Division 2.3—Registration of liquor suppliers

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

25 A person who was, immediately before the repeal of the *Subsidies (Liquor and Diesel) Act 1998*, registered as a liquor supplier under that Act, is taken to be registered as a liquor supplier under this Act subject to the conditions mentioned in section 16 of this Act (Conditions of registration) and any other conditions imposed under paragraph 22 (h) of that Act.

Note The *Subsidies (Liquor and Diesel) Act 1998* was repealed by the *Subsidies (Liquor and Diesel) Repeal Act 2000 No 24*.

30 15 Registration of new liquor suppliers

(1) A person may apply to the commissioner for registration as a liquor supplier.

(2) The application must be in a form approved by the commissioner.

(3) The commissioner may, by written notice to the applicant, require the applicant to give the commissioner further stated information or to produce particular documents in relation to the application.

5 (4) A notice requiring further information to be given or documents to be produced may require the information or documents to be given or produced—

(a) in a form, and within a period, specified in the notice; or

10 (b) personally by the applicant on a date, at a time, and to a person, stated in the notice.

(5) The commissioner must register the applicant if satisfied on reasonable grounds that—

(a) the applicant supplies low-alcohol liquor, or intends to supply low-alcohol liquor, to licensees by wholesale; and

15 (b) the applicant is not a registered liquor supplier whose registration is suspended; and

(c) the applicant is not a defined business associate of a registered liquor supplier whose registration is suspended; and

20 (d) the applicant has not, without reasonable excuse, failed to comply with a notice under subsection (3).

16 **Conditions of registration**

The conditions of registration of a liquor supplier are as follows:

25 (a) the benefit of low-alcohol liquor subsidies received by the supplier must be passed on to the licensees to whom the liquor is sold;

(b) the supplier must keep records of all low-alcohol liquor sold to licensees by wholesale for a period of at least 5 years in a form approved by the commissioner;

30 (c) the supplier must produce such records for inspection on demand by a subsidy officer;

(d) the supplier must give the commissioner written notice specifying any change to the information stated in the supplier's application for registration within 14 days after the change;

- (e) the supplier must not become a defined business associate of a registered liquor supplier whose registration is suspended;
- (f) any amount required to be paid under a repayment notice must be repaid within 21 days after the notice is given;
- 5 (g) the supplier must not provide false or misleading information to the commissioner under this Act, or fail to give information or to produce any document as requested under this Act;
- (h) the supplier must comply with any other conditions imposed by the commissioner on registration of the supplier, or under
10 paragraph 17 (1) (a).

17 Variation and suspension of registration

- (1) If the commissioner believes on reasonable grounds that a registered liquor supplier has contravened a condition of registration, the commissioner may, by written notice to the supplier—
 - 15 (a) vary a condition of the supplier's registration; or
 - (b) suspend the supplier's registration from the date of the notice until—
 - (i) a date stated in the notice, or the revocation of the suspension, whichever is earlier; or
 - 20 (ii) if the notice of suspension states any condition for the revocation of the suspension—the revocation of the suspension.
- (2) The commissioner may, by written notice to a liquor supplier whose registration has been suspended, revoke the suspension on application by
25 the supplier or on the commissioner's own motion if the commissioner is satisfied on reasonable grounds that—
 - (a) if the notice of suspension stated any condition for the revocation of the suspension—the supplier has satisfied the condition; or
 - (b) in any case—revocation is justified in the circumstances.
- 30 (3) The revocation of the suspension of a liquor supplier's registration takes effect on the date of the notice of revocation, or on a later date stated in the notice.

Division 2.4—Subsidy repayments

18 Repayment requirements

5 (1) If the commissioner considers that there are reasonable grounds for a person to be required to pay an amount (a *repayment*) to the commissioner under any of the following sections, the commissioner must, by written notice to the person (a *repayment notice*), require the person to pay the repayment, plus interest under section 24 (Interest on repayments):

- 10 (a) section 19 (Repayments—false or misleading information);
- (b) section 20 (Repayments—contravention of registration conditions);
- (c) section 21 (Repayments—failure to provide information);
- (d) section 22 (Repayments—excess subsidy);
- (e) section 23 (Repayments—subsidised liquor sold outside Territory).

15 (2) In a repayment notice, the commissioner must—

- 20 (a) tell the person why the notice has been given; and
- (b) tell the person what is the applicable section mentioned in subsection (1), how the repayment is worked out under that section, and how interest payable on the repayment is worked out; and
- (c) tell the person how to apply for remission under section 25 (Remission of repayments).

