

1995

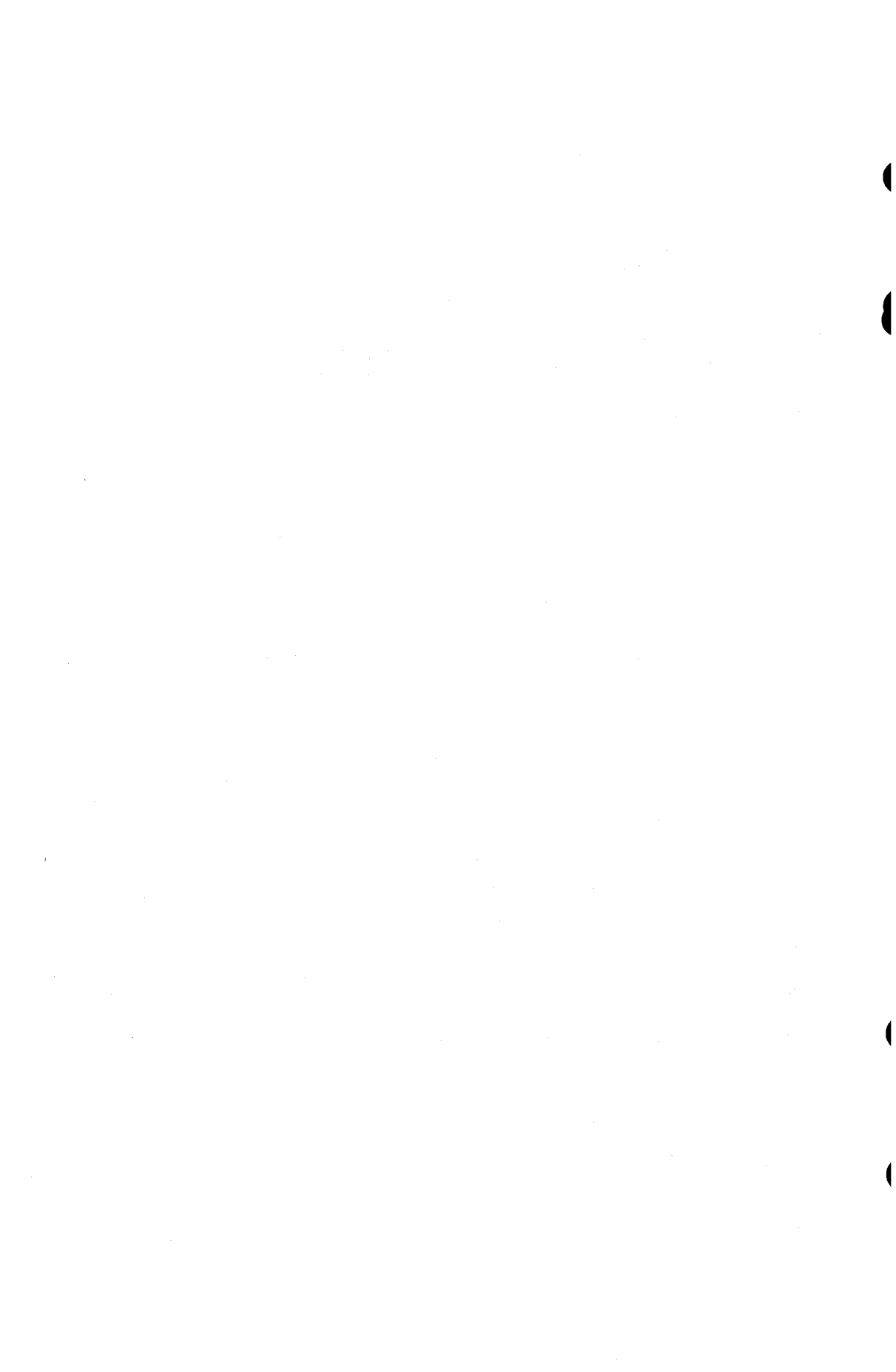
THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**CUSTOMS AND EXCISE LEGISLATION  
AMENDMENT BILL 1995**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industry, Science and Technology,  
Senator the Hon. Peter Cook)



**CUSTOMS AND EXCISE LEGISLATION**  
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**OUTLINE**

This Bill contains a range of measures announced in the 9 May 1995 Budget to amend the provisions of the *Customs Act 1901* and the *Excise Act 1901* relating to the Diesel Fuel Rebate Scheme.

The amendments are principally designed to tighten the eligibility criteria for rebates of customs or excise duty which have been paid on purchases of diesel-fuel, so that the integrity of the Scheme as it was introduced in 1982, to assist those engaged in mainstream primary production and those engaged in mainstream mining operations, can be maintained.

The four principal changes to the Scheme proposed by the Bill involve:

- i) the abolition of the "residential premises" category from rebate eligibility, from 1 July 1995 (items 1, 2, 3, 5, 6 and 9 of Schedule 1 to the Bill refer);
- ii) the confirmation of the definition of "agriculture" in the *Customs Act 1901* to exclude from rebate eligibility activities which might loosely be described under the phrase "amenity agriculture", from 1 August 1986 (items 4 and 10 of Schedule 1 to the Bill refer);
- iii) the narrowing of the definition of "minerals" in the *Customs Act 1901* so as to exclude from rebate eligibility diesel fuel used in mining for minerals, where those operations simply involve the extraction of sand, sandstone, soil, clay, granite, water and the like, from 1 August 1986 (item 7 of Schedule 1 to the Bill refers); and
- iv) the amendment of the definitions of "agriculture" and "mining operations" in the *Customs Act 1901* to specify a clear list of activities in which the use of diesel fuel is to be eligible for the payment of rebate, from 1 August 1986 (items 4 and 8 of Schedule 1 of the Bill refer).

