

Queensland



# **FUEL SUBSIDY ACT 1997**

**Reprinted as in force on 6 November 1997  
(Act not amended up to this date)**

**Reprint No. 1**

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**See endnotes for information about when provisions commenced.**

Queensland



**FUEL SUBSIDY ACT 1997**

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**FUEL SUBSIDY ACT 1997**

[reprinted as in force on 6 November 1997]

**An Act about providing subsidies for certain fuel purchases and for related purposes****Parliament's reasons for enacting this Act are—**

**1.** The Commonwealth increased customs and excise duties on fuel with effect from 7 August 1997.

**2.** Parliament recognises the increase will result in an increase in the cost of fuel in the State.

**3.** It is Parliament's intention to ensure licensed off-road diesel users, licensed retailers, retail consumers and licensed bulk end users are not affected by the surcharge.

**4.** To achieve the intention the State will, under this Act—

- (a) subsidise licensed off-road diesel users, licensed retailers and licensed bulk end users for the surcharge; and
- (b) prohibit the surcharge or any part of it being recovered other than by making a claim for a subsidy under this Act.

## CHAPTER 1—PRELIMINARY

### PART 1—INTRODUCTION

#### Short title

1. This Act may be cited as the *Fuel Subsidy Act 1997*.

#### Commencement

2. This Act commences, or is taken to have commenced, on 1 November 1997.

#### Definitions—the dictionary

3. The dictionary in schedule 3 defines particular words used in this Act.<sup>1</sup>

### PART 2—BASIC CONCEPTS

#### Meaning of “bulk end user”

- 4.(1) A person is a “**bulk end user**” to the extent the person purchases fuel (other than retail fuel) for the person’s own use (other than a use that

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<sup>1</sup> In some Acts, definitions are contained in a dictionary that appears as the last schedule and forms part of the Act—*Acts Interpretation Act 1954*, section 14(4). Words defined elsewhere in the Act are generally signposted by entries in the dictionary. However, if a section has a definition applying only to the section, or a part of the section, it is generally not signposted by an entry in the dictionary and is generally set out in the last subsection of the section. Signpost definitions in the dictionary alert the reader to the terms defined elsewhere in the Act and tell the reader where the definitions can be found. For example, the definition ‘ “**retailer**” see section 6’, tells the reader there is a definition of retailer in the section.

would make the person an off-road diesel consumer), including, for example, for use in a production process carried on by the person.

(2) For subsection (1), a person is taken to purchase fuel for the person's own use if—

- (a) it is for use for an enterprise of the person and as part of the enterprise is sold to (in retail quantities), or used by, the person's independent contractor, joint venturer or partner; and
- (b) on delivery to the person it does not require transportation before use by the contractor, joint venturer or partner; and
- (c) it is supplied by the person to the contractor, joint venturer or partner in retail quantities.

(3) Subject to subsection (2), a regulation may prescribe purchases of fuel that are, or are not, taken to be for a person's own use under subsection (1).

(4) However, a bulk end user is not entitled to make a claim for a subsidy under this Act for a sale mentioned in subsection (2)(a).

### **Meaning of “off-road diesel consumer”**

**5.(1)** A person is an “**off-road diesel consumer**” to the extent the person purchases diesel (other than retail fuel) for the person's own use in Queensland for any purpose other than that of propelling a diesel engine road vehicle on a public road.

(2) For subsection (1), a person is taken to purchase diesel for the person's own use if—

- (a) it is for use for an enterprise of the person and as part of the enterprise is sold to (in retail quantities), or used by, the person's independent contractor, joint venturer or partner; and
- (b) on delivery to the person it does not require transportation before use by the contractor, joint venturer or partner; and
- (c) it is supplied by the person to the contractor, joint venturer or partner in retail quantities.

(3) For subsection (1), diesel is taken to be used in Queensland if it is used in propelling a boat that operates from Queensland.

(4) Subject to subsection (2), a regulation may prescribe purchases of diesel that are, or are not, taken to be for a person's own use under subsection (1).

(5) However, an off-road diesel consumer is not entitled to make a claim for a subsidy under this Act for a sale mentioned in subsection (2)(a).

### **Meaning of “retailer”**

6. A person is a “**retailer**” to the extent the person purchases fuel for resale to the public in retail quantities from a fixed site in Queensland.

### **Meaning of “retail quantity” for fuel**

7.(1) The “**retail quantity**” for fuel is not more than 3 000 L or, if another quantity is prescribed under a regulation for fuel, the other quantity.

(2) However, a quantity of fuel is not a retail quantity unless it is delivered by a metered pump into—

- (a) a running tank; or
- (b) a container that is empty when the delivery starts.

(3) A regulation under subsection (1) may prescribe different quantities for different types of fuel.

### **Meaning of “net sale”**

8.(1) A “**net sale**”—

- (a) for chapter 2—is a sale of diesel made in compliance with section 14 and for which the seller does not recover (directly or indirectly) from the purchaser the part of the sale price that is an amount equal to the subsidy for the sale other than by making a claim on behalf of the purchaser under the chapter; or
- (b) for chapter 3—is a sale of fuel made in compliance with section 43 and for which the seller does not recover (directly or indirectly) from the purchaser the part of the sale price that is an amount equal to the subsidy for the sale other than by making a claim on behalf of the purchaser under the chapter; or



- (c) for chapter 4—is a sale of fuel made in compliance with section 73 and for which the seller does not recover (directly or indirectly) from the purchaser the part of the sale price that is an amount equal to the subsidy for the sale other than by making a claim on behalf of the purchaser under the chapter.<sup>2</sup>

(2) Unless a contrary intention appears, a reference in chapter 2, 3 or 4 to a net sale is a reference to a net sale for the chapter.

### **Only 1 subsidy payable for fuel**

**9.(1)** For an amount of fuel, only 1 subsidy is payable whether under this Act or a corresponding law.

(2) If a person receives a subsidy under this Act for the sale of fuel and the person also receives a subsidy for the fuel under a corresponding law in relation to the fuel, the commissioner may require the person to refund the subsidy received under this Act.

(3) The requirement must be made by an information notice for the decision given to the licensee.

(4) Within 7 days after receiving the notice, the person must pay the amount to the commissioner.

(5) At the end of the 7 days, the amount is a debt owing to the commissioner.

(6) For this section, a subsidy is received by a person when—

- (a) someone else makes a claim on the person's behalf for the subsidy under this Act or a corresponding law; or
- (b) the person makes a claim for the subsidy under this Act or a corresponding law because the person is taken to have made a net sale for chapter 2, 3 or 4.

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<sup>2</sup> Chapter 2 (Off-road diesel consumers), section 14 (Sales of diesel to licensed off-road diesel consumers), chapter 3 (Retailers), section 43 (Sales of fuel to licensed retailers), chapter 4 (Bulk end users), section 73 (Sales of fuel to licensed bulk end users)

(7) In this section—

“**corresponding law**” means a law of another State about the payment of subsidies for fuel.

### **Subsidy only for fuel**

**10.(1)** A subsidy may be claimed under this Act only for fuel.

(2) If fuel has been mingled with other material, the subsidy can only be claimed for the volume of fuel in the mixture.

(3) For this Act, goods cease to be fuel if—

- (a) mingled with other material and the resultant product is not ordinarily used as fuel; or
- (b) otherwise dealt with and the resultant product is not fuel.

### **Own use**

**11.(1)** Fuel is not used for a person’s own use if it is sold by the person.

(2) Subsection (1) has effect subject to sections 4 and 5.

## **CHAPTER 2—OFF-ROAD DIESEL CONSUMERS**

### **PART 1—SUBSIDY SCHEME FOR LICENSED OFF-ROAD DIESEL CONSUMERS**

#### **Purpose of ch 2**

**12.(1)** It is Parliament’s intention that licensed off-road diesel consumers be entitled to a subsidy for diesel purchased under their licences for use by them in Queensland.

(2) The entitlement is only gained by the procedures in this chapter.

**When surcharge must not be recovered**

**13.** To the extent that imposition of the surcharge increases (directly or indirectly) the costs of a person who sells diesel to a licensed off-road diesel consumer, the person must not recover, or seek to recover (directly or indirectly) the increased cost or any part of it other than by making a claim for the subsidy for the diesel under this chapter.

Maximum penalty—200 penalty units.

**Sales of diesel to licensed off-road diesel consumers**

**14.(1)** A person (a “**seller**”) who sells diesel to a licensed off-road diesel consumer must not recover (directly or indirectly) from the consumer the part of the sale price that is an amount equal to the subsidy for the sale other than by making a claim on behalf of the consumer under this chapter.

Maximum penalty—200 penalty units.

**(2)** Unless a seller knows that a person is not a licensed off-road diesel consumer or that a person’s off-road diesel consumer’s licence is suspended, the seller must assume the person is a licensed off-road diesel consumer if—

- (a) the person produces an off-road diesel consumer’s licence to the seller at the time of or before the sale; or
- (b) the person has previously produced an off-road diesel consumer’s licence to the seller.

**(3)** Subsections (1) and (2) do not apply if—

- (a) at the time of or before a sale, a person does not produce to a seller the person’s off-road diesel consumer’s licence if requested to do so by the seller; or
- (b) a seller has reason to believe a licensed off-road diesel consumer intends to sell the fuel, use it for propelling a diesel engine road vehicle on a public road or use it outside Queensland; or
- (c) the holder of an off-road diesel consumer’s licence tells a seller that the diesel is not being purchased under the licence.

**Claim for subsidy—net sale**

**15.(1)** A person who makes a net sale of diesel to a licensed off-road diesel consumer may, on behalf of the consumer, claim from the State, and keep, the subsidy for the sale.

(2) The claim must be made under the commissioner’s guidelines.

**Claim for subsidy—other than net sale**

**16.(1)** This section applies if—

- (a) a person makes a sale (other than a net sale) of diesel to a licensed off-road diesel consumer; and
- (b) after the sale, the consumer satisfies the person the consumer was a licensed off-road diesel consumer at the time of the sale.

(2) On receipt of a written request to do so, the person must—

- (a) on behalf of the consumer, claim, under the commissioner’s guidelines, from the State the subsidy for the sale; and
- (b) account for the subsidy to the consumer.

Maximum penalty for subsection (2)—200 penalty units.

**Net sales by licensed off-road diesel consumers**

**17.** If a person purchases diesel under a net sale (the “**first sale**”) and sells the diesel under a net sale for this chapter or chapter 3 or 4 (the “**second sale**”), the person is taken to have—

- (a) repaid the subsidy for the first sale; and
- (b) as claimant, been paid the subsidy for the second sale.

**Other sales by licensed off-road diesel consumers**

**18.(1)** If a person purchases diesel under a net sale (the “**first sale**”) and sells the diesel other than under a net sale for this chapter or chapter 3 or 4 (the “**second sale**”), the person must, within 7 days after the second sale, repay to the commissioner the subsidy for the first sale.

(2) At the end of the 7 days, the amount is a debt owing to the commissioner.

### **Non-licensed use by licensed off-road diesel consumers**

**19.** This section applies if a person purchases diesel under a net sale and uses the diesel—

- (a) for propelling a diesel engine road vehicle on a public road; or
- (b) outside Queensland.

(2) Within 7 days after using the diesel, the person must repay to the commissioner the amount of the subsidy for the diesel.

(3) At the end of the 7 days, the amount is a debt owing to the commissioner.

### **Certain sales of fuel other than under licence**

**20.(1)** This section applies if, under a provision of this chapter, a licensee has sold fuel and is taken to have been paid the subsidy for the fuel or is required to repay to the commissioner the subsidy for fuel.

(2) The sale of the fuel is not permitted under the licence merely because of the provision.

### **Notional sales**

**21.(1)** This section applies if—

- (a) a person is a licensed off-road diesel consumer; and
- (b) the person is also a manufacturer or importer of fuel or purchases fuel other than under a net sale for this chapter or chapter 3 or 4; and
- (c) that fuel is used for or irrevocably allocated to the person's own use as an off-road diesel consumer; and
- (d) the use is not a contravention of the person's off-road diesel consumer's licence.

(2) The use or allocation is taken to be a net sale of that fuel under

section 14(1)<sup>3</sup> to a licensed off-road diesel consumer.

(3) The net sale is taken to have happened at the earlier of—

- (a) the person's starting to use the fuel as an off-road diesel consumer; or
- (b) the irrevocable allocation of the fuel to the person in the person's capacity as an off-road diesel consumer.

## **PART 2—OFF-ROAD DIESEL CONSUMERS' LICENCES**

### *Division 1—Applications for, and issue of, off-road diesel consumers' licences*

#### **Application for off-road diesel consumer's licence**

**22.(1)** An application for a licence under this part (an “**off-road diesel consumer's licence**”) may be made to the commissioner in the approved form.

(2) The commissioner may, by written notice given to the applicant, require the applicant to give the commissioner further information that is necessary and reasonable to help the commissioner decide the application.

#### **Consideration of application**

**23.** The commissioner must consider the application and either grant or refuse to grant the application.

#### **Condition for granting application**

**24.** The commissioner may grant the application only if the

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<sup>3</sup> Section 14 (Sales of diesel to off-road diesel consumers)

commissioner is satisfied the applicant is, or will operate as, an off-road diesel consumer.

### **Decision on application**

**25.(1)** If the commissioner decides to grant the application, the commissioner must promptly issue an off-road diesel consumer's licence to the applicant.

**(2)** If the commissioner decides to refuse to grant the application, the commissioner must promptly give the applicant an information notice for the decision.

### **When licence becomes effective**

**26.(1)** An off-road diesel consumer's licence becomes effective on the later of the following—

- (a) the day the commissioner receives the application for the licence;
- (b) the day decided by the commissioner and stated in the licence.

**(2)** If the licence states a day under subsection (1)(b), the commissioner must give the licensee an information notice for the decision with the licence.

### **Conditions of licence**

**27.(1)** An off-road diesel consumer's licence is subject to the following conditions—

- (a) the licensee must not contravene a provision of this Act;
- (b) the licensee must use fuel purchased under the licence as an off-road diesel consumer;
- (c) the licensee must not sell fuel purchased under the licence;
- (d) the licensee must not allow another person to use the licence or the licence number to purchase diesel for someone other than the licensee;
- (e) if the licensee becomes aware that another person has used the licence or the licence number to purchase diesel for someone

other than the licensee—the licensee must immediately give written notice of that fact to the commissioner.

(2) The licence is also subject to the other reasonable conditions the commissioner considers appropriate to give effect to this chapter.

(3) If the licence is subject to conditions under subsection (2), the commissioner must give the licensee an information notice for the decision with the licence.