25 (3) A repayment, together with interest worked out under section 24, is—

- (a) payable on the date of the notice; and
- (b) recoverable as a debt by the commissioner on behalf of the Territory.

19 Repayments—false or misleading information

If a liquor supplier has, because of false or misleading information given to the commissioner, been paid an amount of subsidy greater than the amount to which the supplier is entitled, the supplier must pay the
5 commissioner—

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

20 Repayments—contravention of registration conditions

(1) If low-alcohol liquor in relation to which a subsidy has been paid is sold by the supplier to a licensee in contravention of a condition of the
15 supplier's registration, the supplier must pay the commissioner—

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

(2) This section does not apply in relation to a subsidy if section 19 (Repayments—false or misleading information) applies in relation to the
subsidy.

21 Repayments—failure to provide information (SLDC s 16)

(1) If a liquor supplier fails to comply with a direction in a notice under section 12 (Further information about applications) in relation to an application for a subsidy, but has been paid a subsidy because of the application, the supplier must pay the commissioner—

- 30 (a) the amount of the subsidy, if that amount (plus interest) is received by the commissioner 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 by the commissioner within 21 days after the date of the repayment notice.

5 (2) This section does not apply in relation to a subsidy if either of the following sections apply in relation to the subsidy:

- (a) section 19 (Repayments—false or misleading information);
- (b) section 20 (Repayments—contravention of registration conditions).

22 Repayments—excess subsidy

10 (1) If a liquor supplier receives an amount of low-alcohol liquor subsidy greater than the amount to which the supplier is entitled, the supplier must pay the commissioner—

- 15 (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 by the commissioner 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 by the commissioner within 21 days after the date of the repayment notice.

20 (2) This section does not apply in relation to a subsidy if any of the following sections apply in relation to the subsidy:

- (a) section 19 (Repayments—false or misleading information);
- (b) section 20 (Repayments—contravention of registration conditions);
- 25 (c) section 21 (Repayments—failure to provide information).

23 Repayments—subsidised liquor sold outside Territory

(1) This section applies in relation to low-alcohol liquor (*subsidised liquor*) if—

- 30 (a) low-alcohol liquor subsidy is payable, or has been paid, for the liquor; and

- (b) the liquor is sold (or offered for sale) from premises outside the Territory by a person (an *interstate seller*) other than the person to whom the subsidy is payable or has been paid; and
- (c) the interstate seller knows that the liquor is subsidised liquor.

5 (2) The interstate seller must pay the commissioner—

- (a) the amount of the subsidy, if that amount (plus interest) is received by the commissioner 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 by the commissioner within 21 days after the date of the repayment notice.

10 (3) This section does not apply in relation to subsidised liquor if any of the following sections apply in relation to the relevant low-alcohol liquor subsidy:

- 15 (a) section 19 (Repayments—false or misleading information);
- (b) section 20 (Repayments—contravention of registration conditions);
- (c) section 21 (Repayments—failure to provide information).

24 Interest on repayments

20 (1) The interest payable on a repayment is worked out—

- (a) by reference to the outstanding amount of the repayment, on a daily basis from the day following the date of the repayment notice; and
- (b) at the rate fixed under section 26 of the *Taxation Administration Act 1999*.

25 (2) If judgment is entered by a court for the outstanding amount of the repayment (plus interest), or for an amount that includes the outstanding amount (plus interest)—

- 30 (a) the interest payable on the judgment debt is the amount worked out under subsection (1) for the outstanding amount of the repayment from time to time; and

- (b) no interest is otherwise payable on the judgment debt; and
- (c) the interest forms part of the judgment.

25 Remission of repayments

- 5 (1) On written application by a person required to make a repayment, the commissioner may, by written notice to the person, remit (in part or in whole) either or both of the following:
- (a) the portion of the repayment that exceeds the amount of the relevant subsidy;
 - (b) an amount of interest payable on that portion.
- 10 (2) The commissioner may remit an amount only if the commissioner considers on reasonable grounds that there are special circumstances to justify it.

PART 3—RECORDS OF LICENSEE SALES

26 Recording low-alcohol liquor sales

A licensee must keep the following records of sales of low-alcohol liquor by the licensee, other than retail sales within the Territory, for 5
5 years after the date of each sale:

- (a) invoices, in chronological order;
- (b) the following details of each sale, in chronological order:
 - (i) the name and address of the person supplied;
 - (ii) the address of the premises from which the liquor was
10 supplied;
 - (iii) the price received;
 - (iv) the amount and kind of low-alcohol liquor sold;
 - (v) the date of supply.