**Financial Impact Statement**

The amendments proposed in this Bill are expected to result in the following savings to the Revenue, in present dollar values;

- i) abolition of the category of residential premises
  - savings for 1995-96 of \$13.6 million, offset by compensation arrangements to the value of \$1.8 million;

ii) clarifying the definition of "agriculture"

- one-off retrospective savings of \$40 million on claims under review or unpaid;
- savings for 1995-96 of \$15 million;

iii) narrowing the definition of "minerals"

- one-off retrospective savings of \$16 million on claims under review or unpaid;
- savings for 1995-96 of \$5 million;

iv) the tightening of the definitions of "agriculture" and "mining operations" to remove the sweeper clauses

- one-off retrospective savings of \$30 million on claims under review or unpaid;
- savings for 1995-96 of \$7 million.

CUSTOMS AND EXCISE LEGISLATION  
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**NOTES ON CLAUSES**

**Clause 1 - Short Title**

Provides for this Act to be cited as the *Customs and Excise Legislation Amendment Act 1995* (hereinafter the CELA Act).

**Clause 2 - Commencement**

This clause provides for the commencement of the various amendments contained in the CELA Act as set out below.

Subclause 2(2) provides that sections 1, 2, 3, 4 and 5 commence on the day on which the CELA Act receives Royal Assent.

Subclause 2(3) provides that items 4, 7, 8, and 10 of Schedule 1 of the CELA Act are taken to have commenced on 1 August 1986. These items propose amendments to the definitions of "agriculture", "minerals" and "mining operations" in subsection 164(7) of the *Customs Act 1901* (the Customs Act), which set out some of the uses of diesel fuel in respect of which rebate of customs duty and excise duty is payable.

The amendments are proposed to clarify the ambit of the Diesel Fuel Rebate Scheme (DFRS) as being a targeted scheme intended to provide rebate of duty paid on diesel fuel used by those who are genuinely involved in the business of mining or farming, or those who undertake activities that are intimately bound up with mining or farming. This intention is implicit in paragraphs 164(1)(a) and (aa) of the Customs Act, which provides that rebate is payable in respect of diesel fuel purchased for use in mining operations and in primary production.

Rebate was originally intended to be payable to those who the ordinary person would have considered to be 'farmers' and 'miners'. However, as the years have progressed, various decisions of courts and tribunals have expanded the ambit of the DFRS to the extent that many activities that should never have been regarded as being eligible to receive rebate have received, and continue to receive, rebate.

In order to remove any ambiguity as to the ambit of the DFRS as it relates to outstanding claims for rebate, it is proposed to have such claims made in relation to diesel fuel purchased since 1 August 1986 (the commencement date of the current DFRS) decided in accordance with the new eligibility criteria inserted by the CELA Act.

Subclause 2(3) provides that items 1, 2, 3, 5, 6 and 9 of Schedule 1, and Schedule 2, commence on 1 July 1995. The amendments effected by items 1, 2 and 3 of Schedule 1 which amend the Customs Act, and Schedule 2 which amends the *Excise Act 1901* (the Excise Act), give effect to the Budget announcement to remove the eligibility for

rebate of customs and excise duty where diesel fuel is for use at residential premises. Items 5 and 6 of Schedule 1 propose to maintain this eligibility with respect to diesel fuel for use at residential premises where the premises are located on an agricultural property (item 5) or at the place, or at a place adjoining that place, where mining operations are carried out (item 9).

### **Clause 3 - Amendments of the *Customs Act 1901***

Clause 3 provides that the Customs Act is amended in accordance with Schedule 1. The amendments set out in Schedule 1 propose to:

- remove the eligibility for the payment of rebate of customs duty in respect of the use of diesel fuel at residential premises;
- remove from the definition of "minerals" for the purposes of the DFRS materials that are more valuable for use in their own right rather than for their inherent mineral worth (eg., water used for drinking);
- ensure that rebate of customs and excise duty is payable only where the diesel fuel is for use in an activity included in the definition of "agriculture" that is for the purposes of a business undertaken to obtain produce for sale; and
- remove the so-called 'sweeper clause', which confer rebate on activities characterised as being "connected with" mining operations and primary production and insert a clear list of activities, under the definitions of "agriculture" and "mining operations" in section 164 of the Customs Act, in which the use of diesel fuel is to be eligible for the payment of rebate of customs and excise duty.

### **Clause 4 - Amendments to the *Excise Act 1901***

Clause 4 provides that the Excise Act is amended in accordance with Schedule 2. The amendments set out in Schedule 2 propose to remove the eligibility for the payment of rebate of excise duty in respect of the use of diesel fuel at residential premises.

Subsection 78A(7) of the Excise Act provides that "mining operations" and "primary production" (which is further defined as meaning, inter alia, "agriculture") have the same respective meanings as in the section 164 of the Customs Act. This means that the proposed amendments to the definitions of "agriculture" and "mining operations" in the Customs Act will have the same effect on the eligibility for the payment of rebate of excise duty for the use of diesel fuel under the Excise Act as they will have on the eligibility for the payment of customs duty under the Customs Act.

