

## **Business Franchise Fees (Safety Net) Bill**

### **EXPLANATORY MEMORANDUM**

#### **PART 1—PRELIMINARY**

Clause 1 outlines the purpose of the Bill.

Clause 2 is the commencement provision.

#### **PART 2—BUSINESS FRANCHISE (PETROLEUM PRODUCTS) ACT 1979**

Clause 3 amends section 2(1) of the **Business Franchise (Petroleum Products) Act 1979** by repealing the definition of "licensed premises" and inserting definitions of "exemption certificate" and "prescribed capacity".

Clause 4 inserts a new section 3A in the **Business Franchise (Petroleum Products) Act 1979** as a transitional provision providing that section 4 of that Act continues to apply in respect of anything done before the commencement of section 5(a) of the **Business Franchise Fees (Safety Net) Act 1997**.

Clause 5 repeals sections 4, 5, 6, 7, 7A, 8, 9, 10, 11, 11A, 12, 13(2)(b), 14 and 16 of the **Business Franchise (Petroleum Products) Act 1979** and makes a consequential amendment to paragraph (a) of section 13(2).

Clause 6 inserts a new section, section 17, in the **Business Franchise (Petroleum Products) Act 1979**. This section authorises the Treasurer to pay amounts determined by him from time to time to sellers of diesel fuel, to holders of exemption certificates for diesel fuel for use other than propelling diesel engined road vehicles on roads ("off-road" use) and to persons carrying on a business of petroleum wholesaling in respect of which Commonwealth excise duties have been paid.

Clause 7 inserts nine new sections, sections 18 to 26, in the **Business Franchise (Petroleum Products) Act 1979**:

Section 18 provides that the Treasurer may require information or the production of documents from a person to determine whether to make a payment, or the amount of a payment, under section 17 of the **Business Franchise (Petroleum Products) Act 1979**. A maximum penalty of 500 penalty units (\$50 000) for a body corporate and 100 penalty units (\$10 000) in any other case is provided for the offence of giving information or producing a document which is false or misleading.

Section 19 states that a person purchasing diesel fuel for off-road use may apply to the Commissioner of State Revenue for a diesel fuel exemption certificate. The application is to be in a form approved by the Commissioner and contain the applicant's name and address, any other information required by the Commissioner and verification by statutory declaration. The Commissioner must issue an exemption certificate unless the Commissioner is satisfied that the application is false or misleading or the applicant has been convicted of an offence under the **Business Franchise (Petroleum Products) Act 1979** or an indictable offence involving dishonesty. An exemption certificate is valid for three years, unless sooner revoked, and is renewable. If the Commissioner is satisfied that the certificate holder has been convicted of an offence against the **Business Franchise (Petroleum Products) Act 1979** or an indictable offence involving dishonesty, or that the certificate holder no longer requires the purchase of diesel fuel for off-road use, the Commissioner may revoke the exemption certificate by written notice given to the certificate holder. A current certificate issued prior to the commencement of this section by the Commissioner stating that a person is a person requiring diesel fuel for off-road use is deemed to be a certificate issued under this section.

Section 20 requires the Commissioner to keep a register of exemption certificate holders which any person may inspect without charge at the Commissioner's office during business hours. The Commissioner is permitted to publish all or part of the register.

Section 21 requires persons carrying on the business of petroleum wholesaling to make and keep records of petroleum sales and purchases and persons carrying on petroleum retailing to make and keep records of purchases for five years unless the

Commissioner authorises earlier destruction. A record is to be in the form, and contain particulars, required by the Commissioner. Failure to make or keep a record under this section or the inclusion in a record required under this section of false or misleading information is an offence. The maximum penalty is 500 penalty units (\$50 000) for a body corporate and 100 penalty units (\$10 000) in any other case.

Section 22 requires a person on whose behalf petroleum products are to be transported in Victoria by road vehicle in a tank which exceeds the prescribed capacity (3000 litres) to complete a transportation record in respect of the petroleum products. That person must give the transportation record to the carrier at or before transportation. Failure to comply with this section is an offence which may incur a maximum 20 penalty units (\$2000). The transportation record is to be in a form approved by the Commissioner and contain the date and address at which transportation is to commence, the class and quantity of the petroleum products, the name and address of the person on whose behalf the products are to be transported, the name and address of the owner, the name of the person (if any) to whom the products are to be transported, the address to which the products are to be transported and the name and address of the person (if any) who has agreed to purchase the products. The transportation record must be carried in the transporting vehicle. The section also creates offences of including false or misleading information in a transportation record and failing to carry a transportation record in the transporting vehicle.

Section 23 enables an inspector who reasonably suspects that petroleum products are being transported in a vehicle which has a tank capacity exceeding 3000 litres to search the vehicle and request inspection of the transportation record. The police may also request a vehicle to stop at the request of an inspector. A maximum penalty of 100 penalty units applies to the offences of refusing to allow the inspector to search the vehicle or failing to comply with a request of a police officer to stop.

Section 24 enables the seizure of petroleum where a tanker driver does not produce a transportation record or produces a record which is false or misleading. Either the driver of the

vehicle will drive to a place where the fuel is to be unloaded or the police will take charge of the vehicle.

Section 25 provides that if a person is convicted of either failing to carry a transportation record, or failing to produce a record on request, the petroleum seized from that person may be forfeited to the State and may be disposed of as the Commissioner sees fit.

Section 26 provides that where a body corporate has contravened the Act, a person concerned in the management of the body corporate is also take to have contravened the same provision unless that person either was not in a position to influence the conduct of the body corporate, used all due diligence to prevent the contravention or was unaware of the body corporate's contravention.