Maximum penalty: 20 penalty units.

PART 4—ENFORCEMENT

Division 4.1—Preliminary

27 Subsidy offences etc—interpretation

5 (1) For the purposes of this Part, a thing is connected with a particular subsidy offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will afford evidence of the commission of the offence; or
- (c) it was used, or is intended to be used, for the commission of the offence.

10 (2) A reference in this Part to a subsidy offence includes a reference to a subsidy offence that there are reasonable grounds for believing has been committed.

15 (3) If a subsidy officer enters premises under this Part, a reference to the occupier of the premises includes a reference to a person the officer has reasonable grounds for believing to be an occupier of the premises.

28 Identity cards

(1) The chief executive must issue to a subsidy officer an identity card certifying that the officer is authorised to exercise powers under this Part.

20 (2) Upon ceasing to be a subsidy officer, the former officer must not, without reasonable excuse, fail to return the officer's identity card to the chief executive.

Maximum penalty: 1 penalty unit.

25 (3) An identity card issued to a subsidy officer under section 57 of the *Subsidies (Liquor and Diesel) Act 1998* is taken to be an identity card issued under this section.

Note The *Subsidies (Liquor and Diesel) Act 1998* was repealed by the *Subsidies (Liquor and Diesel) Repeal Act 2000* No 24.

Division 4.2—Inspection and seizure

29 Entry

(1) If a subsidy officer has reasonable grounds for believing that it is necessary to do so for this Act, the officer may, using such reasonable force
5 and assistance as is necessary—

(a) for premises other than residential premises—

(i) enter the premises at any reasonable time; or

(ii) enter the premises at any time with the consent of the occupier, or as authorised by a warrant; or

10 (b) for residential premises—enter the premises at any time with the consent of the occupier, or as authorised by a warrant.

(2) A subsidy officer who enters premises under this section is not entitled to remain on the premises if, on request by the occupier, the subsidy officer does not show the officer's identity card to the occupier.

15 **30 Consent to entry**

(1) Before obtaining an occupier's consent for entry to premises, a subsidy officer must—

(a) show the officer's identity card to the occupier; and

(b) tell the occupier that he or she may refuse to give consent.

20 (2) If a subsidy officer obtains an occupier's consent for entry to premises, the officer must ask the occupier to sign a written acknowledgment—

(a) of the fact that the occupier has been told that he or she may refuse to give consent; and

25 (b) of the fact that the occupier has voluntarily given consent; and

(c) of the day on which, and the time at which, consent was given.

30 (3) If it is material in any proceedings for a court to be satisfied of the voluntary consent of an occupier for entry to premises, and an acknowledgment under subsection (2) signed by the person is not produced in evidence, the court must assume, unless the contrary is proved, that the occupier did not voluntarily give such consent.

31 Powers of inspection

(1) On entry to premises under this Division, a subsidy officer is entitled to full and free access to documents relating to any of the following:

- 5 (a) the supply of low-alcohol liquor by a registered liquor supplier;
- (b) the receipt of low-alcohol liquor by a licensee or any other person;
- (c) the payment of Commonwealth duty in relation to the sale of low-alcohol liquor;
- 10 (d) for an interstate investigation—the administration of the relevant interstate subsidy scheme.

(2) Without limiting subsection (1), if a subsidy officer enters premises under this Division, the officer may, if the officer considers it to be necessary or desirable for this Act—

- 15 (a) require the occupier of the premises to display and print out all or part of any information stored or kept on the premises by means of a data processing device; or
- (b) take extracts from, and make copies of, any documents on the premises); or
- (c) inspect any low-alcohol liquor on the premises; or
- 20 (d) seize any low-alcohol liquor on the premises that the officer believes on reasonable grounds to be connected with an offence against this Act; or
- (e) for an interstate investigation—
 - 25 (i) inspect any low-alcohol liquor relevant to that investigation; or
 - (ii) seize any low-alcohol liquor that the officer believes on reasonable grounds to be connected with an offence against the relevant interstate subsidy law; or
- (f) subject to section 32, require any person on the premises to give the officer his or her name and address; or
- 30 (g) require the occupier of the premises to give the officer such assistance as is necessary and reasonable to enable the officer to exercise powers under this section.

32 Power to require name and address

(1) A subsidy officer may only require a person to give his or her name and address to the officer under section 31 if the officer has reasonable grounds for believing that the person has committed—

- 5 (a) an offence against this Act; or
(b) for an interstate investigation—an offence against the relevant interstate subsidy law.