### **Clause 5 - Application and savings provisions**

Clause 5 sets out the application and savings provisions for the purposes of the proposed amendments to the Customs Act and the Excise Act set out in Schedules 1 and 2 of the CELA Act.

Subclause 5(1)

Subclause 5(1) sets out the application provisions with respect to:

- all applications for rebate of customs and excise duty; and
- all applications made to the Administrative Appeals Tribunal (the AAT) in respect of decisions relating to rebate applications;

made before, but not decided before, the day on which the CELA Act receives Royal Assent.

Subclause 5(1) provides that, despite section 8 of the *Acts Interpretation Act 1901* but subject to subclause (2), all such applications are to be decided under the *Customs Act 1901* and the *Excise Act 1901* as in force on and after the day on which the CELA Act receives Royal Assent.

Section 8 of the *Acts Interpretation Act 1901* contains provisions that, inter alia, preserve any right acquired or accrued under any Act and any legal proceeding in respect of such rights where such an Act is repealed either in whole or part by another Act. Therefore, if not for the provisions of subclause 5(1) of the CELA Act, all rebate applications and all applications to the AAT in respect of decisions relating to rebate applications made before the day on which the CELA Act receives Royal Assent would be determined in accordance with the provisions of the Customs Act or the Excise Act that were in force before that day.

However, the provisions of section 8 of the *Acts Interpretation Act 1901* are subject to the appearance of a contrary intention and subclause 5(1) provides this contrary intention for the purposes of the CELA Act. The effect of subclause 5(1) is that all rebate applications and all applications to the AAT in respect of decisions relating to rebate applications made before the day on which the CELA Act receives Royal Assent but not decided upon at that day are to be decided in accordance with the provisions of these Acts in force on and after the day on which the CELA Act receives Royal Assent ie in accordance with the new eligibility criteria inserted by the CELA Act.

As set out above, the CELA Act is proposing to limit the circumstances in which the use of diesel fuel is eligible for rebate of customs duty and excise duty with effect from 1 August 1986. The effect of subclause 5(1), therefore, may be that activities the subject of applications before the Collector, and applications to the AAT, made before the day on which the CELA Act receives Royal Assent may have been eligible applications on the day they were made, but when decided in accordance with the provisions of the Customs Act and the Excise Act in force after the day of Royal Assent, may no longer be eligible for payment of rebate.

As referred to above, the operation of subclause 5(1) is subject to subclause 5(2). The effect of making subclause 5(1) subject to subclause 5(2) is that the provisions of subclause 5(1) do not apply in relation to a rebate application made in respect of diesel fuel purchased for use at residential premises (see below).

Subclause 5(2)

Subclause 5(2) provides that subclause 5(1) does not apply in relation to a rebate application made by a person in respect of diesel fuel purchased for use by the person at residential premises in providing food, drink, lighting, heating, air-conditioning, hot water or similar amenities for or meeting the other domestic requirement of the residents of the premises or to an application to the AAT in respect of decisions relating to such an application.

As the removal of the eligibility for the payment of rebate in respect of diesel fuel for use at residential premises is not for the purposes of specifying those uses of diesel fuel that have been eligible for rebate since 1 August 1986, as are other amendments proposed in the CELA Act, it is not necessary that such applications be subject to the provisions of subsection 5(1).

Subclause 5(3), however, sets out provisions governing the making and determining of applications for rebate post 1 July 1995 in respect of diesel fuel purchased for use in residential premises before 1 July 1995.

Subclause 5(3)

Subclause 5(3) governs the circumstances in which a person has purchased diesel fuel for use by that person at residential premises in an activity referred to in paragraphs 5(2)(a), (b) or (c) before 1 July 1995. A person may make an application under section 164 of the Customs Act for rebate of customs duty and under section 78A of the Excise Act for rebate of excise duty in respect of the fuel.

If such an application is not made, or is not finally determined, before 1 July 1995, subclause 5(3) provides that for the purpose of finally determining that application and making any necessary payment of rebate, the Customs Act and the Excise Act have effect as if:

- i) the amendments set out in items 1, 2, 5, 6 and 9 of Schedule 1 to the CELA Act; and
- ii) the amendments set out in item 1, 2 and 4 of Schedule 2 to the CELA Act;

had not been made. These items effect the removal of the eligibility of the use of diesel fuel at residential premises for the payment of rebate and the replacement provisions with respect to diesel fuel for use at agricultural and mining residential premises. The amendments in item 3 of both Schedules 1 and 2 omit the rate of rebate payable in respect of use of diesel fuel at residential premises and for the purposes of subclause 5(3), these amendments are taken not to have been made.

The effect of subclause 5(3), therefore, is that rebate applications in respect of fuel purchased before 1 July 1995 for use at residential premises which have not been made or finally determined before 1 July 1995 are to be determined in accordance with the provisions of the Customs Act and the Excise Act in force before 1 July 1995, *except* for the rate of rebate payable. Subclause 5(3) provides that in respect of such



applications, the Customs Act and the Excise Act are to have effect as if the rate of rebate payable were \$0.24659 per litre.

Subclause 5(3) also provides that a person making an application in accordance with this subclause is not otherwise entitled to make an application for rebate for that fuel. This means that such a person cannot make a rebate application for diesel fuel for use at residential premises under the new categories of agricultural or mining residential premises.