### **PART 3—BUSINESS FRANCHISE (TOBACCO) ACT 1974**

- Clause 8 amends the **Business Franchise (Tobacco) Act 1974** to repeal obsolete definitions of "licence", "licensed premises", "licensee", "listed company", "major shareholder" and "transportation record" and to amend an anomaly in section 5(2) to clarify that the secrecy provisions extend to both the **Business Franchise (Tobacco) Act 1974** and the **Business Franchise (Petroleum Products) Act 1979**.
- Clause 9 repeals numerous provisions, sections 5A, 6, 7, 7AA, 7AB, 7AC, 7AD, 7AE, 7AF, 7AG, 7AH, 7AI, 7AJ, 7A, 7B, 8, 9, 9AA, 9A, 9B, 9BA, 9C, 9D, 9E, 10, 11, 11A, 11B, 11D, 12, 13, 13A, 13B, 13C, 13D, 18D, 19, 19A and 19AB of the **Business Franchise (Tobacco) Act 1974**, concerned with licensing. The reference to the repealed section 7AH is removed from section 21A.
- Clause 10 amends a number of provisions of the **Business Franchise (Tobacco) Act 1974**:
- The inspection and investigation powers in section 14 and 15 are amended to confine these powers to matters related to the payment of an amount under the **Business Franchise (Petroleum Products) Act 1979**. The warrant provision, section 15A, is amended to apply solely to petroleum matters. A person is required to give written notice of the provisions of section 25 of the **Business Franchise**

**(Petroleum Products) Act 1979** (the forfeiture provision) to any person from whom petroleum is seized or to leave the notice in a prominent place at the premises from which it was seized.

- The certificate evidence provision in section 19E(1) of the **Business Franchise (Tobacco) Act 1974** is amended to allow the Commissioner to give evidence by certificate that a particular person was or was not the holder of a diesel fuel exemption certificate under the **Business Franchise (Petroleum Products) Act 1979**. A certificate under this section is only evidence which will stand in the absence of evidence to the contrary.
- The form of warrant to enter premises in Schedule 1 to the **Business Franchise (Tobacco) Act 1974** is amended to remove any power to enter premises where tobacco is stored or any power related to documents relevant to the assessment or collection of tobacco licence fees.

Clause 11 inserts a transitional provision, section 23, into the **Business Franchise (Tobacco) Act 1974**. The provisions states that section 6 of the Act, which is repealed by clause 9, continues to apply to anything done before the commencement of clause 9.

#### **PART 4—LIQUOR CONTROL ACT 1987**

Clause 12 amends the **Liquor Control Act 1987** as follows:

- In section 3 the definition of "Commissioner of State Revenue" is repealed and the definition of "prescribed liquor" is altered to make it consistent with all other States; and
- Section 4 and paragraph (c) of section 43(2) are repealed.

Clause 13 makes consequential amendments to the **Liquor Control Act 1987**:

- Section 63(5)(l), which required the submission of a statement of estimated annual sales by a person applying for a producer's or distributor's licence, is removed, as the estimate was used to calculate ad valorem fees which are no longer applicable;
- Section 69 is amended to remove references to section 63(5)(l);

- Section 90 is amended to clarify its operation and remove the fine for failing to pay licence fee;
- Section 98 is amended to remove references to repealed sections;
- Section 99 is amended to ensure that an agent or mortgagee of licensed premises is under the same obligations as if they were the licence holder in relation to the premises;
- Section 101 is amended to remove a reference to a repealed provision.

Clause 14 repeals section 109 of the **Liquor Control Act 1987**. This section required licence holders to maintain a purchases register.

Clause 15 substitutes a new section 113 of the **Liquor Control Act 1987** which provides for fee amounts for licence applications and for future increase in the fees to be prescribed by regulation.

Clause 16 repeals sections 114, 115, 116, 117, 118 and 119 of the **Liquor Control Act 1987** as ad valorem fees are no longer levied and fixed fees are too low to require instalment payments.

Clause 17 inserts a new section, section 119A, in the **Liquor Control Act 1987**. This provision gives the Treasurer a discretion to make payments to licence holders on the basis that they paid licence fees before 6 August in respect of licences for 1997, or on the basis that they have paid sales tax to the Commonwealth in respect of sales of liquor. A standing appropriation provides authority for the payments.

Clause 18 inserts two new sections, sections 119B and 119C, in the **Liquor Control Act 1987**. These provisions allow the Treasurer to request any information from a person who may be paid under section 119A, and oblige producers and distributors to keep records of sales and purchases in an approved form for at least 5 years.

Clause 19 amends section 145A to remove references to repealed sections.

Clause 20 makes miscellaneous amendments of a statutory revision nature.

## PART 5—TOBACCO ACT 1987

Clause 21 amends the **Tobacco Act 1987** as follows:

- In section 32 sub-section (3) is substituted by two new sub-sections (3) and (3A) with the effect that the reference to funds received from the **Business Franchise (Tobacco) Act 1974** is repealed and an appropriation authority is provided from the Consolidated Fund to the Victorian Health Promotion Fund for \$21.395m to be paid to the Fund in the year 1997–98. The reference in section 32(4) to 30 per centum of the Victorian Health Promotion Levy is omitted.
- A new sub-section (2A) is inserted in section 33 to ensure that the amounts to be paid each year to sporting bodies and for health promotion purposes from the Victorian Health Promotion Fund will each not be less than 30% of the total amount to be paid into the Fund in that year from the Consolidated Fund.
- Part 5 is repealed as it is spent.