(2) A subsidy officer must—

- 10 (a) tell the person the reasons for the requirement that the person give the subsidy officer his or her name and address; and
(b) as soon as practicable after that—record those reasons.

(3) A person need not comply with a requirement to give a subsidy officer his or her name and address if, on request by the person, the subsidy officer does not produce the officer's identity card to the person.

- 15 (4) Subject to this section, a person must not, without reasonable excuse, fail to comply with a requirement under section 31 to give a subsidy officer the person's name and address.

Maximum penalty (subsection (4)): 5 penalty units.

33 Seizure of low-alcohol liquor

20 (1) If low-alcohol liquor is seized under this Division—

- (a) the subsidy officer who seized the liquor must give a receipt to the occupier of the premises from which it was seized; and
(b) the seized liquor must be kept in the custody of the commissioner.

25 (2) If a prosecution for a subsidy offence in relation to the seized liquor is not instituted within 60 days after the seizure, reasonable steps must be taken to return the liquor to the occupier.

(3) Seized low-alcohol liquor is forfeited to the Territory and may be disposed of as the Minister directs if—

- 30 (a) a person is convicted of a subsidy offence in relation to the liquor;
or
(b) the liquor is not able to be returned under subsection (2).

34 Search warrants

(1) If an information on oath is laid before a magistrate alleging that there are reasonable grounds for suspecting that there may be, at any place, a thing of a particular kind connected with a particular subsidy offence, and
5 the information sets out those grounds, the magistrate may issue a search warrant authorising a subsidy officer named in the warrant, with such assistance and by such force as is necessary and reasonable—

- (a) to enter the place; and
- (b) to search the place for things of that kind; and
- 10 (c) to exercise any of the powers under section 31 (Powers of inspection) in relation to such a thing.

(2) A magistrate must not issue a warrant unless—

- 15 (a) the informant or some other person has given to the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(3) A warrant must—

- 20 (a) state the purpose for which it is issued; and
- (b) state the nature of the offence in relation to which the warrant is issued; and
- (c) state particular hours during which the entry is authorised or state that the entry is authorised at any time of the day or night; and
- 25 (d) describe the kinds of things in relation to which the powers under section 31 may be exercised; and
- (e) state a day, not later than 1 month after the warrant is issued, on which the warrant is to cease to have effect.

35 Warrants by telephone or electronic media

30 (1) An authorised officer may apply to a magistrate for a warrant by telephone, telex, facsimile or other electronic means—

- (a) in an urgent case; or

- (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (2) The magistrate may require communication by voice if practicable.
- (3) The application must include all information required to be provided in an application for a warrant under section 34, but the application may, if necessary, be made before the information is sworn.
- (4) The magistrate, after considering the information and any further information the magistrate requires, may complete and sign the same form of warrant that would be issued under section 34 if satisfied that—
- (a) a warrant in the terms of the application should be issued urgently; or
- (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (5) If the magistrate decides to issue the warrant, the magistrate must notify the applicant, by telephone, telex, facsimile or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.
- (6) The applicant must then complete a form of warrant in terms substantially corresponding to those given by the magistrate, stating on the form the name of the magistrate and the day on which and the time at which the warrant was signed.
- (7) The applicant must, not later than the day after the day of expiry of the warrant or the day after the day on which the warrant was executed, whichever is earlier, give or transmit to the issuing officer the form of warrant completed by the applicant and, if the information mentioned in subsection (3) was not sworn, that information duly sworn.
- (8) The magistrate must attach to the documents provided under subsection (7) the form of warrant completed by the magistrate.
- (9) If it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorised, the court must assume, unless the contrary is proved, that the exercise of a power under a warrant was not duly authorised if the form of warrant signed by the magistrate is not produced in evidence.

Division 4.3—Provision of information

36 Notice requiring information

(1) This section applies if the commissioner believes on reasonable grounds that a person is able to give information or produce a document relating to any of the following matters (*relevant matters*):

- (a) the supply of low-alcohol liquor by any person;
- (b) the payment of low-alcohol liquor subsidy by any person;
- (c) a requirement that any person pay an amount under a repayment notice;
- (d) an interstate investigation.

(2) The commissioner may, by written notice to the person, require the person—

- (a) to give the information to the commissioner within the time and in the manner stated in the notice; or
- (b) to attend before the commissioner or another person specified in the notice at a stated time and place (that are reasonable in the circumstances) to answer questions about a relevant matter; or
- (c) to produce the document to the commissioner or to another person stated in the notice, as required by the notice.

(3) A person required to attend before the commissioner or another person for an interstate investigation must be paid expenses in accordance with the scale of allowances determined under section 139 of the *Taxation Administration Act 1999*.