Application for rebate in accordance with subclause 5(3) will also be subject to subsection 164(4A) of the Customs Act, i.e. in respect of all applications for rebate received on or after 1 July 1994, rebate is only payable in respect of diesel fuel purchased within 3 years before an application is received except where a notice of intention has been given before 1 July 1994.

#### Subclause 5(4)

Subclause 5(4) sets out provisions, similar to subclause 5(1), governing the law that is applicable to legal proceedings brought in the Federal Court of Australia or the High Court of Australia before the day on which the CELA Act receives Royal Assent in relation to a rebate application. Subclause 5(4), similar to subclause 5(1), provides the contrary intention to the operation of section 8 of the *Acts Interpretation Act 1901* in respect of such legal proceedings.

Subclause 5(4) provides that if legal proceedings have been brought in the Federal Court or the High Court before the day the CELA Act receives Royal Assent in relation to a rebate application, for the purposes of the proceedings, and despite section 8 of the *Acts Interpretation Act 1901*, the law governing the right to be paid such a rebate is the Customs Act and the Excise Act as in force on and after the day on which the CELA Act receives Royal Assent.

Subclause 5(4) is intended to have the same effect that subclause 5(1) has on rebate applications and applications to the AAT. The law for the purpose of proceedings in relation to rebate applications in the Federal Court or the High Court may be different from the law that applied on the day the proceedings were brought. This may mean that applications that were eligible on this day may no longer be eligible on or after the day on which the CELA Act receives Royal Assent.

#### Subclause 5(5)

Subclause 5(5) proposes to give effect to the Government's decision that where rebate has been paid before to Royal Assent in respect of certain uses of diesel fuel that will, upon Royal Assent, be taken to have been ineligible for rebate on and from 1 August 1986, such amounts of rebate are not to be recovered.

Subclause 5(5) applies if a person has made a rebate application and, before Royal Assent of the CELA Act, has been paid an amount by way of rebate to which the person is entitled under the *Customs Act 1901* or the *Excise Act 1901* as in force at the time of the payment. Subclause 5(5) provides that in such circumstances, the payment

is to be treated, on and after the day on which the CELA Act receives Royal Assent, as if it were payment properly made under the Customs Act and the Excise Act, whichever is appropriate, as in force on and after the day of Royal Assent.

The effect of this provision can be seen, for example, in the circumstance where a person has claimed and been paid rebate prior to the Royal Assent for the use of diesel fuel in an activity "connected with" agriculture. The activity in respect of which the rebate was paid may, on and after the Royal Assent, no longer fall within the definition of "agriculture" in the Customs Act. If, as result of the proposed 1 August 1986 commencement of amendments in the CELA Act, the activity would not be a rebatable activity, payments made would nevertheless be deemed to have been properly made under the provisions of Customs Act or the Excise Act in force on and after the CELA Act receives Royal Assent.

This deeming provision only applies where rebate has been paid to a person who was *entitled* to the payment under the *Customs Act 1901* or the *Excise Act 1901* as in force at the time of the payment. The recipient of the payment must have been an eligible recipient at the time of the payment and this provision will not affect action being taken to recover amounts paid by way of rebate where, for example, the rebate was not payable to a person due to fraud or where a person has knowingly or recklessly claimed rebate.

#### Subclause 5(6)

Subclause 5(6) provides a mechanism whereby rebate applications may be made in respect of the proposed new eligibility criteria more the 3 years before the making of an application. Subclause 5(6) provides that a person may, at any time, make a rebate application in respect of diesel fuel purchased for the purpose of a particular activity or operation more than 3 years before the making of that application only in the following circumstances:

- i. if a notice of intention to make an application was duly given before 1 July 1994 under the relevant provision of the Customs Act and the Excise Act; and
- ii. the notice of intention can reasonably be construed as extending to cover that activity or operation, whether it so refers in express terms or not.

Subclause 5(6) preserves the amendments made to the DFRS in 1993 which provided that, as from 1 July 1994, applicants can only claim rebate in respect of diesel fuel purchased 3 years from the date of purchase unless the applicant has given to Customs prior to 1 July 1994 a notice of intention to claim rebate for purchases of diesel fuel back to 1 August 1986.

Subclause 5(6) will have effect in those circumstances where a notice of intention has been given, and at the date of Royal Assent of the CELA Act the application for rebate relevant to the notice has not been made. In such circumstances, if the notice can reasonably be construed as extending to cover an activity that will be rebatable after the date of Royal Assent, an application for rebate in respect of diesel fuel purchased

for use in that activity can be made, as from the earliest date expressed in the notice of intention.

If, however, a notice of intention cannot be construed as extending to cover an activity or operation in respect of which a rebate application is being made, the application will be limited by the 3 year time limit.

Subclause 5(7)

Subclause 5(7) sets out a definition of "rebate application" for the purposes of clause 5. A rebate application is an application in respect of customs duty paid on diesel fuel made under section 164 of the Customs Act or an application in respect of excise duty paid on diesel fuel made under section 78A of the Excise Act.

**SCHEDULE 1****AMENDMENTS OF THE CUSTOMS ACT 1901**

**Item 1 - Paragraph 164(1)(b),**

**Item 2 - Subsection 164(3)**

**Item 3 - Paragraph 164(5)(c)**

Item 1 omits paragraph 164(1)(b), item 2 omits and substitutes subsection 164(3) and item 3 omits paragraph 164(5)(c) from the Customs Act.