### **Form of off-road diesel consumer's licence**

**28.(1)** An off-road diesel consumer's licence must be in the approved form.

(2) The approved form must provide for the inclusion of the following particulars—

- (a) the licensee's name;
- (b) the date the licence becomes effective;
- (c) an identifying number for the licence;
- (d) the licence conditions.

### ***Division 2—Surrender and cancellation of off-road diesel consumers' licences***

#### **Surrender of off-road diesel consumer's licence**

**29.(1)** The holder of an off-road diesel consumer's licence surrenders the licence by giving to the commissioner—

- (a) written notice of the surrender; and
- (b) the licence.

(2) The surrender takes effect when subsection (1) has been complied with.

(3) If the holder of an off-road diesel consumer's licence ceases to be an off-road diesel consumer, the holder must promptly surrender the licence.

Maximum penalty for subsection (3)—40 penalty units.



**Cancellation of off-road diesel consumer's licence**

**30.** Each of the following is a ground for the cancellation of an off-road diesel consumer's licence—

- (a) the commissioner believes on reasonable grounds that if the licensee were now applying for the licence the application would be refused;
- (b) the licensee has contravened a condition of the licence;
- (c) the licence was issued because of a materially false or misleading representation or declaration;
- (d) the licensee has failed to pay an amount under this Act to the commissioner when it is due.

**Procedure for cancellation**

**31.(1)** If the commissioner believes a ground exists to cancel an off-road diesel consumer's licence (the **“proposed action”**), the commissioner must give the holder of the licence written notice—

- (a) stating the proposed action; and
- (b) stating the ground for the proposed action; and
- (c) outlining the facts and circumstances forming the basis for the commissioner's belief; and
- (d) inviting the holder to show in writing, within a stated reasonable time of at least 28 days, why the proposed action should not be taken.

**(2)** If, after considering all written representations made within the stated time, the commissioner still considers a ground to take the proposed action exists, the commissioner may cancel the licence.

**(3)** The commissioner must promptly give an information notice for the decision to cancel the licence to the licensee.

**(4)** The cancellation takes effect on the later of—

- (a) the day when the information notice is given to the licensee; or
- (b) the day of effect stated in the information notice.

**Immediate suspension pending formal cancellation procedure**

**32.(1)** This section applies if—

- (a) the commissioner believes a ground exists to cancel an off-road diesel consumer's licence; and
- (b) the commissioner believes it is necessary to immediately suspend the licence until the formal cancellation procedure is completed because an activity of the licensee has jeopardised, or if continued, could jeopardise, the integrity of the fuel subsidy arrangements established under this Act.

*Example of activity for paragraph (b)—*

The licensee has made sales of fuel in contravention of this Act.

**(2)** The commissioner may immediately suspend the licence.

**(3)** The suspension takes effect immediately an information notice for the decision is given to the holder of the licence.

**(4)** If, within 14 days after the commissioner suspends the licence, the commissioner gives the notice required by section 31(1), the suspension of the licence lasts until the first to happen of the following—

- (a) the commissioner cancels the suspension;
- (b) a decision to cancel the licence takes effect;
- (c) a decision is made not to cancel the licence.

**(5)** However, if the notice required by section 31(1) is not given within the time mentioned in subsection (4), the suspension lapses at the end of the time unless the commissioner has already cancelled the suspension.

**(6)** While the licence is suspended it is taken to be cancelled.

**Immediate suspension after charging with offence**

**33.(1)** This section applies if—

- (a) the holder of an off-road diesel consumer's licence is charged with an offence against this Act (the "**offence**"); and
- (b) the commissioner believes it is necessary immediately to suspend the licence to protect the integrity of the fuel subsidy arrangements established under this Act while the charge is dealt

with.

(2) The commissioner may immediately suspend the licence.

(3) The suspension takes effect immediately an information notice for the decision is given to the holder of the licence.

(4) The immediate suspension of the licence lasts until the first to happen of the following—

- (a) the commissioner cancels the immediate suspension;
- (b) proceedings (including appeals) about the offence are finished and result in the holder being found not guilty of the offence;
- (c) proceedings (including appeals) about the offence end and result in the holder's being found guilty of the offence, and 14 days elapse without the commissioner taking action to cancel the licence;
- (d) proceedings against the holder of the licence for the offence end otherwise than because of the holder being found guilty, or not guilty, of the offence.

(5) While the licence is suspended it is taken to be cancelled.

### **Return of cancelled off-road diesel consumer's licence to commissioner**

**34.(1)** This section applies if the commissioner has cancelled an off-road diesel consumer's licence and given an information notice for the decision to the licensee.

(2) The licensee must give the licence to the commissioner within 7 days after receiving the information notice.

Maximum penalty—40 penalty units.

### ***Division 3—General provisions about off-road diesel consumers' licences***

### **Changing conditions of off-road diesel consumer's licence**

**35.(1)** The commissioner may decide to change the conditions of an off-road diesel consumer's licence, if the commissioner considers it is

necessary or desirable to make the change to give effect to this chapter.

(2) Subsection (1) does not apply to a condition imposed by section 27(1).<sup>4</sup>

(3) If the commissioner decides to change conditions of an off-road diesel consumer's licence under this section, the commissioner must promptly give the licensee an information notice for the decision.

(4) The licensee must return the licence to the commissioner within 7 days after the information notice is given, unless the licensee has a reasonable excuse.

Maximum penalty—40 penalty units.

(5) On receiving the licence, the commissioner must—

- (a) amend the licence in an appropriate way and return the amended licence to the licensee; or
- (b) if the commissioner does not consider it practicable to amend the licence—issue another off-road diesel consumer's licence, incorporating the changed conditions, to the licensee to replace the licence returned to the commissioner.

(6) A change of conditions takes effect when the information notice is given to the licensee and does not depend on the licence being amended or a replacement licence being issued.

(7) The power of the commissioner under subsection (1) includes the power to add conditions.

### **Licensee must comply with licence conditions**

**36.** The holder of an off-road diesel consumer's licence must comply with the conditions of the licence.

Maximum penalty—200 penalty units.

### **Off-road diesel consumer's licence not transferable**

**37.** An off-road diesel consumer's licence can not be transferred.

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<sup>4</sup> Section 27 (Conditions of licence)

**Duration of off-road diesel consumer's licence**

**38.** An off-road diesel consumer's licence continues in force until it is surrendered or cancelled under this part.

**PART 3—GENERAL****Records of sales to be kept**

**39.(1)** A person who sells diesel under a net sale (the “**record keeper**”) must keep records, complying with subsections (2) and (3).

Maximum penalty—40 penalty units.

**(2)** The records must include the following details for each sale of diesel by the record keeper—

- (a) the quantity sold;
- (b) the purchaser's name and address;
- (c) the purchaser's licence number;
- (d) the place of delivery;
- (e) the price charged per litre;
- (f) whether or not the sale was a net sale;
- (g) another matter prescribed under a regulation.

**(3)** The records must include the following details for each purchase of diesel by the record keeper—

- (a) the quantity purchased;
- (b) the seller's name and address;
- (c) the place of delivery;
- (d) the price paid per litre;
- (e) another matter prescribed under a regulation.

**Records to be kept by licensed off-road diesel consumers**

**40.(1)** A licensed off-road diesel consumer must keep a record, complying with subsection (2), of each purchase of diesel (other than retail fuel) by the consumer.

Maximum penalty—40 penalty units.

- (2)** The record must include the following details—
- (a) the quantity purchased;
  - (b) the seller's name and address;
  - (c) the price paid per litre;
  - (d) the place of delivery;
  - (e) another matter prescribed under a regulation.

## **CHAPTER 3—RETAILERS**

### **PART 1—SUBSIDY SCHEME FOR LICENSED RETAILERS**

#### **Purpose of ch 3**

**41.(1)** It is Parliament's intention that licensed retailers be entitled to a subsidy for fuel purchased under their licences.

- (2)** The entitlement is only gained by the procedures in this chapter.

#### **When surcharge must not be recovered**

**42.(1)** To the extent that imposition of the surcharge increases (directly or indirectly) the costs of a person who sells fuel to a licensed retailer, the person must not recover, or seek to recover (directly or indirectly) the increased cost or any part of it other than by making a claim for the subsidy

for the fuel under this chapter.

Maximum penalty—200 penalty units.

(2) To the extent that imposition of the surcharge increases (directly or indirectly) the costs of a person making a sale of fuel to a retail consumer, the retailer must not recover, or seek to recover (directly or indirectly) the increased cost or any part of it.

Maximum penalty—200 penalty units.

(3) However, for a licensed retailer, subsection (2) does not prevent the retailer's supplier making a claim on behalf of the retailer for the subsidy for the fuel under this chapter.

### **Sales of fuel to licensed retailers**

**43.(1)** A person (a “**seller**”) who sells fuel to a licensed retailer must not recover (directly or indirectly) from the retailer the part of the sale price that is an amount equal to the subsidy for the sale other than by making a claim on behalf of the retailer under this chapter.

Maximum penalty—200 penalty units.

(2) Unless a seller knows that a person is not a licensed retailer or that a person's retailer's licence is suspended, the seller must assume the person is a licensed retailer if—

- (a) the person produces a retailer's licence to the seller at the time of or before the sale; or
- (b) the person has previously produced a retailer's licence to the seller.

(3) Subsections (1) and (2) do not apply if—

- (a) at the time of or before a sale, a person does not produce to a seller the person's retailer's licence if requested to do so by the seller; or
- (b) a seller has reason to believe a licensed retailer intends to use the fuel other than in selling retail fuel; or
- (c) the holder of a retailer's licence tells a seller that the fuel is not being purchased under the licence.

**Claim for subsidy—net sales**

**44.(1)** A person who makes a net sale of fuel to a licensed retailer may, on behalf of the retailer, claim from the State, and keep, the subsidy for the sale.

(2) The claim must be made under the commissioner’s guidelines.

**Claim for subsidy—other than net sales**

**45.(1)** This section applies if—

- (a) a person makes a sale (other than a net sale) of fuel to a licensed retailer; and
- (b) after the sale, the retailer satisfies the person the retailer was a licensed retailer at the time of the sale.

(2) On receipt of a written request to do so, the person must—

- (a) on behalf of the retailer, claim, under the commissioner’s guidelines, from the State the subsidy for the sale; and
- (b) account for the subsidy to the retailer.

Maximum penalty for subsection (2)—200 penalty units.

**Net sales by licensed retailers**

**46.** If a person purchases fuel under a net sale (the “**first sale**”) and sells the fuel under a net sale for this chapter or chapter 2 or 4 (the “**second sale**”), the person is taken to have—

- (a) repaid the subsidy for the first sale; and
- (b) as claimant, been paid the subsidy for the second sale.

**Other sales by licensed retailers**

**47.(1)** If a person purchases fuel under a net sale (the “**first sale**”) and sells the fuel other than under a net sale for this chapter or chapter 2 or 4 or other than as retail fuel (the “**second sale**”), the person must, within 7 days after the second sale, repay to the commissioner the subsidy for the first sale.



(2) At the end of the 7 days, the amount is a debt owing to the commissioner.

### **Non-licensed use by licensed retailers**

**48.(1)** This section applies if a person purchases fuel under a net sale and uses the fuel other than by selling it as retail fuel.

(2) Within 7 days after using the fuel, the retailer must repay to the commissioner the amount of the subsidy for the fuel.

(3) At the end of the 7 days, the amount is a debt owing to the commissioner.

### **Certain sales of fuel other than under licence**

**49.(1)** This section applies if, under a provision of this chapter, a licensee has sold fuel and is taken to have been paid the subsidy for the fuel or is required to repay to the commissioner the subsidy for fuel.

(2) The sale of the fuel is not permitted under the licence merely because of the provision.

### **Notional sales**

**50.(1)** This section applies if—

- (a) a person is a licensed retailer; and
- (b) the person is also a manufacturer or importer for fuel or purchases fuel other than under a net sale for this chapter or chapter 2 or 4; and
- (c) that fuel is irrevocably allocated for sale by the retailer as retail fuel; and
- (d) the allocation is not a contravention of the person's retailer's licence.

(2) The allocation is taken to be a net sale of that fuel under section 43(1)<sup>5</sup> to a licensed retailer on the allocation.

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<sup>5</sup> Section 43 (Sales of fuel to licensed retailers)

## **PART 2—RETAILERS’ LICENCES**

### *Division 1—Applications for, and issue of, retailers’ licences*

#### **Application for retailer’s licence**

**51.(1)** An application for a licence under this part (a “**retailer’s licence**”) may be made to the commissioner in the approved form.

(2) The commissioner may, by written notice given to the applicant, require the applicant to give the commissioner further information that is necessary and reasonable to help the commissioner decide the application.

#### **Consideration of application**

**52.** The commissioner must consider the application and either grant or refuse to grant the application.

#### **Condition for granting application**

**53.** The commissioner may grant the application only if the commissioner is satisfied the applicant is, or will operate as, a retailer.

#### **Decision on application**

**54.(1)** If the commissioner decides to grant the application, the commissioner must promptly issue a retailer’s licence to the applicant.

(2) If the commissioner decides to refuse to grant the application, the commissioner must promptly give the applicant an information notice for the decision.

#### **When licence becomes effective**

**55.(1)** A retailer’s licence becomes effective on the later of the following—

- (a) the day the commissioner receives the application for the licence;
- (b) the day decided by the commissioner and stated in the licence.

(2) If the licence states a day under subsection (1)(b), the commissioner must give the licensee an information notice for the decision with the licence.

### **Conditions of licence**

**56.(1)** A retailer's licence is subject to the following conditions—

- (a) the licensee must not contravene a provision of this Act;
- (b) the licensee must sell fuel purchased under the licence only as retail fuel;
- (c) the licensee must not allow another person to use the licence or the licence number to purchase fuel for someone other than the licensee;
- (d) if the licensee becomes aware that another person has used the licence or the licence number to purchase fuel for someone other than the licensee—the licensee must immediately give written notice of that fact to the commissioner.

(2) The licence is also subject to the other reasonable conditions the commissioner considers appropriate to give effect to this chapter.

(3) If the licence is subject to conditions under subsection (2), the commissioner must give the licensee an information notice for the decision with the licence.

### **Form of retailer's licence**

**57.(1)** A retailer's licence must be in the approved form.

(2) The approved form must provide for the inclusion of the following particulars—

- (a) the licensee's name;
- (b) the date the licence becomes effective;
- (c) each retail site for the licence;
- (d) an identifying number for the licence;
- (e) the licence conditions.

*Division 2—Surrender and cancellation of retailers' licences***Surrender of retailer's licence**

**58.(1)** The holder of a retailer's licence surrenders the licence by giving to the commissioner—

- (a) written notice of the surrender; and
- (b) the licence.