37 Copies and extracts of documents

The commissioner may cause copies to be made of, or extracts to be taken from, any documents produced to the commissioner or another person for this Act.

38 Evidence under oath or affirmation

(1) If a person is required to attend to give information to the commissioner or another person under this Act, the commissioner or other person may require evidence to be given on oath or affirmation.

(2) The commissioner or other person may administer the oath or affirmation.

39 Self-incrimination

5 (1) A person is not excused from giving information, answering a question or producing a document in compliance with a requirement under this Act on the ground that the giving of the information, the answering of the question or the production of the document might tend to incriminate the person.

10 (2) Information, an answer or a document obtained because of a requirement under this Act, or any information, document or thing obtained as a direct or indirect consequence of the requirement, is not admissible in evidence against the person in criminal proceedings other than proceedings for—

15 (a) an offence in relation to the false, misleading or incorrect nature of the information, answer or document; or

(b) an offence under Part 8 of the *Crimes Act 1900* that relates to an offence mentioned in paragraph (a).

40 Requirements to give information

20 (1) A person must not, without reasonable excuse, contravene a requirement under this Act—

(a) to give written information or to produce a document to the commissioner or another person; or

(b) to attend before the commissioner or another person.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

25 (2) A person attending before the commissioner or another person under section 36 (Notice requiring information) shall not, without reasonable excuse, contravene any of the following:

(a) a requirement to answer a question;

(b) a requirement to produce a document;

30 (c) a requirement to take an oath or to make an affirmation.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

41 Orders to comply with requirements

(1) This section applies if a person is found guilty of an offence against section 40.

(2) The court may order the person—

5 (a) to comply with the requirement within a specified time or at a specified place; and

(b) to comply with such other requirements that have or could have been made in relation to the person under this Act as the court considers necessary to ensure compliance with the firstmentioned requirement.

10 (3) An order may be made—

(a) in addition to the imposition of a penalty for the offence or the making of an order under the *Crimes Act 1900*, section 556A, in relation to the offence; and

15 (b) whether or not the time for complying with the relevant requirement or requirements has passed.

(4) If an order is not given orally by the court to the person to whom the order is directed, the proper officer of the court must cause a copy of the order to be served on the person.

20 (5) A person must not, without reasonable excuse, contravene an order under subsection (2).

Maximum penalty (subsection (5)): 100 penalty units, imprisonment for 1 year or both.

Division 4.4—Statements and subsidy records

25 **42 False or misleading statements**

(1) A person must not—

(a) make a subsidy statement that is false or misleading in a material particular; or

- (b) omit from a subsidy statement any matter or thing without which the statement is misleading in a material particular.

Maximum penalty: 30 penalty units.

5 (2) A person is not guilty of an offence against subsection (1) in relation to a statement if the person adduces evidence that is not rebutted by the prosecution that—

- (a) the person did not know, and could not reasonably be expected to have known, that the statement was false or misleading; or
- 10 (b) if the alleged offence relates to the production of a document by the person—
 - (i) the person could not reasonably be expected to have had any influence over the contents of the document; and
 - (ii) the person gave written or oral notice accordingly to the person to whom the document was produced.

15 (3) A person must not recklessly or knowingly—

- (a) make a subsidy statement that is false or misleading in a material particular; or
- (b) omit from a subsidy statement any matter or thing without which the statement is false or misleading in a material particular.

20 Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(4) In this section:

25 *subsidy statement* means a statement made orally, in writing, by means of a data processing device or by any other means to a subsidy officer or another person for a purpose related to the administration of this Act and includes the following statements:

- (a) a statement made in an application or other document made or given, or purported to be made or given, under this Act;
- (b) a statement made in answer to a question asked of a person under this Act;
- 30 (c) a statement made in any information given, or purported to be given, under this Act;
- (d) a statement made to comply with a condition of registration under this Act;

- (e) a statement made in a document given to a subsidy officer otherwise than to comply with a requirement under this Act.

43 Records offences

- 5 (1) A person must not keep subsidy records that do not correctly record or explain any matter to which they relate.

Maximum penalty: 30 penalty units.

- 10 (2) A person is not guilty of an offence against subsection (1) in relation to any records if the person adduces evidence that the person did not know, and could not reasonably be expected to have known, that the records did not correctly record or explain the matters to which they relate, and the evidence is not rebutted by the prosecution.

- (3) A person must not recklessly or knowingly keep subsidy records that do not correctly record or explain any matter to which they relate.

