

[Act 1997 No 108]



New South Wales

## Appropriation (Refunds and Subsidies) Bill 1997

### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

The following Bills are cognate with this Bill:

*Business Franchise Licences (Repeal) Bill 1997*

*Petroleum Products Subsidy Bill 1997*

### Overview of Bill

The object of this Bill is to appropriate an additional amount of \$282 million from the Consolidated Fund for recurrent services of the Government for the financial year 1997–98.

The appropriation is necessary because of the decision of the High Court of Australia given on 5 August 1997 in *Ngo Ngo Ha & Anor v State of New South Wales & Ors and Walter Hammond and Associates Pty Limited v State of New South Wales & Ors* in which tobacco licence fees under the *Business Franchise Licences (Tobacco) Act 1987* were found to be invalid as imposing a duty or duties of excise within the meaning of section 90 of the *Commonwealth Constitution*. The decision also affects liquor licence fees and petroleum licence fees.

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The amount appropriated is comprised as follows:

	<b>\$ million</b>
Refunds of liquor licence fees to the liquor industry	130.0
Off-road diesel subsidies	97.5
Subsidies for low alcohol beer and wine	12.5
On-road petrol and diesel subsidies	37.5
Subsidies for vignerons' sales and wine tastings	<u>4.5</u>
	282.0

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the proposed Act to commence on 1 July 1997, which is the date of commencement of the *Appropriation Act 1997*.

**Clause 3** is the appropriation provision. Clause 3 (1) appropriates the sum specified above. Clause 3 (2) identifies the program for which the sum is appropriated. Clause 3 (3) allows the Treasurer to amend the estimates (a similar provision is contained in section 26 of the *Public Finance and Audit Act 1983*).

**Clause 4** contains miscellaneous provisions concerning the operation of the proposed Act. Clause 4 (1) provides that the proposed Act is to be construed as part of the *Appropriation Act 1997* (this emphasises that the appropriation is part of the budgetary process for the year 1997–98, and ensures that terms are construed consistently). Clause 4 (2) is consequential on subclause (1), and makes it clear that the appropriation is not limited to meeting a shortfall from other appropriations. Clause 4 (3) validates any payment of the appropriated sum before the date of assent to the proposed Act. Clause 4 (3) also provides that the proposed subsection applies whether or not the proposed Act is assented to during or after the year 1997–98 (this removes an argument, based on section 23 of the *Public Finance and Audit Act 1983*, that the appropriation lapses at the close of the year).