**(2)** The surrender takes effect when subsection (1) has been complied with.

**(3)** If the holder of a retailer's licence ceases to be a retailer, the holder must promptly surrender the licence.

Maximum penalty for subsection (3)—40 penalty units.

**Cancellation of retailer's licence**

**59.** Each of the following is a ground for the cancellation of a retailer's licence—

- (a) the commissioner believes on reasonable grounds that if the licensee were now applying for the licence the application would be refused;
- (b) the licensee has contravened a condition of the licence;
- (c) the licence was issued because of a materially false or misleading representation or declaration;
- (d) the licensee has failed to pay an amount under this Act to the commissioner when it is due.

**Procedure for cancellation**

**60.(1)** If the commissioner believes a ground exists to cancel a retailer's licence (the "**proposed action**"), the commissioner must give the holder of the licence written notice—

- (a) stating the proposed action; and
- (b) stating the ground for the proposed action; and

- (c) outlining the facts and circumstances forming the basis for the commissioner's belief; and
- (d) inviting the holder to show in writing, within a stated reasonable time of at least 28 days, why the proposed action should not be taken.

(2) If, after considering all written representations made within the stated time, the commissioner still considers a ground to take the proposed action exists, the commissioner may cancel the licence.

(3) The commissioner must promptly give an information notice for the decision to cancel the licence to the licensee.

(4) The cancellation takes effect on the later of—

- (a) the day when the information notice is given to the licensee; or
- (b) the day of effect stated in the information notice.

### **Immediate suspension pending formal cancellation procedure**

**61.(1)** This section applies if—

- (a) the commissioner believes a ground exists to cancel a retailer's licence; and
- (b) the commissioner believes it is necessary to immediately suspend the licence until the formal cancellation procedure is completed because an activity of the licensee has jeopardised, or if continued, could jeopardise, the integrity of the fuel subsidy arrangements established under this Act.

*Example of activity for paragraph (b)—*

The licensee has sold fuel in other than retail quantities in contravention of this Act.

(2) The commissioner may immediately suspend the licence.

(3) The suspension takes effect immediately an information notice for the decision is given to the holder of the licence.

(4) If, within 14 days after the commissioner suspends the licence, the commissioner gives a notice required by section 60(1), the immediate suspension of the licence lasts until the first to happen of the following—

- (a) the commissioner cancels the immediate suspension;
- (b) a decision to cancel the licence takes effect;
- (c) a decision is made not to cancel the licence.

(5) However, if the notice required by section 60(1) is not given within the time mentioned in subsection (4), the immediate suspension lapses at the end of the time unless the commissioner has already cancelled the immediate suspension.

(6) While the licence is suspended it is taken to be cancelled.

### **Immediate suspension after charging with offence**

**62.(1)** This section applies if—

- (a) the holder of a retailer's licence is charged with an offence against this Act (the “**offence**”); and
- (b) the commissioner believes it is necessary immediately to suspend the licence to protect the integrity of the fuel subsidy arrangements established under this Act while the charge is dealt with.

(2) The commissioner may immediately suspend the licence.

(3) The suspension takes effect immediately an information notice for the decision is given to the holder of the licence.

(4) The immediate suspension of the licence lasts until the first to happen of the following—

- (a) the commissioner cancels the immediate suspension;
- (b) proceedings (including appeals) about the offence are finished and result in the holder being found not guilty of the offence;
- (c) proceedings (including appeals) about the offence end and result in the holder's being found guilty of the offence, and 14 days elapse without the commissioner taking action to cancel the licence;
- (d) proceedings against the holder of the licence for the offence end otherwise than because of the holder being found guilty, or not

guilty, of the offence.

(5) While the licence is suspended it is taken to be cancelled.

### **Return of cancelled retailer's licence to commissioner**

**63.(1)** This section applies if the commissioner has cancelled a retailer's licence and given an information notice for the decision to the licensee.

(2) The licensee must give the licence to the commissioner within 7 days after receiving the information notice.

Maximum penalty—40 penalty units.

### ***Division 3—General provisions about retailers' licences***

#### **Changing conditions of retailer's licence**

**64.(1)** The commissioner may decide to change the conditions of a retailer's licence, if the commissioner considers it is necessary or desirable to make the change to give effect to this chapter.

(2) Subsection (1) does not apply to a condition imposed by section 27(1).<sup>6</sup>

(3) If the commissioner decides to change conditions of a retailer's licence under this section, the commissioner must promptly give the licensee an information notice for the decision.

(4) The licensee must return the licence to the commissioner within 7 days after the information notice is given, unless the licensee has a reasonable excuse.

Maximum penalty—40 penalty units.

(5) On receiving the licence, the commissioner must—

- (a) amend the licence in an appropriate way and return the amended licence to the licensee; or
- (b) if the commissioner does not consider it practicable to amend the

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<sup>6</sup> Section 27 (Conditions of licence)

licence—issue another retailer’s licence, incorporating the changed conditions, to the licensee to replace the licence returned to the commissioner.

(6) A change of conditions takes effect when the information notice is given to the licensee and does not depend on the licence being amended or a replacement licence being issued.

(7) The power of the commissioner under subsection (1) includes the power to add conditions.

### **Licensee must comply with licence conditions**

65. The holder of a retailer’s licence must comply with the conditions of the licence.

Maximum penalty—40 penalty units.

### **Retailer’s licence not transferable**

66. A retailer’s licence can not be transferred.

### **Duration of retailer’s licence**

67. A retailer’s licence continues in force until it is surrendered or cancelled under this part.

## **PART 3—GENERAL**

### **Records of sales to be kept**

68.(1) A person who sells fuel under a net sale (the “**record keeper**”) must keep records, complying with subsections (2) and (3).

Maximum penalty—40 penalty units.

(2) The records must include the following details for each sale of fuel by the record keeper—



- (a) the type of fuel;
- (b) the quantity sold;
- (c) the purchaser's name and address;
- (d) the purchaser's licence number;
- (e) the place of delivery;
- (f) the price charged per litre;
- (g) whether or not the sale was a net sale;
- (h) another matter prescribed under a regulation.

(3) The records must include the following details for each purchase of fuel by the record keeper—

- (a) the type of fuel;
- (b) the quantity purchased;
- (b) the seller's name and address;
- (c) the place of delivery;
- (d) the price paid per litre;
- (e) another matter prescribed under a regulation.

### **Records to be kept by licensed retailers**

**69.(1)** A licensed retailer must keep a record, complying with subsection (2), of each purchase of fuel by the retailer.

Maximum penalty—40 penalty units.

(2) The record must include the following details—

- (a) the type of fuel;
- (b) the quantity purchased;
- (c) the seller's name and address;
- (d) the price paid per litre;
- (e) the place of delivery;
- (f) another matter prescribed under a regulation.

## **CHAPTER 4—BULK END USERS**

### **PART 1—SUBSIDY SCHEME FOR LICENSED BULK END USERS**

#### **Purpose of ch 4**

**70.(1)** It is Parliament’s intention that licensed bulk end users be entitled to a subsidy for fuel purchased in Queensland by them under their licences.

**(2)** The entitlement is only gained by the procedures in this chapter.

#### **Purchase or sale of fuel in Queensland**

**71.** For this chapter, fuel is purchased or sold in Queensland only if it is supplied by the seller from a place in Queensland.

#### **When surcharge must not be recovered**

**72.** To the extent that imposition of the surcharge increases (directly or indirectly) the costs of a person who sells fuel to a licensed bulk end user, the person must not recover, or seek to recover (directly or indirectly) the increased cost or any part of it other than by making a claim for the subsidy for the fuel under this chapter.

Maximum penalty—200 penalty units.

#### **Sales of fuel to licensed bulk end users**

**73.(1)** A person (a “seller”) who sells fuel to a licensed bulk end user must not recover (directly or indirectly) from the user the part of the sale price that is an amount equal to the subsidy for the sale other than by making a claim on behalf of the user under this chapter.

Maximum penalty—200 penalty units.

**(2)** Unless a seller knows that a person is not a licensed bulk end user or

that the person's bulk end user's licence is suspended, the seller must assume the person is a licensed bulk end user if—

- (a) the person produces a bulk end user's licence to the seller at the time of or before the sale; or
- (b) the person has previously produced a bulk end user's licence to the seller.

(3) Subsections (1) and (2) do not apply if—

- (a) at the time of or before a sale, a person does not produce to a seller the person's bulk end user's licence if requested to do so by the seller; or
- (b) a seller has reason to believe a licensed bulk end user intends to sell the fuel; or
- (c) the holder of a bulk end user's licence tells a seller that the fuel is not being purchased under the licence.

### **Claim for subsidy—net sale**

**74.(1)** A person who makes a net sale of fuel to a licensed bulk end user may, on behalf of the user, claim from the State, and keep, the subsidy for the sale.

(2) A claim must be made under the commissioner's guidelines.

### **Claim for subsidy—other than net sales**

**75.(1)** This section applies if—

- (a) a person makes a sale (other than a net sale) of fuel to a licensed bulk end user; and
- (b) after the sale, the user satisfies the person the user was a licensed bulk end user at the time of the sale.

(2) On receipt of a written request to do so, the person must—

- (a) on behalf of the user, claim, under the commissioner's guidelines, from the State the subsidy for the sale; and

- (b) account for the subsidy to the user.

Maximum penalty for subsection (2)—200 penalty units.

### **Net sales by licensed bulk end users**

**76.** If a person purchases fuel under a net sale (the “**first sale**”) and sells the fuel under a net sale for this chapter or chapter 2 or 3 (the “**second sale**”), the person is taken to have—

- (a) repaid the subsidy for the first sale; and  
(b) as claimant, been paid the subsidy for the second sale.

### **Other sales by licensed bulk end users**

**77.(1)** If a person purchases fuel under a net sale (the “**first sale**”) and sells the fuel other than under a net sale for this chapter or chapter 2 or 3 (the “**second sale**”), the person must, within 7 days after the second sale, repay to the commissioner the subsidy for the first sale.

**(2)** At the end of the 7 days, the amount is a debt owing to the commissioner.

### **Certain sales of fuel other than under licence**

**78.(1)** This section applies if, under a provision of this chapter, a licensee has sold fuel and is taken to have been paid the subsidy for the fuel or is required to repay to the commissioner the subsidy for fuel.

**(2)** The sale of the fuel is not permitted under the licence merely because of the provision.

### **Notional sales**

**79.(1)** This section applies if—

- (a) a person is a licensed bulk end user; and  
(b) the person is also a manufacturer or importer for fuel or purchases fuel other than under a net sale for this chapter or chapter 2 or 3; and

- (c) that fuel is supplied from a place in Queensland and is used for, or irrevocably allocated to, the person's own use as a bulk end user; and
- (d) the use is not a contravention of the person's bulk end user's licence.

(2) The use or allocation is taken to be a net sale of that fuel under section 73(1)<sup>7</sup> to a licensed bulk end user.

(3) The net sale is taken to have happened at the earlier of—

- (a) the person's starting to use the fuel as a bulk end user; or
- (b) the irrevocable allocation of the fuel to the person in the person's capacity as a licensed bulk end user.

## **PART 2—LICENCES FOR BULK END USERS OF FUEL**

### *Division 1—Applications for, and issue of, bulk end users' licences*

#### **Application for bulk end user's licence**

**80.(1)** An application for a licence under this part (a “**bulk end user's licence**”) may be made to the commissioner in the approved form.

(2) The commissioner may, by written notice given to the applicant, require the applicant to give the commissioner further information that is necessary and reasonable to help the commissioner decide the application.

#### **Consideration of application**

**81.** The commissioner must consider the application and either grant or refuse to grant the application.

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<sup>7</sup> Section 73 (Sale of fuel to licensed bulk end users)

### **Grant of application**

**82.(1)** If the applicant purchased fuel in Queensland as a bulk end user in the financial year starting 1 July 1996 (the “**1996–97 financial year**”) and has continued to purchase fuel in Queensland as a bulk end user in the year starting 1 July 1997, the commissioner must grant the application and issue to the applicant a bulk end user’s licence.

**(2)** For another applicant, the commissioner may grant the application and issue to the applicant a bulk end user’s licence only if—

- (a) the applicant is carrying on, or proposes to carry on, an activity other than an activity causing the applicant to be, or become, an off-road diesel consumer; and
- (b) on the assumption that all relevant laws of this or any other jurisdiction were complied with in relation to the sale and purchase of fuel, and having regard to the information supplied by the applicant and the matters mentioned in subsection (3)—it is reasonable to expect that, had the applicant carried on that activity in the 1996–97 financial year, the applicant would have been a bulk end user who purchased fuel in Queensland.

**(3)** For subsection (2)(b) the following are the matters—

- (a) when the applicant first purchased, or proposes to purchase, fuel in Queensland;
- (b) sources of fuel for the applicant;
- (c) when the applicant first carried on, or proposes to carry on, the activity;
- (d) the location of the activity;
- (e) the use to which the fuel is to be put;
- (f) the source of purchases of fuel by the applicant’s competitors;
- (g) changes in the economy;
- (h) any other matter the commissioner considers relevant.

### **Decision on application**

**83.(1)** If the commissioner decides to grant the application, the

commissioner must promptly issue a bulk end user's licence to the applicant.

(2) If the commissioner decides to refuse to grant the application, the commissioner must promptly give the applicant an information notice for the decision.

### **When licence becomes effective**

**84.(1)** A bulk end user's licence becomes effective on the later of the following—

- (a) the day the commissioner receives the application for the licence;
- (b) the day decided by the commissioner and stated in the licence.

(2) If the licence states a day under subsection (1)(b), the commissioner must give the licensee an information notice for the decision with the licence.

### **Conditions of licence**

**85.(1)** A bulk end user's licence is subject to the following conditions—

- (a) the licensee must not, in any financial year, purchase fuel in Queensland (other than retail fuel, fuel purchased other than under a net sale and fuel purchased under an off-road diesel consumer's licence) under the licence in excess of the licensed quantity of fuel for the licence for that year;
- (b) the licensee must not contravene a provision of this Act;
- (c) the licensee must not sell fuel purchased under the licence;
- (d) the licensee must not allow another person to use the licence or the licence number to purchase fuel for someone other than the licensee;
- (e) if the licensee becomes aware that another person has used the licence or the licence number to purchase fuel for someone other than for the licensee—the licensee must immediately give written notice of that fact to the commissioner.

(2) The licence is also subject to the other reasonable conditions the

commissioner considers appropriate to give effect to this chapter.