15 Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (4) A person must not perform a defined act in relation to a subsidy record with the intention of—

- (a) deceiving or misleading the commissioner or another subsidy officer; or
20 (b) hindering or obstructing the investigation of an offence against this Act, or a debt under this Act; or
(c) hindering, obstructing or defeating the administration, execution or enforcement of this Act; or
(d) defeating the purposes of this Act.

25 Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (5) In this section, a reference to the keeping by a person of subsidy records that do not correctly record or explain the matters to which they relate includes a reference to the making of such a subsidy record by the person.

(6) In this section:

defined act means—

(a) keeping subsidy records so that they—

(i) do not correctly record or explain the matters to which they relate; or

(ii) are illegible, indecipherable or incapable of being identified (whether wholly or in part); or

(iii) if they are stored or kept by means of a data processing device—cannot be displayed, printed out or otherwise reproduced in legible form; or

(b) making a subsidy record of a matter so that it does not correctly record the matter; or

(c) altering, defacing, mutilating, falsifying, damaging, removing, concealing or destroying any subsidy record (whether wholly or in part); or

(d) doing or omitting to do any other act or thing to any subsidy record.

subsidy record means accounts or any other record required to be kept under this Act or required by a condition of registration under this Act.

Division 4.5—Other offences

44 Falsifying or concealing identity

(1) A person must not perform a defined act of falsification or concealment with the intention of—

(a) deceiving or misleading the commissioner or another subsidy officer; or

(b) hindering or obstructing an investigation under this Act; or

(c) hindering, obstructing or defeating the administration, execution or enforcement of this Act; or

(d) defeating the purposes of this Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(2) In this section:

defined act of falsification or concealment by a person, means—

(a) falsification or concealment of the identity, or the address or location of a place of residence or business, of the person or of another person; or

(b) doing or omitting to do any act or thing to facilitate such falsification or concealment.

45 Obstruction

(1) A person must not, without reasonable excuse, obstruct or hinder a subsidy officer in the exercise of the officer's powers under this Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(2) A person must not, without reasonable excuse, contravene a reasonable requirement of a subsidy officer who has entered premises under this Act.

Maximum penalty: 50 penalty units.

**PART 5—RECIPROCAL ENFORCEMENT OF INTERSTATE
SUBSIDY SCHEMES**

46 Investigation of referred matters

5 If an interstate officer refers a matter relating to the administration
of the interstate subsidy scheme of a reciprocating State, in writing, to the
commissioner for investigation, the commissioner may authorise an
investigation (an *interstate investigation*) into the matter by—

- 10 (a) a tax officer within the meaning of the *Taxation Administration
Act 1999*; or
- (b) an interstate officer of that jurisdiction.

47 Disclosure of information to reciprocating States

The commissioner may give information disclosed or obtained
under this Act to an interstate officer of a reciprocating State for the
purposes of the administration of the relevant interstate subsidy scheme.

PART 6—ADMINISTRATIVE REVIEW

Division 6.1—Reviewable decisions

48 Reviewable decisions

- 5 (1) This Part applies to a decision of the commissioner (a *reviewable decision*) mentioned in columns 2 and 3 of an item in Schedule 1.
- (2) The commissioner must give written notice of the reviewable decision to the person (the *affected person*) mentioned in column 4 of the item.
- (3) Notice of a reviewable decision must state—
- 10 (a) the reasons for the decision; and
- (b) that the recipient of the notice may object to the decision; and
- (c) the requirements under this Part for making an objection.

Division 6.2—Objections

49 How to lodge an objection to a reviewable decision

- 15 (1) An affected person who is dissatisfied with a reviewable decision may lodge a written objection with the commissioner.
- (2) An objection must be accompanied by the fee determined by the Minister for section 100 of the *Taxation Administration Act 1999*.
- (3) The commissioner must refund the determined fee if—
- 20 (a) the commissioner allows the objection in whole or in part; or
- (b) the objector appeals to the tribunal and—
- (i) the tribunal or a court hearing an appeal on the matter upholds the objection in whole or in part; and
- 25 (ii) the period in which any further appeal can be made has ended; and
- (iii) neither the objector nor the commissioner has appealed against the decision in relation to a part of the objection that was upheld.

50 Grounds for objection

- (1) The grounds for an objection must be stated fully and in detail, and must be in writing.
- (2) The burden of showing that an objection should be sustained lies with the objector.

51 Time for lodging objection

An objection must be lodged with the commissioner not later than 60 days after the date notice of the reviewable decision is served on the affected person, except as provided by section 52.