These items omit those provisions of the Customs Act relating to "residential premises" as a consequence of the Government's decision to remove from eligibility to receive rebate diesel fuel for use at residential premises with effect from 1 July 1995. Diesel fuel purchased for use at residential premises after that date will not be eligible to receive rebate of customs duty.

However, in recognition of the burden this may place on people living on agricultural properties and on individuals engaged in mining operations, it is proposed that rebate will continue to be payable in respect of diesel fuel purchased for use for domestic purposes at residential premises on agricultural properties and at or adjoining the place at which mining operations are carried out (see items 5 and 9 below).

**Item 4 - Subsection 164(7) (definition of "agriculture")**

Item 4 omits and substitutes the definition of "agriculture" in subsection 164(7) of the Customs Act.

The purpose of the omission and substitution of the definition of "agriculture" is to clarify that the ambit of the DFRS is restricted to paying rebate on diesel fuel purchased for use in the preparation of the soil, the act of growing primary produce or rearing of livestock, and for use in other activities that are sufficiently connected with "agriculture" to be considered eligible for the payment of rebate. This will remove any doubt that the DFRS is a targeted scheme that will provide rebate of customs and excise duty for diesel fuel for use in activities that fall completely within the activities specified in the new definition of "agriculture" rather than in respect of activities that may, in a loose sense, go towards "encouraging" agriculture.

The payment of rebate of customs and excise duty on diesel fuel was originally intended to be made to those involved in the business of farming, as that is understood by the common person. This is implicit in the terms of paragraph 164(1)(aa) of the Customs Act which provides for the eligibility for diesel fuel rebate in respect of diesel fuel for use in "primary production". The amendment proposed in this item makes it clear that persons conducting so-called "hobby farms" for the purposes of recreation, prison farms or agricultural colleges or persons who live in a farm as a substitute for living in a house in a town or a city and who cannot be said to be operating a farm to make a living, are ineligible to receive rebate.

The paragraphs also make clear that those who are engaged in so-called "amenity horticulture", who grow flowers for pleasure either at home, or for public presentation in parks and playgrounds, or who maintain golf courses or municipal sportsgrounds are also ineligible to receive rebate, as distinct from those who grow flowers for the purpose of sale and who are engaged in a rebatable activity.

New paragraphs (a), (b), (c) and (d) of the definition of "agriculture" re-insert paragraphs (a), (b), (c), and (d) of the existing definition of "agriculture" to provide that diesel fuel for use in activities that involve the actual growing of primary produce and its gathering in, and the rearing of livestock retains its eligibility for the payment of rebate

- New paragraph (q) of the definition of "agriculture" qualifies paragraphs (a) to (d) inclusive by providing that an activity referred to in these paragraphs must be carried out for the purposes of a business to obtain produce for sale to others in order the fall within the definition of "agriculture". If the activity in paragraphs (a) to (d) is not for such purposes, it will not be eligible for the payment of rebate.

New paragraphs (e), (f), (g), (h), (i), (j), (k), (l) (m), (n) and (o) of the definition of "agriculture" specify those activities in respect of which rebate is payable. These paragraphs replace the so-called "sweeper clause" in existing paragraph (e) of the definition of "agriculture" under which activities said to be "connected with" agriculture are eligible for the payment of rebate.

The eligible activities proposed to be inserted by new paragraphs (e) to (o) inclusive are activities ordinarily conducted either by, or on behalf of farmers as part of the operations of their farming businesses. Organisations engaged in the provision of services and utilities to farmers, such as electricity and water, are not eligible to receive rebate. Other activities that do not fall within the ordinary meaning of the terms used in new paragraphs (e) to (o) will also be ineligible to receive rebate in respect of diesel fuel for use in such activities.

It is proposed that diesel fuel purchased for use in the following activities will be eligible to receive rebate:

- the shearing or cutting of hair or fleece of live-stock, or the milking of live-stock, carried out on an agricultural property (new paragraph (e));
- frost abatement on an agricultural property (new paragraph (f));
- transporting live-stock to an agricultural property to be reared, or, when it is decided to send away live-stock to agistment for a temporary period, but with the intention of returning the live-stock to the property from where they originally came, transporting the cattle to and from agistment (new paragraph (g));
- hay baling on the agricultural property where the hay was cultivated (new paragraph (h))

- the planting or tending of trees on an agricultural property for the purpose of soil or water conservation, and not for felling (new paragraph (i));
  - The activities falling within paragraphs (e) to (i) inclusive must also be carried only for the purposes of, or for purposes that will directly benefit, a business undertaken to obtain produce for sale. If an activity is not carried on for such purposes, it will not fall within the definition of "agriculture" (new paragraph (r) of the definition of "agriculture" provides).
- any other activity performed for the purpose of soil or water conservation (other than the planting or tending of trees) undertaken either by a person carrying on a "core agricultural activity" or someone contracted by the farmer to perform the activity. (new paragraph 164(7)(j))
  - The new definition of "core agricultural activity" is inserted into subsection 164(7) of the Customs Act by item 10 of the CELA Act. This term is defined as meaning one of the activities referred to in paragraphs (a), (b), (c) and (d) of the definition of agriculture if that activity is carried on for the purposes of a business undertaken to obtain produce for sale.
- pumping water for use in a "core agricultural activity", when the pumping is carried out either on, or adjoining, an agricultural property when carried out by the farmer; (new paragraph (k));
- storage of the produce of a "core agricultural activity" on the agricultural property it was produced, (new paragraph (l));
- the packing, or the prevention of deterioration of the produce of a "core agricultural activity", when performed at the agricultural property where the produce was produced, no physical change to the produce was rendered, and that the activity cannot be regarded as constituting a processing of the produce. The last condition means that activities such as canning are ineligible to receive the advantage or rebate, (new paragraph (m));
- weed, pest or disease control undertaken by a person carrying on a "core agricultural activity" or someone contracted by the farmer to perform the activity (new paragraph (n)); and
- hunting or trapping carried on for the purposes of a business, as well as the storage of carcasses and skins obtained from the hunting or trapping (new paragraph (o)).