(3) If the licence is subject to conditions under subsection (2), the commissioner must give the licensee an information notice for the decision with the licence.

### **Form of bulk end user's licence**

**86.(1)** A bulk end user's licence must be in the approved form.

(2) The approved form must provide for the inclusion of the following particulars—

- (a) the licensee's name;
- (b) the date the licence becomes effective;
- (c) an identifying number for the licence;
- (d) the licence conditions.

### *Division 2—Licensed quantity of fuel for licences*

#### **Commissioner must decide licensed quantity of fuel**

**87.(1)** This section applies if a person applies for a bulk end user's licence and the commissioner decides to grant the application.

(2) The commissioner must, for section 88, decide the licensed quantity of fuel for the first financial year for the licence.

(3) Subject to a decision on an appeal against the commissioner's decision under chapter 6, part 4, division 2, the licensed quantity for section 88 is the quantity decided by the commissioner.

(4) When the commissioner issues the licence, the commissioner must promptly give the licensee an information notice for the decision.

#### **Licensed quantities of fuel for first year of licence**

**88.(1)** If the licence is issued under section 82(1),<sup>8</sup> the licensed quantity

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<sup>8</sup> Section 82 (Grant of application)



of fuel for the licence for the financial year ending 30 June 1998 is—

- (a) the quantity of fuel purchased in Queensland by the licensee in the capacity as a bulk end user in the financial year ending 30 June 1997 adjusted by the indexation factor for the financial year ending 30 June 1998; or
- (b) if the licensee was a bulk end user for only part of the financial year ending 30 June 1997—the larger quantity decided by the commissioner having regard to the period the person was a bulk end user purchasing fuel in Queensland in that financial year and adjusted by the indexation factor for the financial year ending 30 June 1998;

multiplied by the proportion and then less the quantity of fuel purchased as a bulk end user between 14 October 1997 and the day before the licence is effective.

(2) If the licence is issued under section 82(2) and becomes effective in the financial year ending 30 June 1998, the first licensed quantity of fuel for the licence is the quantity of fuel the licensee would reasonably have been expected to purchase in Queensland for the licensee's own use in the financial year ending 30 June 1997 adjusted by the indexation factor for the financial year ending 30 June 1998 and multiplied by the proportion and then less the quantity of fuel purchased as a bulk end user between 14 October 1997 and the day before the licence is effective.

(3) If the licence is issued under section 82(2) and becomes effective in another financial year, the first licensed quantity of fuel for the licence is the quantity of fuel the licensee would reasonably have been expected to purchase in Queensland for the licensee's own use in the financial year ending 30 June 1997 adjusted for each financial year, starting with the financial year ending 30 June 1998 and ending with the financial year in which the licence becomes effective, by the indexation factor for the year.

(4) In this section—

“**proportion**” means—

- (a) if the licensee was a bulk end user before 14 October 1997—

$$\frac{260}{365}; \text{ or}$$

- (b) if the licensee was not a bulk end user before 14 October 1997

and the licence is effective before 30 June 1998—

$$\frac{x}{365}$$

where x is the number of days from the date the licensee became a bulk end user to 30 June 1998; or

- (c) if paragraphs (a) and (b) do not apply—

$$\frac{x}{365}$$

where x is the number of days from the effective date of the licence to the following 30 June.

### **Licensed quantities of fuel for licences for subsequent financial years**

**89.** The licensed quantity of fuel for the second and subsequent years of a bulk end user's licence is the licensed quantity of fuel for the first year as adjusted by the indexation factors for the subsequent financial years.

### **Variation of licensed quantity on application of licensee**

**90.(1)** A licensee may apply to the commissioner for the variation of the licensed quantity of fuel for the licence.

**(2)** The application must be in the approved form.

**(3)** The commissioner may, by written notice given to the licensee, require the licensee to give the commissioner further information that is necessary and reasonable to help the commissioner decide the application.

**(4)** Also, the commissioner may, on the commissioner's own initiative, decide to vary the licensed quantity of fuel for a licence.

### **Criteria to be considered by commissioner**

**91.(1)** In deciding whether or not to vary the licensed quantity of fuel for a licence, the commissioner may have regard to the following matters—

- (a) whether any increase in growth in the industry in which the bulk end user operates is greater than the indexation factor for the

relevant financial year;

- (b) whether the licensee has sold fuel purchased under a net sale;
- (c) economic growth for Queensland;
- (d) the extent to which seasonal and other factors have affected the licensee's requirements for the use of fuel.

(2) Subsection (1) does not limit the matters to which the commissioner may have regard in varying the licensed quantity of fuel.

### **Decision to vary licensed quantity**

**92.** After making a decision to vary the licensed quantity of fuel for a licence, the commissioner must promptly give to the licensee an information notice for the decision.

### ***Division 3—Surrender and cancellation of bulk end user's licence***

#### **Surrender of bulk end user's licence**

**93.(1)** The holder of a bulk end user's licence surrenders the licence by giving to the commissioner—

- (a) written notice of the surrender; and
- (b) the licence.

(2) The surrender takes effect when subsection (1) has been complied with.

(3) If the holder of a bulk end user's licence ceases to be a bulk end user, the holder must promptly surrender the licence.

Maximum penalty for subsection (3)—40 penalty units.

#### **Cancellation of bulk end user's licence**

**94.** Each of the following is a ground for the cancellation of a bulk end user's licence—

- (a) the commissioner believes on reasonable grounds that if the

licensee were now applying for the licence the application would be refused;

- (b) the licensee has contravened a condition of the licence;
- (c) the licence was issued because of a materially false or misleading representation or declaration;
- (d) the licensed quantity of fuel decided by the commissioner for the licence was decided on a materially false or misleading representation or declaration;
- (e) the licensee has failed to pay an amount under this Act to the commissioner when it is due.

### **Procedure for cancellation**

**95.(1)** If the commissioner believes a ground exists to cancel a bulk end user's licence (the "**proposed action**"), the commissioner must give the holder of the licence written notice—

- (a) stating the proposed action; and
- (b) stating the ground for the proposed action; and
- (c) outlining the facts and circumstances forming the basis for the commissioner's belief; and
- (d) inviting the holder to show in writing, within a stated reasonable time of at least 28 days, why the proposed action should not be taken.

**(2)** If, after considering all written representations made within the stated time, the commissioner still considers a ground to take the proposed action exists, the commissioner may cancel the licence.

**(3)** The commissioner must promptly give an information notice for the decision to cancel the licence to the licensee.

**(4)** The cancellation takes effect on the later of—

- (a) the day when the information notice is given to the licensee; or
- (b) the day of effect stated in the information notice.

**Immediate suspension pending formal cancellation procedure**

**96.(1)** This section applies if—

- (a) the commissioner believes a ground exists to cancel a bulk end user's licence; and
- (b) the commissioner believes it is necessary to immediately suspend the licence until the formal cancellation procedure is completed because an activity of the licensee has jeopardised, or if continued, could jeopardise, the integrity of the fuel subsidy arrangements established under this Act.

*Example of activity for paragraph (b)—*

The licensee has sold fuel in contravention of this Act.

**(2)** The commissioner may immediately suspend the licence.

**(3)** The suspension takes effect immediately an information notice for the decision is given to the holder of the licence.

**(4)** If, within 14 days after the commissioner suspends the licence, the commissioner gives the notice required by section 95(1), the immediate suspension of the licence lasts until the first to happen of the following—

- (a) the commissioner cancels the immediate suspension;
- (b) a decision to cancel the licence takes effect;
- (c) a decision is made not to cancel the licence.

**(5)** However, if the notice required by section 95(1) is not given within the time mentioned in subsection (4), the immediate suspension lapses at the end of the time unless the commissioner has already cancelled the immediate suspension.

**(6)** While the licence is suspended it is taken to be cancelled.

**Immediate suspension after charging with offence**

**97.(1)** This section applies if—

- (a) the holder of a bulk end user's licence is charged with an offence against this Act (the "**offence**"); and
- (b) the commissioner believes it is necessary immediately to suspend the licence to protect the integrity of the fuel subsidy

arrangements established under this Act while the charge is dealt with.

*Example of activity for paragraph (b)—*

The licensee has sold fuel in contravention of this Act.

- (2) The commissioner may immediately suspend the licence.
- (3) The suspension takes effect immediately an information notice for the decision is given to the holder of the licence.
- (4) The immediate suspension of the licence lasts until the first to happen of the following—
  - (a) the commissioner cancels the immediate suspension;
  - (b) proceedings (including appeals) about the offence are finished and result in the holder being found not guilty of the offence;
  - (c) proceedings (including appeals) about the offence end and result in the holder's being found guilty of the offence, and 14 days elapse without the commissioner taking action to cancel the licence;
  - (d) proceedings against the holder of the licence for the offence end otherwise than because of the holder being found guilty, or not guilty, of the offence.
- (5) While the licence is suspended it is taken to be cancelled.

### **Return of cancelled bulk end user's licence to commissioner**

**98.(1)** This section applies if the commissioner has cancelled a bulk end user's licence and given an information notice for the decision to the licensee.

(2) The licensee must give the licence to the commissioner within 7 days of receiving the information notice.

Maximum penalty—40 penalty units.

***Division 4—General provisions about bulk end users’ licences*****Changing conditions of bulk end user’s licence**

**99.(1)** The commissioner may decide to change the conditions of a bulk end user’s licence, if the commissioner considers it is necessary or desirable to make the change to give effect to this chapter.

**(2)** Subsection (1) does not apply to a condition imposed by section 27(1).<sup>9</sup>

**(3)** If the commissioner decides to change conditions of a bulk end user’s licence under this section, the commissioner must promptly give the licensee an information notice for the decision.

**(4)** The licensee must return the licence to the commissioner within 7 days after the information notice is given, unless the licensee has a reasonable excuse.

Maximum penalty—40 penalty units.

**(5)** On receiving the licence, the commissioner must—

- (a)** amend the licence in an appropriate way and return the amended licence to the licensee; or
- (b)** if the commissioner does not consider it practicable to amend the licence—issue another bulk end user’s licence, incorporating the changed conditions, to the licensee to replace the licence returned to the commissioner.

**(6)** A change of conditions takes effect when the information notice is given to the licensee and does not depend on the licence being amended or a replacement licence being issued.

**(7)** The power of the commissioner under subsection (1) includes the power to add conditions.

**Licensee must comply with licence conditions**

**100.** The holder of a bulk end user’s licence must comply with the

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<sup>9</sup> Section 27 (Conditions of licence)

conditions of the licence.

Maximum penalty—200 penalty units.

### **Bulk end user’s licence not transferable**

**101.** A bulk end user’s licence can not be transferred.

### **Duration of bulk end user’s licence**

**102.** A bulk end user’s licence continues in force until it is surrendered or cancelled under this part.

### **Returns by licensed bulk end users**

**103.(1)** On or before 31 July in each year (the “**return date**”), a licensed bulk end user must give the commissioner a return if the licensee held a bulk end user’s licence in the year ending on the previous 30 June.

**(2)** The return must be in the approved form.

**(3)** Promptly after receiving the return, the commissioner must give written notice to the licensee of the licensed quantity of fuel for the current financial year.

**(4)** Until the licensee receives the notice, the licensee may assume the licensed quantity for the licence for the current financial year is the same as the licensed quantity for the previous financial year.

**(5)** If a licensed bulk end user does not give the commissioner a return for a licence under subsection (1), the licence is automatically cancelled the day after the return date.

## **PART 3—GENERAL**

### **Records of sales to be kept**

**104.(1)** A person who sells fuel under a net sale (the “**record keeper**”)



must keep records, complying with subsections (2) and (3).

Maximum penalty—40 penalty units.

(2) The records must include the following details for each sale of fuel by the record keeper—

- (a) the type of fuel;
- (b) the quantity sold;
- (c) the purchaser's name and address;
- (d) the purchaser's licence number;
- (e) the place of delivery;
- (f) the price charged per litre;
- (g) whether or not the sale was a net sale;
- (h) for a net sale—the place in Queensland from which the fuel was supplied by the record keeper;
- (i) another matter prescribed under a regulation.

(3) The records must include the following details for each purchase of fuel by the record keeper—

- (a) the type of fuel;
- (b) the quantity purchased;
- (b) the seller's name and address;
- (c) the place of delivery;
- (d) the price paid per litre;
- (e) another matter prescribed under a regulation.

### **Records to be kept by licensed bulk end users**

**105.(1)** A licensed bulk end user must keep a record, complying with subsection (2), of each purchase of fuel under the licence by the user.

Maximum penalty—40 penalty units.

(2) The record must include the following details—

- (a) the type of fuel;

- (b) the quantity purchased;
- (c) the seller's name and address;
- (d) the price paid per litre;
- (e) the place of delivery;
- (f) another matter prescribed under a regulation.

## **CHAPTER 5—REGISTERED PERSONS**

### **Claimants to be registered**

**106.** Despite any other provision of this Act, before making a claim for a payment of a subsidy a person must be registered under this chapter or have applied for registration under this chapter.

### **Application for registration**

**107.(1)** An application for registration must be made to the commissioner in the approved form.

**(2)** If the commissioner is satisfied the applicant is, or is likely to be, entitled to make a claim for payment of a subsidy, the commissioner must register the applicant and give the applicant a certificate of registration in the approved form.

### **Implied terms of contract for sale of fuel by manufacturer or importer**

**108.(1)** In any contract for the sale of fuel (other than under a net sale for chapter 2, 3 or 4) entered into between a manufacturer or importer as a seller and a registered person, it is implied as a term of the contract that the amount of the sale price equal to the subsidy for the sale is not payable earlier than the fifth business day of the month after the sale price would otherwise become payable.

**(2)** However, subsection (1) does not apply if the parties to the contract agree to terms giving the purchaser at least the same economic benefit as the

implied term.

(3) The commissioner may, on the commissioner's own initiative or on the request of 1 of the parties, decide whether or not the agreed terms give the purchaser at least the same economic benefit as the implied term.

(4) On making a decision, the commissioner must give to the parties an information notice.

(5) If the commissioner decides the agreed terms do not give the purchaser at least the same economic benefit as the implied term, the implied term is effective from the time the commissioner gives the information notice.

(6) The commissioner's decision has effect subject only to an appeal under this Act.

## **CHAPTER 6—ENFORCEMENT AND APPEALS**

### **PART 1—INVESTIGATION AND ENFORCEMENT**

#### *Division 1—Authorised persons*

##### **Functions of authorised person**

**109.** An authorised person has the function of conducting investigations and inspections to monitor and enforce compliance with this Act.