52 Objections lodged out of time

- (1) The commissioner may permit an affected person to lodge an objection after the 60 day period.
- (2) The affected person seeking to lodge the objection must state fully and in detail, in writing, the circumstances concerning and the reasons for the failure to lodge the objection within the 60 day period.
- (3) The commissioner may grant permission unconditionally or subject to conditions or may refuse permission.
- (4) The commissioner must give notice to the affected person of the commissioner's decision.
- (5) If the commissioner does not grant permission unconditionally, the commissioner must include in the notice an explanation for refusing to grant permission or for imposing conditions on the permission.
- (6) The notice must be in a form approved by the commissioner.

53 Determination of objection

- (1) The commissioner must consider an objection and either allow the objection in whole or in part or disallow the objection.
- (2) The commissioner must take such steps as are necessary (for example, by delegating the functions conferred by this section) to ensure that the individual who considers the objection is not the individual who made the assessment or decision against which the objection was lodged.

54 Notice of determination

(1) The commissioner must give notice to the objector of the determination of the objection.

5 (2) If the objection is not upheld, the commissioner must, in the notice, give an explanation for disallowing the objection or for allowing an objection in part only.

(3) The notice must be in a form approved by the commissioner.

10 (4) The approved form must be in accordance with the requirements of the code of practice in force under subsection 35B (1) of the *Administrative Appeals Tribunal Act 1989*, except for the determination of objections to the following decisions:

(a) registration subject to a condition (under paragraph 16 (h));

(b) variation of a condition of registration (under paragraph 17 (1) (a)).

15 **55 Recovery of repayments pending objection or appeal**

The fact that an objection or appeal is pending does not in the meantime affect the decision to which the objection or appeal relates, and any amount payable under a repayment notice may be recovered as if no objection or appeal were pending.

20 ***Division 6.3—Appeals to the tribunal***

56 Right of appeal to the administrative appeals tribunal

(1) An affected person may apply to the tribunal for a review of—

(a) a determination of an objection to a reviewable decision; or

25 (b) 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.

(2) However, subsection (1) does not apply in relation to the determination of objections to the following decisions:

(a) registration subject to a condition (under paragraph 16 (h));

30 (b) variation of a condition of registration (under paragraph 17 (1) (a)).

57 Grounds of appeal

The appellant's and respondent's cases on appeal to the tribunal are not limited to the grounds of the objection.

58 Giving effect to decision on appeal

5 (1) Within 60 days after a decision by the tribunal becomes final, the commissioner must take any action, including amending a repayment notice or a notice of remission if necessary, that is necessary to give effect to the decision.

10 (2) For this section, a decision by the tribunal becomes final when a period of 30 days has passed after a relevant decision and no appeal against the relevant decision has been instituted within that period.

(3) In this section:

relevant decision means—

- (a) the decision of the tribunal; or
- 15 (b) a decision by a court hearing an appeal from—
 - (i) the decision of the tribunal; or
 - (ii) a decision of a lower court in relation to the decision of the tribunal.

PART 7—MISCELLANEOUS

59 Acts and omissions of representatives

(1) In this section:

representative means—

- 5 (a) for a corporation—an executive officer, employee or agent of the corporation; or
- (b) for an individual—an employee or agent of the individual.

state of mind, of a person, includes:

- 10 (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

15 (2) This section applies to a 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.

(3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—

- 20 (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
- (b) the representative had the state of mind.

25 (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

(5) An individual who is convicted of an offence cannot be punished by imprisonment for the offence if the individual would not have been convicted of the offence without subsection (3) or (4).

60 Criminal liability of officers of corporation

(1) If a corporation commits an offence against this Act, an executive officer of the corporation—

(a) commits the offence; and

5 (b) is liable, on conviction, to a penalty not exceeding the maximum penalty that may be imposed for the commission of the offence by an individual.

(2) It is a defence to a prosecution for an offence against subsection (1) that—

10 (a) the defendant exercised reasonable diligence to prevent the corporation from doing the act or making the omission alleged to constitute the offence or an element of the offence committed by the corporation; or

15 (b) an officer or employee of the corporation occupying the defendant's position could not reasonably have been expected to know of the contravention; or

(c) the corporation would not have been found guilty of the offence because of its being able to establish a defence available to it under this Act.

20 (3) An executive officer may, under subsection (1), be prosecuted for and convicted of an offence whether or not the corporation has been prosecuted for or convicted of the offence.

61 Regulation-making power

The Executive may make regulations for the purposes of this Act.