New paragraph 164(7)(p) provides that fishing operations and forestry are not included in the definition of "agriculture" as these activities are themselves separately defined for the purposes of the DFRS in subsection 164(7) of the Customs Act.

**Items 5 - Subsection 164(7) (after paragraph (o) of the definition of "agriculture")**

**Item 6 - Subsection 164(7) (paragraph (r) of the definition of "agriculture")**

Item 5 inserts the word "or" and new paragraph (oa) into the definition of "agriculture" in subsection 164(7) of the Customs Act. Item 6 omits the reference to "(h) or (i)" and substitutes a reference to "(h), (i) or (oa)" in paragraph (r) of the definition of "agriculture" in subsection 164(7) of the Customs Act.

The amendments proposed in these items ensure that diesel fuel purchased for use in residential premises located on agricultural properties for domestic purposes, by a person carrying on "core agricultural activities" remains eligible for the payment of rebate with respect to diesel fuel purchased on and after 1 July 1995, which is the date on which the general eligibility for diesel fuel for use at residential premises for domestic purposes is removed.

**Item 7 - subsection 164(7) (definition of minerals")**

Item 7 amends the definition of "minerals" in subsection 164(7) of the Customs Act by inserting after the word "inorganic" the phrase ", except sand, sandstone, soil, slate, clay (other than bentonite or kaolin), basalt, granite, gravel, limestone and water".

This purpose of the amendment proposed in this item is to exclude from eligibility for the payment of rebate diesel fuel for use in extracting certain materials from the ground because they are valuable as extracted, rather than for the purpose of recovering their inherent mineral qualities. For example the use of diesel fuel in the mining of sand for its use in concreting, rather than for the purpose of extracting the minerals contained in the sand, is to be excluded from eligibility for rebate.

**Item 8 - Subsection 164(7) (definition of "mining operations")**

Item 8 omits the existing definition of "mining operations" in subsection 164(7) of the Customs Act and substitutes a new definition of "mining operations".

The purpose of this amendment is to clarify that the ambit of the DFRS is to pay rebate on diesel fuel for use in the activities of the exploring or prospecting for, and subsequent dressing and beneficiation of minerals and also for use in particular activities that are sufficiently connected with mining, and for use in the liquefaction of natural gas and the production of common salt by means of evaporation.

The payment of rebate on diesel fuel was originally intended to be made to those persons who are involved in the mainstream of mining, as understood by the common person. This intention is implicit in the terms of paragraph 164(1)(a) of the Customs Act which provides eligibility for the payment of rebate in respect of diesel fuel for use in "mining operations. The amendment proposed by this item removes any doubt that the DFRS is a targeted scheme providing rebate of customs and excise duty in respect of diesel fuel used in those activities that fall fully within the activities specified in the new definition of "mining operations", rather than in respect of activities that may, in a loose sense, go towards "encouraging" mining operations. As with the new definition

of "agriculture", organisations engaged in the bulk provision of services and utilities to miners, such as electricity and water, will not be eligible to receive the advantage of rebate subject to the activities specified in new paragraph (h) of the definition of "mining operations".

New paragraphs (a), (b), (c), (d), (e), (f) and (g) of the new definition of "mining operations" re-insert paragraphs 164(7) (a), (b), (d), (da), (e), (f) and (g) of the existing definition of "mining operations". This provides that diesel fuel for use in the exploration or prospecting for minerals, as well as their subsequent dressing and beneficiation retains its eligibility for the payment of rebate, as will diesel fuel for use in the liquefaction of natural gas and the production of common salt by means of evaporation.

New paragraphs (h), (i), (j), (k) and (l) of the definition of "mining operations" specify those activities in respect of which rebate is payable. These paragraphs replace the so-called "sweeper clause" in existing paragraphs (c) and (ca) of the definition of "mining operations" under which activities said to be "connected with" mining operations are eligible for the payment of rebate.

The eligible activities proposed to be inserted by new paragraphs (h) to (l) inclusive are activities ordinarily conducted either by, or on behalf of, miners as part of the operation of their mining business. Other activities that do not fall within the ordinary meaning of the terms used in new paragraphs (h) to (l) will be ineligible to receive rebate in respect of diesel fuel for use in the activity.