##### **Authorised person subject to commissioner's directions**

**110.** An authorised person is subject to the commissioner's directions in exercising powers of an authorised person.

**Powers of authorised persons**

**111.** For this Act, an authorised person has the powers given to the person under this Act.

**Limitation on powers of authorised person**

**112.** The powers of an authorised person may be limited—

- (a) under a regulation; or
- (b) under a condition of appointment; or
- (c) by written notice given by the commissioner to the authorised person.

***Division 2—Appointment of authorised persons and other matters*****Appointment of authorised persons**

**113.** The commissioner may appoint as an authorised person an appropriately qualified officer or employee of the department or an appropriately qualified officer of another State or the Commonwealth.

**Authorised person's appointment conditions**

**114.(1)** An authorised person holds office on the conditions stated in the instrument of appointment.

**(2)** An authorised person—

- (a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and
- (b) may resign by signed notice given to the commissioner; and
- (c) if the conditions of appointment provide—ceases holding office as an authorised person on ceasing to hold another office stated in the appointment conditions (the “**main office**”).

**(3)** However, an authorised person who is an officer of the public service of the State may not resign from the office of authorised person (the

“**secondary office**”) if a term of the authorised person’s employment to the main office requires the authorised person to hold the secondary office.

### **Authorised person’s identity card**

**115.(1)** The commissioner must give an identity card to each authorised person.

**(2)** The identity card must—

- (a) contain a recent photograph of the authorised person; and
- (b) be signed by the authorised person; and
- (c) identify the person as an authorised person for this Act; and
- (d) include an expiry date; and
- (e) be signed by the commissioner or by a person acting under the authority of the commissioner.

**(3)** A person who ceases to be an authorised person must return the person’s identity card to the commissioner within 7 days after the person ceases to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

### **Display of authorised person’s identity card**

**116.(1)** An authorised person may exercise a power in relation to someone else (the “**other person**”) only if the authorised person—

- (a) first produces the authorised person’s identity card for the other person’s inspection; or
- (b) has the identity card displayed so it is clearly visible to the other person.

**(2)** However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the authorised person must produce the identity card for the other person’s inspection at the first reasonable opportunity.

***Division 3—Powers of authorised persons******Subdivision 1—Power to enter places*****Entry without consent or warrant**

**117.(1)** For performing the functions and exercising the powers of an authorised person, an authorised person may, without the occupier's consent or a warrant, at any time, enter—

- (a) a public place; or
- (b) a fuel subsidy place, unless the place is or is located in a dwelling house; or
- (c) the land around a fuel subsidy place to ask its occupier for consent to enter the place.

**(2)** However, an authorised person may exercise the person's power of entry under subsection (1)(b) only if the person has first made a reasonable attempt to obtain the occupier's consent under subdivision 2.

**Entry with consent or warrant**

**118.** Unless an authorised person is authorised to enter a place under section 117, an authorised person may enter a place, to perform the functions and exercise the powers of an authorised person, only if—

- (a) its occupier consents to the entry; or
- (b) the entry is authorised by a warrant.

***Subdivision 2—Consents and warrants for entry*****Consent to entry**

**119.(1)** This section applies if an authorised person intends to ask an occupier of a place to consent to the authorised person or another authorised

person entering the place.<sup>10</sup>

(2) Before asking for the consent, the authorised person must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

(3) If the consent is given, the authorised person may ask the occupier to sign an acknowledgment of the consent (a “**consent acknowledgment**”).

(4) The acknowledgment must state—

- (a) the occupier was told—
  - (i) the purpose of the entry; and
  - (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) the occupier gives the authorised person consent to enter the place and exercise powers under this part; and
- (d) the time and date the consent was given.

(5) If the occupier signs a consent acknowledgment, the authorised person must promptly give a copy to the occupier.

### **Evidence of consent**

**120.(1)** Subsection (2) applies if—

- (a) an issue arises in a court proceeding whether the occupier of a place consented to an authorised person entering the place under this part; and
- (b) a consent acknowledgment is not produced in evidence for the entry; and
- (c) it is not proved the occupier consented to the entry.

(2) The court may presume the occupier did not consent.

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<sup>10</sup> This section does not apply if entry is authorised by section 117 or 118(b).

### **Application for warrant**

**121.(1)** An authorised person may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

### **Issue of warrant**

**122.(1)** The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and
- (b) the evidence is at the place, or may be at the place within the next 7 days.

(2) The warrant must state—

- (a) that a stated authorised person may, with necessary and reasonable help and force, enter the place and exercise the authorised person’s powers under this part; and
- (b) the offence for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when the place may be entered; and
- (e) the date, within 14 days after the warrant’s issue, the warrant ends.

### **Special warrants**

**123.(1)** An authorised person may apply for a warrant (a “**special**”



**warrant**”) by phone, fax, radio or another form of communication if the authorised person considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the authorised person’s remote location.

(2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.

(3) The authorised person may apply for the warrant before the application is sworn.

(4) After issuing the warrant, the magistrate must promptly fax a copy to the authorised person if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy to the authorised person—

- (a) the magistrate must tell the authorised person—
  - (i) what the terms of the warrant are; and
  - (ii) the date and time the warrant was issued; and
- (b) the authorised person must complete a form of warrant (a **“warrant form”**) and write on it—
  - (i) the magistrate’s name; and
  - (ii) the date and time the magistrate issued the warrant; and
  - (iii) the terms of the warrant.

(6) The facsimile warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the other powers stated in the warrant issued by the magistrate.

(7) The authorised person must, at the first reasonable opportunity, send to the magistrate—

- (a) the sworn application; and
- (b) if the authorised person completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the warrant.

**Evidence about special warrants**

**124.(1)** Subsection (2) applies if—

- (a) an issue arises in a court proceeding whether a power exercised by an authorised person was not authorised by a special warrant; and
- (b) the warrant is not produced in evidence.

**(2)** The court must presume the exercise of the power was not authorised by a special warrant, unless the contrary is proved.

***Subdivision 3—General powers*****General powers after entering places**

**125.(1)** This section applies to an authorised person who enters a place.

**(2)** However, if an authorised person enters a place to get the occupier's consent to enter premises, this section applies to the authorised person only if the consent is given or the entry is otherwise authorised.

**(3)** For monitoring or enforcing compliance with this Act, the authorised person may—

- (a) search any part of the place; or
- (b) inspect, measure, test, photograph or film any part of the place or anything at the place; or
- (c) take a thing, or a sample of or from a thing, at the place for analysis or testing; or
- (d) copy a document at the place; or
- (e) for a fuel subsidy place—access, electronically or in another way, a system used at the place, for the purposes of a fuel subsidy entity, for the operation of the subsidy arrangements established under this Act, including for administrative purposes related to the operation of the subsidy arrangements established under this Act; or
- (f) take into or onto the place any persons, equipment and materials the authorised person reasonably requires for exercising a power

under this part; or

- (g) require the occupier of the place, or a person at the place, to give the authorised person reasonable help to exercise the authorised person's powers under paragraphs (a) to (f); or
- (h) require the occupier of the place, or a person at the place, to give the authorised person information to help the authorised person ascertain whether this Act is being complied with.

(4) When making a requirement mentioned in subsection (3)(g) or (h), the authorised person must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

### **Failure to help authorised person**

**126.(1)** A person required to give reasonable help under section 125(3)(g) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(2) If the requirement is to be complied with by the person giving information, or producing a document (other than a document required to be kept by the person under this Act), it is a reasonable excuse for the person to fail to comply with the requirement, if complying with the requirement might tend to incriminate the person.

### **Failure to give information**

**127.(1)** A person of whom a requirement is made under section 125(3)(h) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(2) It is a reasonable excuse for the person to fail to comply with the requirement if complying with the requirement might tend to incriminate the person.

**Role of police officers**

**128.(1)** An authorised person may ask a police officer to help the authorised person in the exercise of a power under this part.

(2) The police officer must give the authorised person the reasonable help the authorised person requires, if it is practicable to give the help.

(3) Before the police officer helps the authorised person to exercise the power, the authorised person must explain the power to the police officer.

(4) The police officer has, while helping the authorised person, the same powers and protections under this Act as the authorised person has.

***Subdivision 4—Vehicles transporting fuel*****Stopping vehicle requiring fuel transport record**

**129.(1)** This section applies if an authorised person suspects on reasonable grounds, or is aware, that—

- (a) fuel is being transported on a vehicle; and
- (b) the driver of the vehicle is required under this Act to carry a fuel transport record for the fuel.

(2) For helping the authorised person to exercise the powers of an authorised person under this part, a police officer may—

- (a) if the vehicle is moving—ask or signal the driver of the vehicle to stop the vehicle; and
- (b) whether or not the vehicle is moving—ask the driver to drive the vehicle to a convenient place within a reasonable distance to allow the authorised person to exercise the person's powers under this part.

(3) The driver must comply with the police officer's request or signal unless the driver has a reasonable excuse for not complying.

Maximum penalty—40 penalty units.

(4) If the vehicle is stopped, the authorised person may direct the driver—

- (a) not to move the vehicle until the authorised person has exercised the authorised person's powers under this Act; or
- (b) to move the vehicle to, and keep it at, a stated reasonable place to allow the authorised person to exercise the authorised person's powers under this Act.

(5) The driver of the vehicle must comply with the authorised person's direction under subsection (4) unless the driver has a reasonable excuse for not complying.

Maximum penalty—40 penalty units.

(6) For the application of section 143,<sup>11</sup> a requirement of the authorised person for the driver to produce the fuel transport record immediately is taken to be a requirement for the production of the record at a reasonable time and place.

### **Exercise of authorised person's powers for vehicle**

**130.(1)** This section applies if—

- (a) the driver of a vehicle is required under this Act to carry a fuel transport record; and
- (b) under section 143, an authorised person requires the driver to produce the fuel transport record to the authorised person for inspection; and
- (c) either of the following happens—
  - (i) the driver does not comply with the requirement;
  - (ii) the driver produces a document purporting to be a fuel transport record for inspection, but the authorised person suspects on reasonable grounds that the document does not comply with the requirements of this Act for a fuel transport record.

(2) For the exercise by the authorised person of the authorised person's powers under this part—

- (a) the place where the vehicle is stopped is taken to be a fuel subsidy

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<sup>11</sup> Section 143 (Power to require production of documents)

place; and

- (b) the authorised person is taken to have lawfully entered the place under this part.

(3) To avoid doubt, it is declared that—

- (a) for the exercise of the authorised person’s powers under this part in relation to a place, the place includes any part of the vehicle and anything being transported on the vehicle; and
- (b) for the exercise of the authorised person’s power to seize a thing under this part, a thing that may be seized may include either or both of the following—
- (i) fuel being transported on the vehicle;
- (ii) the vehicle.

### *Subdivision 5—Power to seize evidence*

#### **Seizing evidence**

**131.** An authorised person who enters a place under this part may seize—

- (a) the evidence for which a warrant was issued; or
- (b) a thing the authorised person reasonably believes—
- (i) to be evidence of an offence against this Act; or
- (ii) to have been used to commit an offence against this Act or to be the subject of an offence against this Act (whether or not the thing is also evidence of the offence); or
- (iii) it is necessary to seize, in order to prevent the thing from being used to commit an offence against this Act.

#### **Securing seized things**

**132.** Having seized a thing, an authorised person may—

- (a) move the thing from the place where it was seized (the “**place of seizure**”); or

- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it.

*Example of restricting access to a thing—*

1. Sealing a thing and marking it to show access to it is restricted.
2. Sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted.

### **Tampering with seized things**

**133.** If an authorised person restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing, or something restricting access to the thing, without an authorised person's approval.

Maximum penalty—40 penalty units.

### **Powers to support seizure**

**134.(1)** To enable a thing to be seized, an authorised person may require the person in control of it—

- (a) to take it to a stated reasonable place by a stated reasonable time; and
- (b) if necessary, to remain in control of it at the stated place for a reasonable time.

**(2)** The requirement—

- (a) must be made by notice in the approved form; or
- (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice in the approved form as soon as practicable.

**(3)** A person of whom a requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

**(4)** A further requirement may be made under this section about the same thing if it is necessary and reasonable to make the further requirement.

**Receipt for seized things**

**135.(1)** As soon as practicable after an authorised person seizes a thing, the authorised person must give a receipt for it to the person from whom it was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the authorised person must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.

(3) The receipt must describe generally each thing seized and its condition.

(4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt (given the thing's nature, condition and value).

**Forfeiture of seized things**

**136.(1)** A seized thing is forfeited to the commissioner if the authorised person who seized the thing—

- (a) can not find its owner, after making reasonable inquiries; or
- (b) can not return it to its owner, after making reasonable efforts; or
- (c) reasonably believes it is necessary to retain the thing to prevent it being used to commit an offence against this Act.

(2) In applying subsection (1)—

- (a) subsection (1)(a) does not require the authorised person to make inquiries if it would be unreasonable to make inquiries to find the owner; and
- (b) subsection (1)(b) does not require the authorised person to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

(3) If the authorised person decides to forfeit a thing under subsection (1)(c), the authorised person must promptly give the owner an information notice for the decision.

(4) Subsection (3) does not apply if—

- (a) the authorised person can not find the owner, after making



reasonable inquiries; or

(b) it is impracticable or would be unreasonable to give the notice.

(5) Regard must be had to a thing's nature, condition and value—

(a) in deciding—

(i) whether it is reasonable to make inquiries or efforts; and

(ii) if making inquiries or efforts—what inquiries or efforts are reasonable; or

(b) in deciding whether it would be unreasonable to give notice about a thing.

(6) This section does not apply to fuel the commissioner sells under section 137.

### **Sale of seized fuel**

**137.(1)** This section applies to fuel if an authorised person seizes the fuel under this subdivision, and—

(a) the authorised person reasonably believes that it is not practicable to return the fuel to the owner of the fuel, including, for example, because the fuel was seized to prevent it from being used to commit an offence against this Act; but

(b) the authorised person also reasonably believes that it is not practicable for the commissioner to retain the fuel under the commissioner's control until it can be returned to its owner, including, for example, because the fuel will evaporate or deteriorate.

(2) The commissioner may sell the fuel and—

(a) account to the owner for the proceeds of the sale as soon as practicable; or

(b) if the authorised person reasonably believes the fuel was used to commit an offence or was the subject of an offence—retain the proceeds.

(3) If the commissioner is required to account to the owner under subsection (2)(a), but the commissioner can not find the owner after

making reasonable inquiries, or can not return the proceeds to the owner, after making reasonable efforts, the proceeds are forfeited to the commissioner.

### **Return of seized things**

**138.(1)** If a seized thing has not been forfeited, the authorised person must return it to its owner—

- (a) at the end of 6 months; or
- (b) if a proceeding for an offence involving the thing is started within 6 months—at the end of the proceeding and any appeal from the proceeding.