**SCHEDULE 1
REVIEWABLE DECISIONS**

(See s 48)

column 1 item	column 2 provision of Act	column 3 reviewable decision	column 4 affected person
1	11	refusal to pay low-alcohol liquor subsidy as applied for	applicant for subsidy
2	15	refusal to register a person as a liquor supplier	applicant for registration
3	16 (h)	registration subject to a condition	registered liquor supplier
4	17 (1) (a)	variation of condition of registration	registered liquor supplier
5	17 (1) (b)	suspension of registration	liquor supplier whose registration is suspended
6	17 (2)	refusal to revoke suspension	liquor supplier whose registration is suspended
7	18	issue of repayment notice	person required to make repayment
8	25	refusal to remit repayment (or interest) as applied for	applicant for remission

DICTIONARY

(See s 3)

affected person, in relation to a reviewable decision—see s 48.

commissioner means the commissioner for Australian Capital Territory Revenue.

5 **Commonwealth duty** means duty payable under the *Customs Tariff Act 1995* (Cwlth) the *Excise Tariff Act 1921* (Cwlth) or any other legislation of the Commonwealth prescribed under the regulations.

10 **defined business associate**, in relation to a person who is or has been a registered liquor supplier, means—

(a) if the person is a corporation—

(i) an executive officer of the corporation; or

(ii) a person able to control, or to substantially influence, the corporation's activities or internal affairs; or

15 (b) if the person is a member of a partnership whose business involves the supply of liquor—

(i) another partner; or

(ii) another person substantially concerned in the management of the business relating to the supply of liquor; or

20 (iii) another person able to control, or to substantially influence, the partnership's activities relating to the supply of liquor; or

(c) in any other case—

25 (i) another person substantially concerned in the management of the person's business relating to the supply of liquor; or

(ii) another person able to control, or to substantially influence, the person's activities relating to the supply of liquor.

30 **executive officer**, of a corporation, means a person, by whatever name called and whether or not the person is a director of the

DICTIONARY—continued

corporation, who is concerned with, or takes part in, the corporation's management.

GST—see the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth), dictionary.

5 *identity card*, in relation to a subsidy officer, means the officer's identity card under section 28.

interstate investigation—see section 46.

10 *interstate officer*, of a reciprocating State, means a person or authority, not being a Minister of State, that exercises functions for the relevant interstate subsidy scheme.

interstate subsidy law, of a State, means—

- 15 (a) a law of the State prescribed under the regulations, to the extent that it relates to an interstate subsidy scheme; or
- (b) if a law is not prescribed—a law of the State that provides for the payment of subsidies for low-alcohol liquor (however defined for that law), or that provides administrative arrangements for an interstate subsidy scheme.

20 *interstate subsidy scheme*, of a State, means a scheme under which the State pays subsidies in relation to the sale by wholesale of low-alcohol liquor (however defined for the scheme).

licensed premises means premises from which the sale of liquor is licensed under the *Liquor Act 1975*.

25 *licensee* means a person who holds a licence under the *Liquor Act 1975*.

liquor supplier means a person who sells low-alcohol liquor by wholesale.

low-alcohol liquor means—

- 30 (a) beer that contains between 1.15% and 3.5% by volume ethyl alcohol; or
- (b) undiluted and unadulterated wine of the grape that contains between 1.15% and 6.5% by volume ethyl alcohol.

DICTIONARY—continued

low-alcohol liquor subsidy means a subsidy payable under Part 2.

premises includes any place, vehicle, vessel or aircraft.

5 **reciprocating State** means a State under whose interstate subsidy scheme a person or authority (not being a Minister of State) is authorised to give the commissioner information for the administration of this Act.

registered, in relation to a liquor supplier, means a supplier registered under this Act, but does not include a supplier whose registration is suspended.

10 **repayment**—see subsection 18 (1).

repayment notice—see subsection 18 (1).

sale by wholesale, in relation to low-alcohol liquor, means the sale of the liquor for the purpose of further sale or exposure for sale.

subsidy offence means—

- 15 (a) an offence against this Act; or
(b) in relation to an interstate investigation—an offence against the relevant interstate subsidy law.

subsidy officer means—

- 20 (a) a tax officer within the meaning of the *Taxation Administration Act 1999*; or
(b) for an interstate investigation—a person authorised under that Part to conduct the investigation.

tribunal means the administrative appeals tribunal.

25 **vary**, a condition of registration, includes impose a condition or substitute a new condition.

warrant means a warrant under section 34 (Search warrants) or 35 (Warrants by telephone or electronic media).

Endnote

Penalty units

Section 33AA of the *Interpretation act 1967* deals with the meaning of offence penalties that are expressed in penalty units.