It is proposed that diesel fuel purchased for use in the following activities will be eligible to receive rebate:

- the generation of electricity for the provision of electricity for a "mining town" when the electricity had to be produced so as to allow the mining of minerals to take place at all (new paragraph (h));
  - The new definition of "mining town" for the purposes of the DFRS is inserted into subsection 164(7) of the Customs Act by item 10 of the CELA Act. A mining town is essentially a town that had to be built from scratch by a mining company in an isolated location somewhere near the mine site to house its employees, and which has not yet matured sufficiently as a community in its own right so as to be controlled by a town council established pursuant to the local government legislation of the States and Territories.
- the rehabilitation of a mining site when carried on by either the miner or a person contracted by the miner to carry out the rehabilitation. This means that activities that may in the abstract be regarded as rehabilitating a mine site, such as using a mining site as a garbage tip long after mining operations have ceased, are not rebatable activities (new paragraph (i));
- pumping water for use in exploring or prospecting for minerals, or in the subsequent mining and beneficiation of minerals, when the pumping is carried out



either on, or adjoining, the place where the operation is taking place by the miner itself (new paragraph (j));

- the construction or maintenance of access roads, storage dams or tailings dams for use in exploring or prospecting for minerals, or in the subsequent mining and beneficiation of minerals when carried out at the actual place where the mining operation takes place, by the miner itself or someone contracted by the miner to carry out the construction or maintenance; (new paragraph (k)); and
- the service, maintenance and repair of vehicles, plant and equipment for use in exploring or prospecting for minerals, or in the subsequent dressing of minerals when carried out at the actual place where the mining operation takes place, by the miner itself or someone contracted by the miner to carry out the service, maintenance and repair (new paragraph (l)).

The existing ineligibility of quarrying operations carried on solely for the purpose of obtaining stone for building, road making or similar purposes is retained.

**Item 9 - Subsection 164(7) (after paragraph (l) of the definition of "mining operations")**

Item 9 amends the definition of "mining operations" in subsection 164(7) of the Customs Act by inserting the word "or" and new paragraph (m).

This item ensures that diesel fuel purchased for use in residential premises located at, or at the place adjoining, the place at mining operations are carried out for domestic purposes, by the person who carries out the mining operations remains eligible for the payment of rebate with respect to diesel fuel purchased on and after 1 July 1995. This is also the date on which the general eligibility for diesel fuel for use at residential premises for domestic purposes is removed.

**Item 10 - Subsection 164(7)**

Item 10 inserts the new definitions of "core agricultural activity" and "mining town" into subsection 164(7) of the Customs Act, as referred to above.

**SCHEDULE 2****AMENDMENTS TO THE EXCISE ACT 1901****Item 1 - Paragraph 78A(1)(b)****Item 2 - Subsection 78A(3)****Item 3 - Paragraph 78A(5)(c)****Item 4 - Subsection 78A(7)**

Item 1 omits paragraph 78A(1)(b), item 2 omits subsection 78A(3), item 3 omits paragraph 78A(5)(c) and item 4 omits subsection 78A(7) from the Excise Act.

These items omit those provisions of the Excise Act relating to "residential premises" as a consequence of the Government's decision to remove from eligibility to receive rebate diesel fuel for use at residential premises with effect from 1 July 1995. Diesel fuel purchased for use at residential premises after that date will not be eligible to receive rebate of excise duty.

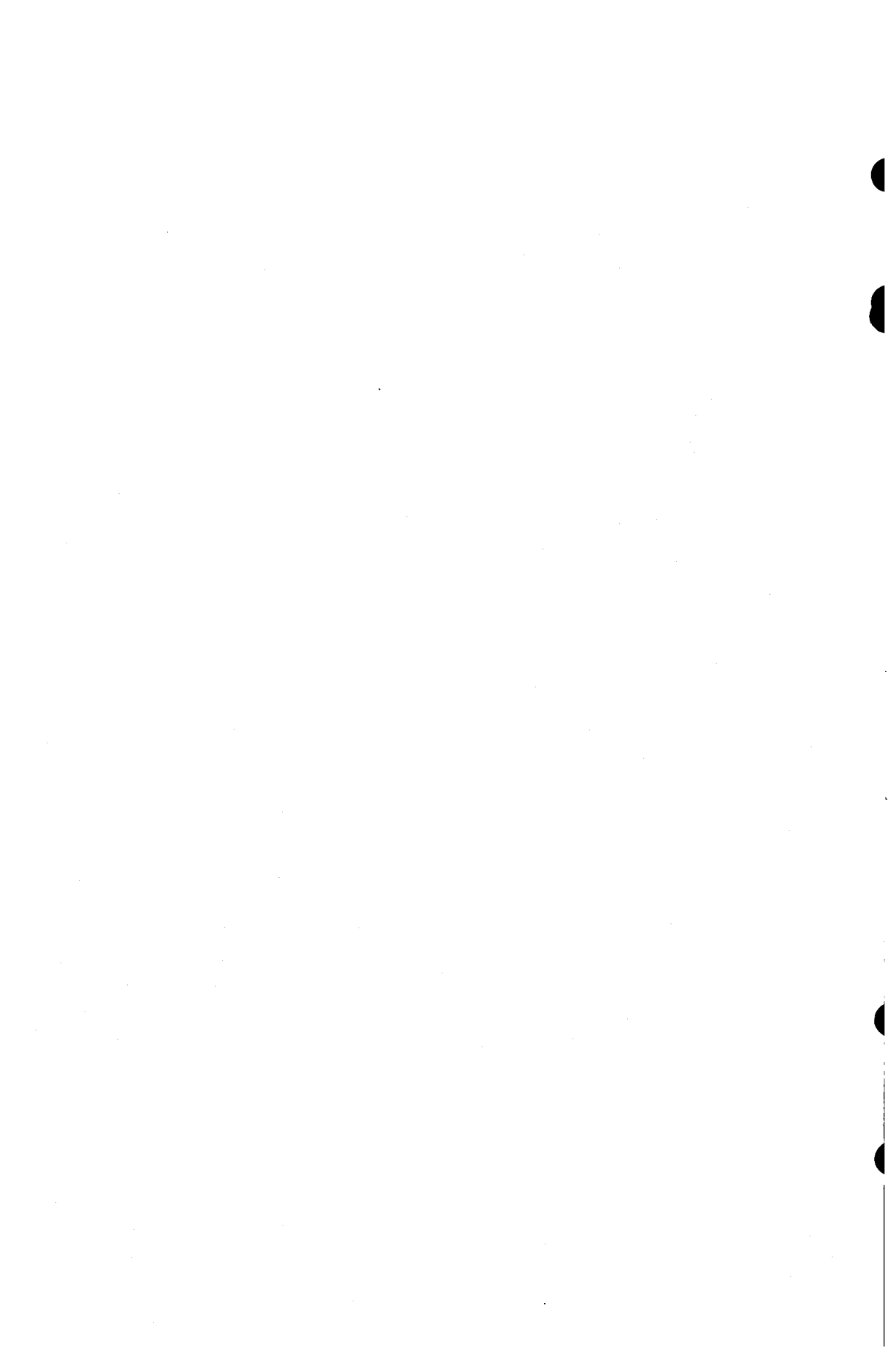
However, in recognition of the burden this may place on people living on agricultural properties and on individuals engaged in mining operations, it is proposed that rebate will continue to be payable in respect of diesel fuel purchased for use for domestic purposes at residential premises on agricultural properties and at or adjoining the place at which mining operations are carried out (see items 5 and 9 of Schedule 1 to the CELA Act).