**(2)** Despite subsection (1), unless the thing has been forfeited, the authorised person must promptly return a thing seized as evidence to its owner if the authorised person stops being satisfied its continued retention as evidence is necessary.

**(3)** If proceeds for fuel seized have not been forfeited, the commissioner must return the proceeds to the owner of the proceeds—

- (a) at the end of 6 months after the fuel was seized; or
- (b) if a proceeding for an offence involving the fuel is started within 6 months after the fuel was seized—at the end of the proceeding and any appeal from the proceeding.

### **Access to seized things**

**139.(1)** Until a seized thing is forfeited or returned, an authorised person must allow its owner to inspect it and, if it is a document, to copy it.

**(2)** Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

***Subdivision 6—Power to obtain information*****Power to require name and address**

**140.(1)** This section applies if—

- (a) an authorised person finds a person committing an offence against this Act; or
- (b) an authorised person finds a person in circumstances that lead, or has information that leads, the authorised person to reasonably suspect the person has just committed an offence against this Act.

**(2)** The authorised person may require the person to state the person’s name and residential address.

**(3)** When making the requirement, the authorised person must warn the person it is an offence to fail to state the person’s name or residential address, unless the person has a reasonable excuse.

**(4)** The authorised person may require the person to give evidence of the correctness of the stated name or residential address if the authorised person reasonably suspects the stated name or address is false.

**(5)** Without limiting section 128,<sup>12</sup> an authorised person may ask a police officer to help with the enforcement of this section.

**(6)** A requirement under subsection (2) or (4) is called a “**personal details requirement**”.

**Failure to give name or address**

**141.(1)** A person of whom a personal details requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

**(2)** A person does not commit an offence against subsection (1) if—

- (a) the person was required to state the person’s name and residential address by an authorised person who suspected the person had

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<sup>12</sup> Section 128 (Role of police officers)

- committed an offence against this Act; and
- (b) the person is not proved to have committed the offence.

### **Steps police officer may take for failure to give name and address**

**142.** A police officer may take the following steps if a person fails to comply with a personal details requirement—

- (a) the police officer may ask the person whether the person has a reasonable excuse for not complying with the requirement;
- (b) if the person gives an excuse, the police officer may ask for details or further details of the excuse;
- (c) if the person does not answer the question or gives an excuse the police officer reasonably believes is not a reasonable excuse, the officer may—
- (i) tell the person that the officer is considering arresting the person for failing to comply with the requirement; and
- (ii) require the person to state the person's name and residential address (or, if the person has no residential address, an address at which the person can most likely be contacted); and
- (iii) if the officer reasonably suspects a stated name or address is false—require the person to give evidence of the correctness of the stated name or address;
- (d) the police officer may arrest the person without a warrant if the officer reasonably believes—
- (i) the person has not complied with a requirement of the officer under paragraph (c)(ii) or (iii); and
- (ii) proceedings by way of complaint and summons against the person for an offence against section 141 would be ineffective.

### **Power to require production of documents**

**143.(1)** An authorised person may require a person to make available for

inspection by an authorised person, or produce to the authorised person for inspection, at a reasonable time and place nominated by the authorised person—

- (a) a document issued to the person under this Act; or
- (b) a document required to be kept by the person under this Act.

(2) The authorised person may keep the document to copy it.

(3) If the authorised person copies the document, or an entry in the document, the authorised person may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.

(4) The authorised person must return the document to the person as soon as practicable after copying it.

(5) However, if a requirement (a “**document certification requirement**”) is made of a person under subsection (3), the authorised person may keep the document until the person complies with the requirement.

(6) A requirement under subsection (1) is called a “**document production requirement**”.

### **Failure to produce document**

**144.(1)** A person of whom a document production requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(2) It is a reasonable excuse for a person not to comply with a document production requirement if complying with the requirement might tend to incriminate the person.

### **Failure to certify copy of document**

**145.** A person of whom a document certification requirement is made must comply with the requirement, unless the person has a reasonable

excuse.

Maximum penalty—40 penalty units.

### **Power to require attendance of persons**

**146.(1)** An authorised person may require a person, or an executive officer of a corporation, of whom a document production requirement has been made to attend before the authorised person to answer questions or give information about the document to which the document production requirement relates.

**(2)** An authorised person may require any of the following persons to attend before the authorised person to answer questions or give information about the operation, with respect to a fuel subsidy entity, of the subsidy arrangements established under this Act—

- (a) the fuel subsidy entity or, if the entity is a corporation, an executive officer of the entity;
- (b) a person employed by the entity;
- (c) an agent of the entity or, if the agent is a corporation, an executive officer of the agent;
- (d) an employee of an agent mentioned in paragraph (c);
- (e) another person associated with the operation or management of the operations of—
  - (i) the entity; or
  - (ii) an agent mentioned in paragraph (c).

**(3)** A requirement made of a person under this section must—

- (a) be made by written notice given to the person; and
- (b) state a reasonable time and place for the person's attendance.

**(4)** When making the requirement, the authorised person must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

**Failure to comply with requirement about attendance**

**147.(1)** A person of whom a requirement is made under section 146 must not, unless the person has a reasonable excuse—

- (a) fail to attend before the authorised person at the time and place stated in the notice imposing the requirement; or
- (b) when attending before the authorised person—
  - (i) fail to comply with a requirement to answer a question or give information; or
  - (ii) state anything the person knows is false or misleading in a material particular.

Maximum penalty—40 penalty units.

**(2)** It is a reasonable excuse for a person to fail to comply with a requirement to answer a question or give information if complying with the requirement might tend to incriminate the person.

**Power to require financial records**

**148.(1)** This section applies to a person who is the manager or other principal officer at a place of business of a financial institution at which a fuel subsidy entity keeps an account.

**(2)** An authorised person may, by written notice given to the person, require the person to give to the authorised person, within the time (not less than 7 days) stated in the notice—

- (a) a statement of account for the account; or
- (b) copies of cheques or other records relevant to the account; or
- (c) other particulars or documents relevant to the account stated in the notice.

**(3)** An authorised person may make a requirement under subsection (2) (a “**financial records requirement**”) only with the written approval of the commissioner.

**Effect of compliance with financial records requirement**

**149.(1)** No liability attaches to a person who is the manager or other principal officer at a place of business of a financial institution for any breach of trust or other reason, merely because the person complies with a financial records requirement.

**(2)** No liability attaches to a financial institution, for any breach of trust or other reason, merely because a person who is the manager or other principal officer at a place of business of the institution complies with a financial records requirement.

**Failure to comply with financial records requirement**

**150.** A person of whom a financial records requirement is made must comply with the requirement within the time stated in the relevant notice, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

***Division 4—General enforcement matters*****Forfeiture on conviction**

**151.(1)** On the conviction of a person for an offence against this Act, the court may order the forfeiture to the commissioner of—

- (a) anything used to commit the offence, including any proceeds, held by the commissioner, of the sale of fuel used to commit the offence; or
- (b) anything else the subject of the offence, including any proceeds, held by the commissioner, of the sale of fuel the subject of the offence.

**(2)** The court may make the order—

- (a) whether or not the thing has been seized; and
- (b) if the thing has been seized—whether or not the thing has been returned to its owner.

**(3)** The court may make any order to enforce the forfeiture it considers



appropriate.

(4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

### **Dealing with forfeited things**

**152.(1)** On the forfeiture of a thing (including the proceeds of the sale of fuel) to the commissioner, the thing becomes the commissioner's property and may be dealt with by the commissioner as the commissioner considers appropriate.

(2) Without limiting subsection (1), the commissioner may destroy the thing.

### **Notice of damage**

**153.(1)** This section applies if—

- (a) an authorised person damages property when exercising or purporting to exercise a power; or
- (b) a person (the “**other person**”) acting under the direction of an authorised person damages property.

(2) The authorised person must promptly give written notice of particulars of the damage to the person who appears to the authorised person to be the owner of the property.

(3) If the authorised person believes the damage was caused by a latent defect in the property or circumstances beyond the authorised person's or other person's control, the authorised person may state it in the notice.

(4) If, for any reason, it is impracticable to comply with subsection (2), the authorised person must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

(5) This section does not apply to damage the authorised person reasonably believes is trivial.

(6) In this section—

“**owner**”, of property, includes the person in possession or control of it.

## **Compensation**

**154.(1)** A person may claim from the commissioner the cost of repairing or replacing property damaged because of the exercise or purported exercise of a power under any of the following subdivisions of division 3<sup>13</sup>—

- subdivision 1 (Power to enter places)
- subdivision 3 (General powers)
- subdivision 4 (Vehicles transporting fuel)
- subdivision 5 (Power to seize evidence)
- subdivision 6 (Power to obtain information).

**(2)** The cost may be claimed and ordered to be paid in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the amount claimed; or
- (b) for an offence against this Act brought against the person claiming the amount.

**(3)** A court may order an amount be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

**(4)** A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

## **Protecting officials from liability**

**155.(1)** In this section—

“**official**” means—

- (a) the Minister; or
- (b) the commissioner; or
- (c) an authorised person; or
- (d) a person acting under the direction of an authorised person.

**(2)** An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

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<sup>13</sup> Division 3 (Powers of authorised persons)

(3) If subsection (2) prevents a civil liability attaching to an official, the liability attaches instead to the State.

### *Division 5—General enforcement offences*

#### **False or misleading statements**

**156.(1)** A person must not state anything to an authorised person the person knows is false or misleading in a material particular.

Maximum penalty—40 penalty units.

(2) It is enough for a complaint against a person for an offence against subsection (1) to state that the statement made was false or misleading to the person's knowledge.

#### **False, misleading or incomplete documents**

**157.(1)** A person must not give an authorised person a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—40 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the authorised person, to the best of the person's ability, how it is false, misleading or incomplete; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

(3) It is enough for a complaint against a person for an offence against subsection (1) to state that the document was false, misleading or incomplete to the person's knowledge.

#### **Obstructing authorised persons**

**158.(1)** A person must not obstruct an authorised person in the exercise of a power, unless the person has a reasonable excuse for the obstruction.

Maximum penalty—40 penalty units.

(2) If a person has obstructed an authorised person and the authorised person decides to proceed with the exercise of the power, the authorised person must warn the person that—

- (a) it is an offence to obstruct the authorised person, unless the person has a reasonable excuse; and
- (b) the authorised person considers the person's conduct is an obstruction.

(3) If, after an authorised person has warned the person, the person continues with the conduct or repeats the conduct, the authorised person may ask a police officer to help with the enforcement of this section.

(4) Subsection (3) does not limit section 128.<sup>14</sup>

### **Steps police officer may take for obstruction**

**159.** A police officer may take the following steps if a person has obstructed an authorised person—

- (a) the police officer may ask the person whether the person has a reasonable excuse for the conduct;
- (b) if the person gives an excuse—the police officer may ask for details or further details of the excuse;
- (c) if the person does not answer the question or gives an excuse the police officer reasonably believes is not a reasonable excuse, the officer may—
  - (i) tell the person that the officer is considering arresting the person for obstruction; and
  - (ii) require the person to stop, or not repeat, the conduct;
- (d) the police officer may arrest the person without a warrant if the officer reasonably believes—
  - (i) the person has not complied with a requirement of the officer under paragraph (c)(ii); and

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<sup>14</sup> Section 128 (Role of police officers)

- (ii) proceedings by way of complaint and summons against the person for an offence against section 158 would be ineffective.

## **PART 2—PROCEEDINGS**

### **Responsibility for acts or omissions of representatives**

**160.(1)** In this section—

**“representative”** means—

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

**“state of mind”** of a person includes—

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

**(2)** Subsections (3) and (4) apply in a proceeding for an offence against this Act.

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

- (a) the act was done or omitted to be done 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.

**(4)** An act done or omitted to be done for 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.

**Executive officers must ensure corporation complies with Act**

**161.(1)** The executive officers of a corporation must ensure the corporation complies with this Act.

**(2)** If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty for subsection (2)—the penalty for the contravention of the provision by an individual.

**(3)** Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with the provision.

**(4)** However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

**Executive officers liable for payment of certain amounts**

**162.(1)** If a corporation is liable under section 165, 166 or 190<sup>15</sup> to pay an overpaid amount, an incorrect subsidy amount, a penalty amount or an amount of interest to the commissioner, each of the corporation's executive officers are jointly and severally liable with the corporation and each other for the payment of the amount.

**(2)** However, it is a defence in an action to recover the amount from an executive officer for the officer to prove—

- (a) if the officer was in a position to influence the conduct of the

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<sup>15</sup> Section 165 (Person receiving subsidy without entitlement), 166 (Person incorrectly receiving benefit of subsidy) or 190 (Interest on amounts owing to commissioner)

corporation in relation to the matter from which the liability to pay the amount arose—the officer exercised reasonable diligence to ensure the corporation did not become liable to pay the amount;  
or

- (b) the officer was not in a position to influence the conduct of the corporation in relation to the matter.

### **Evidentiary aids**

**163.** In a proceeding, a certificate purporting to be signed by the commissioner stating any of the following matters is evidence of the matter—

- (a) a stated document is a licence issued under this Act;
- (b) a stated document is a copy of a licence issued under this Act;
- (c) on a stated day, or during a stated period, a stated person was or was not the holder of a licence under this Act;
- (d) on a stated day, or during a stated period, a licence under this Act—
  - (i) was or was not in force; or
  - (ii) was or was not subject to a stated condition;
- (e) on a stated day a licence was cancelled;
- (f) on a stated day, or during a stated period, a person’s appointment as an authorised person was or was not in force.

### **Proceedings for offences**

**164.(1)** An offence against this Act may be prosecuted in a summary way under the *Justices Act 1886*.

**(2)** A proceeding for the offence may start at any time but if started more than 1 year after the commission of the offence must start within 1 year after the offence comes to the complainant’s knowledge.

**(3)** A proceeding for the offence may be brought only by the commissioner or a person authorised in writing by the commissioner.

(4) In a proceeding for the offence it is not necessary to prove the authority of the complainant to bring the proceeding.

(5) Subsection (4) does not prevent evidence being given that the complainant was not authorised to bring the proceeding.

## **PART 3—REPAYMENTS AND PENALTY AMOUNTS**

### **Person receiving subsidy without entitlement**

**165.(1)** This section applies if—

- (a) the commissioner pays an amount (the **“paid amount”**) to a person (the **“claimant”**) on a claim by the person for a subsidy; and
- (b) for any reason, the paid amount is greater than the amount of subsidy (the **“correct amount”**) the claimant was, within the limits of the claim as made, entitled to receive.

(2) The claimant must pay to the commissioner, if demanded, the amount (the **“overpaid amount”**) that is the difference between the paid amount and the correct amount.

(3) In addition to the requirements under subsection (2) to pay the overpaid amount, the claimant must pay the commissioner a further amount (the **“incorrect payment penalty”**) if the commissioner is satisfied—

- (a) the purchaser of the fuel for which the claim is made, because of a contravention of this Act, did not fully receive the benefit of the subsidy; or
- (b) the claim is materially false; or
- (c) the claimant sold the fuel other than in reliance on a licence.

(4) The incorrect payment penalty is an amount equal to the overpaid amount.

(5) Despite subsection (3), the commissioner may direct that the claimant is not required to pay the whole or a stated part of the incorrect payment penalty if the commissioner is satisfied it is unreasonable in the



circumstances for the claimant to be required to pay the whole of the incorrect payment penalty.

### **Person incorrectly receiving benefit of subsidy**

**166.(1)** This section applies to a purchaser of fuel if—

- (a) the seller of the fuel did not recover from the purchaser the part of the sale price that is an amount (the **“incorrect subsidy amount”**) equal to the subsidy for the sale; but
- (b) the sale was not a net sale for chapter 2, 3 or 4 because, when purchasing the fuel, the purchaser was not the holder of the appropriate licence.

**(2)** This section also applies to a purchaser of fuel if—

- (a) the seller of the fuel did not recover from the purchaser the part of the sale price that is an amount (also, the **“incorrect subsidy amount”**) equal to the subsidy for the sale, because the purchase of the fuel was, or purportedly was, a net sale, for chapter 2, 3 or 4; and
- (b) at least 1 of the following things applies to the purchaser—
  - (i) in purchasing the fuel, the purchaser contravened the requirements of this Act or the licence about the amount of fuel able to be purchased under the licence;
  - (ii) after the purchase, the purchaser resells the fuel purchased, other than under this Act;
  - (iii) after the purchase, the purchaser uses the fuel for a purpose other than a purpose for which, under this Act, including under a licence under this Act, the purchaser is required to use the fuel.

**(3)** The purchaser must pay to the commissioner the incorrect subsidy amount.

**(4)** In addition to the requirement under subsection (3) to pay the incorrect subsidy amount, the purchaser must pay the commissioner a further amount (the **“incorrect benefit penalty”**).

**(5)** The incorrect benefit penalty is an amount equal to the incorrect

subsidy amount.

(6) However, the commissioner may direct that the purchaser is not required to pay the whole or a stated part of the incorrect benefit penalty if the commissioner is satisfied it is unreasonable in the circumstances for the purchaser to be required to pay the whole of the incorrect benefit penalty.

### **Penalty amounts to be alternative to prosecution**

**167.(1)** This section applies if a penalty amount (including a part of a penalty amount) becomes payable under this division by a person because of an act or omission of the person.

(2) If a proceeding is started against the person for an offence against a provision of this Act arising out of the act or omission, and the penalty amount has not been paid to the commissioner, the penalty amount is payable only if the commissioner withdraws the proceeding for the offence.

(3) If the penalty amount has been paid to the commissioner, but a proceeding is started against the person for an offence against a provision of this Act arising out of the act or omission, the penalty amount must be refunded by the commissioner.

(4) Despite subsection (3), if the commissioner withdraws the proceeding for the offence, the person again becomes liable to pay the penalty amount.

## **PART 4—REVIEWS AND APPEALS**

### *Division 1—Review of decisions*

#### **Review of decisions**

**168.(1)** Except as provided under division 2, a decision under this Act—

- (a) is final and conclusive; and
- (b) can not be challenged, appealed against, reviewed, quashed, set-aside, or called in question in any other way, under the

*Fuel Subsidy Act 1997*

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Review Act or otherwise (whether by the Supreme Court, another court, a tribunal, an authority or a person); and

- (c) is not subject to any writ or order of the Supreme Court, another court, a tribunal, an authority or a person on any ground.

*Examples of writs and orders to which the subsection applies—*

*Example 1—*

Writs of mandamus, prohibition and certiorari.

*Example 2—*

Certiorari orders, prohibition orders, prerogative orders, prerogative injunctions, and statutory orders of review, within the meaning of the Review Act.

*Example 3—*

Declaratory and injunctive orders.

**(2)** Without limiting subsection (1), the Review Act does not apply to the following matters under this Act—

- (a) conduct engaged in for the purpose of making a decision;
- (b) other conduct that relates to the making of a decision;
- (c) the making of a decision or the failure to make a decision;
- (d) a decision.

**(3)** In particular, but without limiting subsection (2), the Supreme Court does not have jurisdiction to hear and determine applications made to it under part 3, 4 or 5 of the Review Act in relation to matters mentioned in that subsection.

**(4)** In this section—

**“Review Act”** means the *Judicial Review Act 1991*.

***Division 2—Reviews and appeals under this Act******Subdivision 1—Preliminary*****Definitions for div 2**

**169.** In this division—

“**court**” means—

- (a) for an appeal against a decision in schedule 1, part A—the Supreme Court; or
- (b) for an appeal against a decision in schedule 1, part B—a Magistrates Court.

“**decision**” means a decision in schedule 1.

“**review decision**” see section 174.

**Failure to make decision taken to be decision**

**170.(1)** Subsection (2) applies if the commissioner has failed to decide an application for a retailer’s licence or an off-road diesel consumer’s licence—

- (a) if paragraph (b) does not apply—within 28 days after the application is made; or
- (b) if within a reasonable time after the application is made, the commissioner gives the applicant a written notice requiring the applicant to give the commissioner further information to help the commissioner decide the application—28 days after the commissioner receives the further information.

**(2)** The failure is taken to be a decision refusing the application.

**(3)** Subsection (4) applies if the commissioner has failed to decide an application for a bulk end user’s licence or has failed to decide an application by the holder of a bulk end user’s licence for the variation of the licensed quantity of fuel for the licence—

- (a) if paragraph (b) does not apply—within a reasonable time after the application is made; or

- (b) if within a reasonable time after the application is made, the commissioner gives the applicant a written notice requiring the applicant to give the commissioner further information to help the commissioner decide the application—a reasonable time after the commissioner receives the further information.
- (4) The failure is taken to be a decision refusing the application.

### *Subdivision 2—Internal review of decision*

#### **Appeal process starts with internal review**

**171.** Every appeal against a decision must be, in the first instance, by way of an application for internal review.

#### **Who may apply for review**

**172.(1)** A person who is given, or is entitled to be given, an information notice for a decision may apply to the commissioner for a review of the decision.

(2) For subsection (1), a person is taken to be entitled to be given an information notice for a decision to which section 170 applies.

#### **Applying for review**

**173.(1)** An application by a person for review of a decision must be made within 28 days after—

- (a) if the person is given an information notice for the decision—the day the person is given the information notice; or
- (b) if paragraph (a) does not apply—the day the person otherwise becomes aware of the decision.

(2) The commissioner may, at any time, extend the period for making an application for review.

(3) An application for review must be in writing and state fully the grounds of the application.

**Review decision**

**174.(1)** After reviewing the decision, the commissioner must make a further decision (the “**review decision**”) to confirm the decision, amend the decision or substitute a new decision.

**(2)** The commissioner must promptly give the person written notice of the review decision.

**(3)** If the review decision is not the decision sought by the person, the notice must also state—

- (a) the reasons for the review decision; and
- (b) that the person may appeal against the decision to the court within 28 days after the person is given notice of the review decision.

**(4)** The commissioner is taken to have made a review decision confirming the decision—

- (a) for a decision to which paragraph (b) does not apply—28 days after the application for review is made; or
- (b) for a decision about an application for a bulk end user’s licence or an application by the holder of a bulk end user’s licence for the variation of the licensed quantity of fuel for the licence—60 days after the application for review is made.

***Subdivision 3—Appeals*****Who may appeal**

**175.** A person who has applied for the review of a decision under division 2 and is dissatisfied with the review decision may appeal to the court against the review decision.

**Court to which appeal may be made**

**176.** If the appeal is to a Magistrates Court, the appeal may be made to—

- (a) the Magistrates Court nearest the place where the person resides or carries on business; or
- (b) the Magistrates Court at Brisbane.

**Starting appeal**

**177.(1)** An appeal is started by—

- (a) filing a written notice of appeal with the court; and
- (b) serving a copy of the notice on the commissioner.

**(2)** The notice of appeal must be filed within 28 days after—

- (a) if the person is given written notice of the review decision—the day the person is given the notice; or
- (b) if paragraph (a) does not apply—the day the person otherwise becomes aware of the review decision.

**(3)** The court may, at any time, extend the period for filing the notice of appeal.

**(4)** The notice of appeal must state fully the grounds of the appeal.

**No stay of operations of decisions**

**178.** The court must not grant a stay of the operation of the review decision.

**Hearing procedures**

**179.(1)** In deciding an appeal, the court—

- (a) has the same powers as the commissioner; and
- (b) is not bound by the rules of evidence; and
- (c) must comply with natural justice; and
- (d) may hear the appeal in court or chambers.

**(2)** An appeal is by way of rehearing.

**Powers of court on appeal**

**180.(1)** In deciding an appeal, the court may—

- (a) confirm the review decision; or
- (b) amend the review decision; or

- (c) substitute another decision for the review decision; or
- (d) set aside the review decision and return the issue to the commissioner with the directions the court considers appropriate.

(2) If the court amends the review decision or substitutes another decision for the review decision, the amended or substituted decision is, for this Act (other than this part) taken to be the commissioner's decision.

### **Appeals only on questions of law**

**181.** An appeal from a decision of the court may be made only on a question of law.

## **CHAPTER 7—MISCELLANEOUS**

### **Delegation by commissioner**

**182.** The commissioner may delegate the commissioner's powers under this Act to an appropriately qualified officer or employee of the department or an appropriately qualified officer of another State or the Commonwealth.

### **Approved forms**

**183.** The commissioner may approve forms for use under this Act.

### **Person must not pretend to be licensee**

**184.** For purchasing fuel, a person must not pretend to be the holder of a licence.

Maximum penalty—40 penalty units.

### **Claims for subsidy**

**185.** A subsidy that may be claimed under this Act is not payable unless



the claimant satisfies the commissioner that, in setting the price for the fuel, the claimant did not contravene section 13, 42(1) or 72.<sup>16</sup>

### **Transportation records for bulk transport of fuel**

**186.(1)** This section applies if—

- (a) fuel is transported on a vehicle on a public road in Queensland, whether or not with other goods; and
- (b) the fuel is in a tank (other than a running tank for the vehicle) with a capacity of more than—
  - (i) unless an amount is prescribed under subparagraph (ii)—5 000 L; or
  - (ii) the amount prescribed under a regulation.

**(2)** The driver must maintain, and carry on the vehicle, a record of the fuel (the **“fuel transport record”**) complying with subsections (3) and (4).

Maximum penalty—40 penalty units.

**(3)** The fuel transport record must be in writing, and must include the following information about the transport of the fuel—

- (a) the time and date the transportation started;
- (b) the type and quantity of fuel being transported;
- (c) the name and address of the person who owns the fuel;
- (d) the name and address of the person on whose behalf the fuel is being transported;
- (e) the name of any person to whom the fuel is being transported;
- (f) the address to which the fuel is being transported;
- (g) the name and address of any person who has agreed to purchase the fuel.

**(4)** If the commissioner has approved a form for a fuel transport record, the fuel transport record must be in the approved form.

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<sup>16</sup> Section 13 (When surcharge must not be recovered), 42 (When surcharge must not be recovered) or 72 (When surcharge must not be recovered)

**Decision to require persons to pay amounts owing**

**187.(1)** This section applies if the commissioner decides to require a person to pay an amount owing under a prescribed section.

(2) The commissioner must give the person an information notice for the decision.

(3) In this section—

“**prescribed section**” means section 18, 19, 47, 48, 77, 165, 166, 200, 204 or 208.

**Recovery of amounts owing to commissioner**

**188.(1)** For a proceeding against a person for recovering from the person an amount payable to the commissioner under this Act, the commissioner may give a certificate, signed by the commissioner, stating the person owes an amount stated in the certificate.

(2) If an information notice has been given to the person about an amount payable to the commissioner, the information notice is taken to be the certificate.

(3) In the proceeding, the certificate is conclusive evidence that—

- (a) an amount is payable by the person to the commissioner under this Act; and
- (b) the amount payable by the person is the amount stated in the certificate.

(4) To avoid any doubt it is declared that subsections (1) and (3) do not stop, in an appeal under chapter 6, part 4, division 2, against the commissioner’s decision about giving, or about the amount stated in, an information notice, the making of a decision that—

- (a) the information notice should not have been given; or
- (b) a different amount should be, or should have been, stated in the information notice.

**Repayment of amount after review of decision to require payment**

**189.(1)** This section applies if—

- (a) a person has paid an amount to the commissioner; and
- (b) on an appeal under chapter 6, part 4, division 2, about a decision under section 187, there is a decision that the amount (if any) actually owing by the person is less than the amount paid.

**(2)** The commissioner must pay the person—

- (a) the difference between the amount owing and the amount paid; and
- (b) interest on the difference at the prescribed rate from the date the person paid the amount.

**Interest on amounts owing to commissioner**

**190.(1)** If an amount is owing to the commissioner under this Act, interest at the rate of 20% per annum or, if a lower rate is prescribed under a regulation, the lower rate, is payable on the amount from the date the amount first becomes due to be paid to the commissioner.

**(2)** However, the commissioner may direct that a person is not required to pay the whole or a part of interest under subsection (1) if the commissioner is satisfied that it is unreasonable in the circumstances for the person to be required to pay the whole of the interest.

**False, misleading or incomplete documents given to commissioner**

**191.(1)** A person must not give the commissioner a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—40 penalty units.

**(2)** Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the commissioner, to the best of the person's ability, how it is false, misleading or incomplete; and
- (b) if the person has, or can reasonably obtain, the correct

information—gives the correct information.

(3) It is enough for a complaint against a person for an offence against subsection (1) to state that the document was false, misleading or incomplete to the person's knowledge.

### **False, misleading or incomplete document entries**

**192.(1)** Also, a person must not make an entry in a document required or permitted to be made or kept under this Act knowing the entry to be false, misleading or incomplete in a material particular.

Maximum penalty—40 penalty units.

(2) It is enough for a complaint against a person for an offence against subsection (1) to state that the entry was false, misleading or incomplete to the person's knowledge.

### **Confidentiality of information**

**193.(1)** A person must not disclose information concerning someone else's affairs gained by the person in performing functions or exercising powers under this Act.