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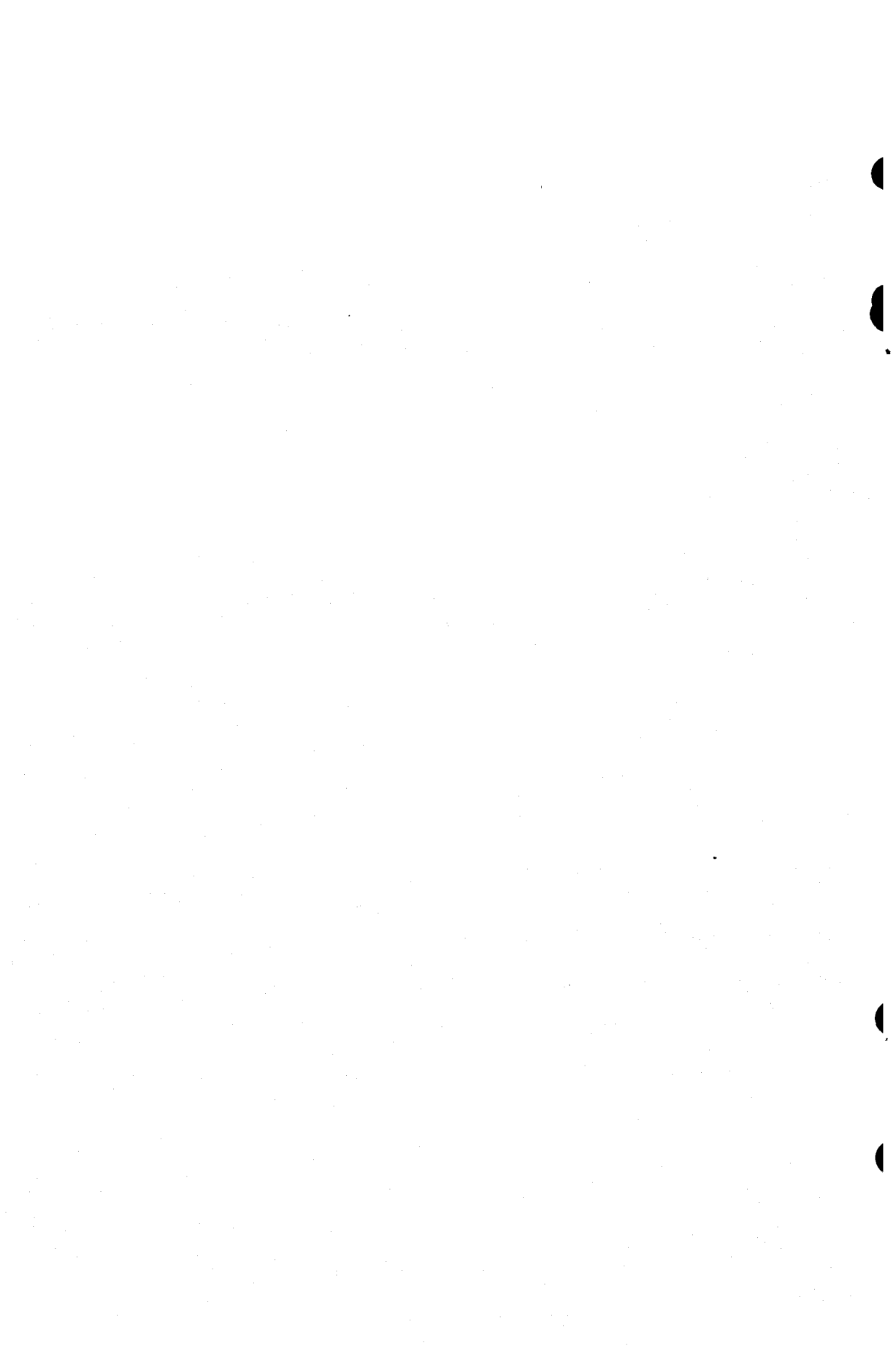


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