Maximum penalty—100 penalty units.

(2) Subsection (1) does not apply to the disclosure of information by a person—

- (a) for the administration of this Act, or
- (b) with the consent of the person to whom the information relates;  
or
- (c) for a proceeding arising out of this Act.

(3) Also, subsection (1) does not apply to the disclosure of information by the commissioner to—

- (a) the Commissioner of Taxation of the Commonwealth or a delegate of the Commissioner of Taxation; or
- (b) an entity administering a corresponding law.

(4) In this section—

**“corresponding law”** means a law of another State or the Commonwealth about the payment of subsidies for fuel.

**“information”** includes a document.

### **Service of documents on commissioner**

**194.(1)** This section applies for any document required or authorised to be given to the commissioner for this Act.

(2) The document may be given to the commissioner by, at the commissioner’s office, giving it to an officer of the department who is employed in the administration of this Act and authorised in writing by the commissioner to accept service of documents on the commissioner’s behalf.

### **Regulation-making power**

**195.(1)** The Governor in Council may make regulations under this Act.

(2) A regulation may be about—

- (a) the keeping of records for this Act; or
- (b) information or documents to be provided for applications for licences under this Act; or
- (c) imposing a penalty of not more than 20 penalty units for a contravention of a provision of a regulation.

## CHAPTER 8—TRANSITIONALS

### PART 1—PRELIMINARY

#### Definitions for ch 8

196. In this chapter—

“**interim guidelines**” means the guidelines titled ‘Transitional arrangements for fuel subsidy scheme’ issued by the commissioner before the commencement of this definition.<sup>17</sup>

“**transitional period**”, for chapter 2, 3 or 4, means the period from and including 1 November 1997 to and including the date notified by the commissioner by gazette notice for the chapter.

### PART 2—OFF-ROAD DIESEL CONSUMERS

#### Purpose of pt 2

197. The purpose of this part is to give effect to Parliament’s intention under chapter 2 for diesel purchased in the transitional period by off-road diesel consumers for use by them in Queensland.

#### Application of ch 2 in transitional period

198.(1) This section states how chapter 2 applies to a person who, in the transitional period, purchases diesel for use by the person.

(2) The chapter applies as if a reference to a licensed off-road diesel consumer were a reference to a person who has satisfied another person from whom the person purchases the diesel that the person is a licensed

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<sup>17</sup> A copy of the guidelines may be obtained at the commissioner’s office.

off-road diesel consumer under the interim guidelines.

(3) This section has effect subject to section 199.

### **When part ceases to apply to persons**

**199.** This part ceases to apply to a person on the earlier of the following—

- (a) an off-road diesel consumer's licence is issued to the person;
- (b) the end of the transitional period.

### **Repayments of subsidies by certain persons**

**200.(1)** This section applies if—

- (a) in the transitional period, a person purchases diesel under a net sale for chapter 2; and
- (b) the person's application for an off-road diesel consumer's licence is refused or at the end of the transitional period the person has not made application for an off-road diesel consumer's licence.

(2) The commissioner may, by written notice given to the person, require the person in the time stated in the notice (not less than 7 days after the person is given the notice) to pay the commissioner the amount of the subsidy for the diesel.

(3) At the end of the time stated in the notice, the amount is a debt owing to the commissioner.

## **PART 3—RETAILERS**

### **Purpose of pt 3**

**201.** The purpose of this part is to give effect to Parliament's intention under chapter 3 for fuel purchased in the transitional period by retailers.

**Application of ch 3 in transitional period**

**202.(1)** This section states how chapter 3 applies to a person who, in the transitional period, purchases fuel for use by the person.

**(2)** The chapter applies as if a reference to a licensed retailer were a reference to a person who has satisfied another person from whom the person purchases the fuel that the person is a licensed retailer under the interim guidelines.

**(3)** This section has effect subject to section 203.

**When part ceases to apply to persons**

**203.** This part ceases to apply to a person on the earlier of the following—

- (a) a retailer's licence is issued to the person;
- (b) the end of the transitional period.

**Repayments of subsidies by certain persons**

**204.(1)** This section applies if—

- (a) in the transitional period, a person purchases fuel under a net sale for chapter 3; and
- (b) the person's application for a retailer's licence is refused or at the end of the transitional period the person has not made application for a retailer's licence.

**(2)** The commissioner may, by written notice given to the person, require the person in the time stated in the notice (not less than 7 days after the person is given the notice) to pay the commissioner the amount of the subsidy for the fuel.

**(3)** At the end of the time stated in the notice, the amount is a debt owing to the commissioner.



## **PART 4—BULK END USERS**

### **Purpose of pt 4**

**205.** The purpose of this part is to give effect to Parliament's intention under chapter 4 for fuel purchased in the transitional period by bulk end users.

### **Application of ch 4 in transitional period**

**206.(1)** This section states how chapter 4 applies to a person who, in the transitional period, purchases fuel for use by the person.

**(2)** The chapter applies as if a reference to a licensed bulk end user were a reference to a person who has satisfied another person from whom the person purchases the fuel that the person is a licensed bulk end user under the interim guidelines.

**(3)** Also, to the extent stated in the interim guidelines, the chapter applies as if a reference to a licensed bulk end user were a reference to a person mentioned in section 82(2).<sup>18</sup>

**(4)** This section has effect subject to section 207.

### **When part ceases to apply to persons**

**207.** This part ceases to apply to a person on the earlier of the following—

- (a) a bulk end user's licence is issued to the person;
- (b) the end of the transitional period.

### **Repayments of subsidies by certain persons**

**208.(1)** This section applies if—

- (a) in the transitional period, a person purchases fuel under a net sale for chapter 4; and

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<sup>18</sup> Section 82 (Grant of application)

- (b) the person's application for a bulk end user's licence is refused or at the end of the transitional period the person has not made application for a bulk end user's licence.

(2) The commissioner may, by written notice given to the person, require the person in the time stated in the notice (not less than 7 days after the person is given the notice) to pay the commissioner the amount of the subsidy for the fuel.

(3) At the end of the time stated in the notice, the amount is a debt owing to the commissioner.

### **Special provision for certain new bulk end users**

**209.(1)** Nothing in the interim guidelines entitles a person who first becomes a bulk end user on or after 1 November 1997 to purchase under a net sale for chapter 4.

(2) Subsection (1) does not affect the operation of section 206 other than in relation to the person mentioned in the subsection.

## **PART 5—GENERAL**

### **Special regulation-making power**

**210.(1)** A regulation may be made about any matter of a savings, transitional or validating nature for which—

- (a) the Governor in Council considers is necessary or convenient to give effect to Parliament's intention for a provision of this Act or otherwise facilitate the operation of this Act; and
- (b) this Act does not make provision or enough provision.

(2) The regulation may be given retrospective operation to a date not earlier than 1 November 1997.

(3) The regulation has effect despite any other provision of this Act.

(4) This section expires 1 year after it commences.

**SCHEDULE 1****DECISIONS SUBJECT TO REVIEW AND APPEAL**

section 169

**PART A—DECISIONS APPEALABLE TO SUPREME COURT**

<b>Section</b>	<b>Description of decision</b>
31	Cancelling an off-road diesel consumer's licence
32	Suspending an off-road diesel consumer's licence
33	Suspending an off-road diesel consumer's licence
60	Cancelling a retailer's licence
61	Suspending a retailer's licence
62	Suspending a retailer's licence
83	Refusing application for a bulk end user's licence
84	Fixing effective date for licence
85	Subjecting licence to conditions
87	Fixing licensed quantity of fuel for bulk end user's licence
92	Refusing application for variation of a licensed quantity of fuel, or reducing a licensed quantity of fuel
95	Cancelling a bulk end user's licence
96	Suspending a bulk end user's licence

## SCHEDULE 1 (continued)

97	Suspending a bulk end user's licence
99	Changing conditions of a bulk end user's licence
108	Deciding whether or not agreed terms give purchaser at least the same economic benefit as the implied term

**PART B—DECISIONS APPEALABLE TO  
MAGISTRATES COURT**

<b>Section</b>	<b>Description of decision</b>
8	Requiring person to refund subsidy
25	Refusing application for off-road diesel consumer's licence
26	Fixing effective date for licence
27	Subjecting licence to conditions
35	Changing conditions of off-road diesel consumer's licence
54	Refusing application for retailer's licence
55	Fixing effective date for licence
56	Subjecting licence to conditions
64	Changing conditions of retailer's licence
136	Forfeiting a thing to the commissioner
187	Requiring a person to pay an amount under a prescribed section

**SCHEDULE 2**

**FUEL**

schedule 3, definition “**fuel**”

**PART A—GOODS FOR EXCISE TARIFF ACT 1921  
(CWLTH)**

11(A)(3)(b)

11(A)(3)(c)

11(B)(3)

11(C)(2)(a)

11(C)(2)(b)

11(E)(2)

11(G)(2)(b)

11(H)(2)

11(J)(2)

12(B)

**PART B—GOODS FOR CUSTOMS TARIFF ACT 1995  
(CWLTH), SCHEDULE 3**

2707.50.11

2707.50.19

2710.00.19

2710.00.20

SCHEDULE 2 (continued)

2710.00.52

2710.00.53

**SCHEDULE 3****DICTIONARY**

section 3

**“appropriately qualified”**, for an officer or employee of the department or another State or the Commonwealth to whom a power under this Act may be delegated or who may be appointed as an authorised person, includes having qualifications, experience or standing appropriate to exercise the delegated power or the powers of an authorised person.

*Example of standing—*

A person’s classification level in the public service.

**“approved form”** means a form approved under section 183.

**“authorised person”** means a person who is an authorised person for this Act.

**“bulk end user”** see section 4.

**“bulk end user’s licence”** see section 80.

**“commissioner”** means the person who is the commissioner of stamp duties under the *Stamp Act 1894*.

**“commissioner’s guidelines”** means guidelines made by the commissioner for this Act and published in the gazette.

**“consent acknowledgment”** see section 119.

**“diesel”** means fuel used, or capable of being used, to power a diesel engine.

**“diesel engine road vehicle”** means a vehicle that—

- (a) has a diesel engine; and
- (b) is designed solely or principally for transporting persons, goods or animals by road.

**“distributor”** means a person who sells fuel in Queensland and is not, for the fuel, a retailer, manufacturer or importer.

## SCHEDULE 3 (continued)

**“document certification requirement”** see section 143.

**“document production requirement”** see section 143.

**“executive officer”**, of a corporation, means a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer.

**“financial records requirement”** see section 148.

**“fuel”** means—

- (a) the goods identified in the *Excise Tariff Act 1921* (Cwlth), schedule, by the item numbers mentioned in schedule 2, part A, of this Act; or
- (b) the goods identified in the *Customs Tariff Act 1995* (Cwlth), schedule 3, by the subheadings mentioned in schedule 2, part B, of this Act; or
- (c) the goods prescribed under a regulation.

**“fuel subsidy entity”** means a bulk end user, distributor, importer, manufacturer, off-road diesel consumer or retailer.

**“fuel subsidy place”** means premises used for any purpose in connection with the activities of a fuel subsidy entity, including, for example, premises the entity ordinarily occupies, or at which the entity—

- (a) ordinarily lives or carries on business; or
- (b) stores records or other materials of the entity.

**“fuel transport record”** see section 186.

**“importer”** means a person who is liable for payment of customs duty on fuel under the *Customs Tariff Act 1995* (Cwlth).

**“incorrect benefit penalty”** see section 166.

**“incorrect payment penalty”** see section 165.

**“incorrect subsidy amount”** see section 166.

**“indexation factor”**, for a financial year, means the forecast increase in



## SCHEDULE 3 (continued)

gross State product for Queensland as decided by the Treasurer for the year and notified by the commissioner by gazette notice.

**“information notice”**, for a decision of the commissioner, is a written notice stating—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) how the person may appeal against the decision.

**“licence”** means a licence under this Act.

**“licence number”**, for a licence, means its identifying number.

**“licensed quantity of fuel”**, for a financial year for a bulk end user’s licence, means the maximum quantity of fuel permitted to be purchased under the licence for the financial year.

**“licensee”** means the holder of a licence under this Act.

**“manufacturer”** means a person who is liable for payment of excise duty on fuel under the *Excise Tariff Act 1921* (Cwlth).

**“net sale”** see section 8.

**“off-road diesel consumer”** see section 5.

**“off-road diesel consumer’s licence”** see section 22.

**“overpaid amount”** see section 165.

**“penalty amount”** means an incorrect benefit penalty or incorrect payment penalty.

**“personal details requirement”** see section 140.

**“place of seizure”** see section 132.

## SCHEDULE 3 (continued)

“**public road**” means a road under the *Land Act 1994*.<sup>19</sup>

“**retail consumer**” means a person who purchases retail fuel.

“**retail fuel**” means fuel sold in a retail quantity from a retail site.

“**retail quantity**” see section 7.

“**retail site**” means a retail site stated in a retailer’s licence.

“**retailer**” see section 6.

“**retailer’s licence**” see section 51.

“**running tank**” means that part of machinery in which fuel for powering the machinery is stored.

“**special warrant**” see section 123.

“**subsidy**”, for a sale of fuel, means the amount calculated by applying the subsidy rate for the fuel at the time of sale to the quantity of fuel sold.

“**subsidy rate**”, for fuel, means—

- (a) unless a rate is prescribed under paragraph (b)—8.1 cents per litre; or
- (b) the rate prescribed under a regulation.

“**surcharge**”, for fuel, means the part of the rate of excise or customs duty imposed by the Commonwealth on the fuel that is—

- (a) unless an amount is prescribed under paragraph (b)—8.1 cents per litre; or

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<sup>19</sup> “Road” is defined in the *Land Act 1994*, section 93, as follows—

**‘Meaning of “road”**

**93.(1)** A “**road**” means an area of land, whether surveyed or unsurveyed—

- (a) dedicated, notified or declared to be a road for public use; or
- (b) taken under an Act, for the purpose of a road for public use.

**(2)** The term includes—

- (a) a street, esplanade, reserve for esplanade, highway, pathway, thoroughfare, track or stock route; and
- (b) a bridge, causeway, culvert or other works in, on, over or under a road; and
- (c) any part of a road.’.

## SCHEDULE 3 (continued)

(b) the amount per litre prescribed under a regulation.

**“vehicle”** means anything used for carrying goods or people by land, sea or air.

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Fuel Subsidy Act 1997 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

## **4 List of legislation**

### **Fuel Subsidy Act 1997 No. 63**

date of assent 5 November 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 November 1997 (see s 2)

## **5 List of annotations**

### **Special regulation-making power**

**s 210**      exp 1 November 1998 (see s 210(4))