

Queensland



# **FUEL SUBSIDY ACT 1997**

**Reprinted as in force on 15 November 2000  
(includes amendments up to Act No. 47 of 2000)**

**Warning—see last endnote for uncommenced amendments**

**Reprint No. 2A**

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This Act is reprinted as at 15 November 2000. The reprint—

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- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

Queensland



**FUEL SUBSIDY ACT 1997**

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# **FUEL SUBSIDY ACT 1997**

[as amended by all amendments that commenced on or before 15 November 2000]

## **An Act about providing subsidies for fuel**

### **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.

##### **Act binds all persons**

- 3A. This Act binds all persons, including the State, and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

## PART 2—BASIC CONCEPTS

### Meaning of “bulk end user”

**4.(1)** A person is a “**bulk end user**” to the extent the person uses bulk end user fuel.

**(2)** If fuel is delivered directly into the running tank of a vehicle or equipment used by a person’s associate under section 4A(3)(b), the associate is not a “**bulk end user**” for the fuel.

### Meaning of “bulk end user fuel”

**4A.(1)** Fuel is “**bulk end user fuel**” if it is fuel, other than diesel that is used for an off-road purpose, that is—

- (a) purchased by a person other than as retail fuel under chapter 2; and
- (b) delivered, under subsection (3)—
  - (i) from a storage site of the person stated in the person’s bulk end user licence; or
  - (ii) in Queensland by a distributor.

**(2)** Subsection (1)(b) applies to the extent the delivery is made in a bulk end user quantity.

**(3)** The fuel must be delivered—

- (a) directly into the running tank of a vehicle or equipment used by the person, and for operating the vehicle or equipment; or
- (b) as part of the person’s enterprise, directly into the running tank of a vehicle or equipment used by the person’s associate, whether or not by way of sale, and for operating the vehicle or equipment.

### Meaning of “bulk end user quantity”

**4B.(1)** The “**bulk end user quantity**” for bulk end user fuel is not more than 2 000 L or, if another quantity is prescribed under a regulation for the fuel, the other quantity.

(2) Also, fuel delivered from a storage site to the running tank of a vehicle or equipment in a day is not a bulk end user quantity to the extent that it is more than the quantity mentioned in subsection (1).

(3) In addition, fuel delivered by a distributor to the running tank of a vehicle or equipment in a day is not a bulk end user quantity to the extent that it is more than the quantity mentioned in subsection (1).

### Meaning of “off-road purpose”

4C.(1) An “**off-road purpose**”, for diesel, means a purpose other than to propel a diesel engine road vehicle on a public road.

(2) For chapters 2 and 2A, an “**off-road purpose**” does not include a private or domestic purpose.

(3) However, diesel used for a private or domestic purpose is used for an “**off-road purpose**” if—

- (a) it is purchased from a retailer; and
- (b) a rebate applies in relation to the diesel under the Commonwealth diesel fuel rebate scheme established under the *Customs Act 1901* (Cwlth) and *Excise Act 1901* (Cwlth).

### Meaning of “retailer”

5.(1) For chapter 2, 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.

(2) For chapter 2A, a person is a “**retailer**”—

- (a) to the extent the person sells fuel owned by the person to the public from, or through, a fixed site in Queensland, unless the person is taken not to be a retailer under subsection (3)(b); or
- (b) if the person is taken to be a retailer under subsection (3)(a).

(3) A regulation may prescribe the circumstances in which—

- (a) a person other than the owner of fuel is taken to be the retailer for the fuel; or
- (b) a retailer of fuel is taken not to be a retailer for the fuel.

**Meaning of “retail fuel”**

**5A.(1)** For chapter 2, “**retail fuel**” is fuel sold in a retail quantity from a retail site.

**(2)** For chapter 2A, fuel sold by a retailer from a retail site, to the extent it is sold in retail quantities, is “**retail fuel**”.

**(3)** However, for chapter 2A, the term does not include—

- (a) diesel for which the retailer is given advice under section 39R;<sup>1</sup> or
- (b) diesel sold from a marine site, unless the diesel is delivered by the retailer directly into the running tank of a registered recreational ship under the *Transport Operations (Marine Safety) Act 1994*—
  - (i) on which a current registration number under that Act is displayed; and
  - (ii) to which a current registration label under that Act is fixed.

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

**6.(1)** For chapter 2, 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.

**(4)** For chapter 2A, the “**retail quantity**” for retail fuel is not more than 2 000 L or, if another quantity is prescribed under a regulation for the fuel, the other quantity.

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

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<sup>1</sup> Section 39R (Purchaser’s obligation to advise retailer of off-road purpose for diesel)



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

(6) Also, a quantity of fuel delivered by a retailer from a retail site to a person in a day is not a retail quantity to the extent that it is more than the quantity mentioned in subsection (4).

### **Meaning of “net sale” for ch 2**

7. A “net sale” for chapter 2 is a sale of fuel made under section 12 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.

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

8.(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.

**Subsidy only for fuel**

**9.(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.

**CHAPTER 2—RETAILERS****PART 1—SUBSIDY SCHEME FOR LICENSED  
RETAILERS****Purpose of ch 2**

**11.(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.

**Sales of fuel to licensed retailers**

**12.(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.

### **Licensed retailer must not recover particular amounts**

**13.** A licensed retailer who sells fuel to a retail 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 of the fuel to the retailer.

Maximum penalty—200 penalty units.

### **Claim for subsidy—net sales**

**14.(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**

**15.(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**

**16.(1)** If a person purchases fuel under a net sale (the “**first sale**”) and sells the fuel under a net sale (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.

**(2)** However subsection (1) applies only if the person does not recover (directly or indirectly) from the purchaser under the second sale the part of the sale price that is an amount equal to the subsidy for the first sale.

**(3)** If subsection (1) does not apply because of subsection (2), the person must, within 7 days after the second sale, repay to the commissioner the subsidy for the first sale.

**(4)** An amount not paid as required under subsection (3) is a debt owing to the commissioner.

### **Other sales by licensed retailers**

**17.(1)** If a person purchases fuel under a net sale (the “**first sale**”) and sells the fuel other than under a net sale 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**

**18.(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**

**19.(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**

**20.(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; 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 12(1)<sup>2</sup> to a licensed retailer on the allocation.

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<sup>2</sup> Section 12 (Sales of fuel to licensed retailers)

## **PART 2—RETAILERS’ LICENCES**

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

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

**21.(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**

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

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

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

#### **Decision on application**

**24.(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**

**25.(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**

**26.(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**

**27.(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**

**28.(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**

**29.** 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**

**30.(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**

**31.(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 30(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 30(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**

**32.(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**

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

**(2)** The former 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**

**34.(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 26(1).<sup>3</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 licence—issue another retailer's licence, incorporating the changed conditions, to the licensee to replace the licence returned to the commissioner.

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<sup>3</sup> Section 26 (Conditions of licence)

(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**

35. 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**

36. A retailer's licence can not be transferred.

### **Duration of retailer's licence**

37. 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**

38.(1) A person who sells fuel under a net sale (the “**record keeper**”) must keep records as required under subsections (2) to (4).

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

(4) Each record must be kept for 5 years after it is made.

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

**39.(1)** A licensed retailer must keep records as required under subsections (2) to (4).

Maximum penalty—40 penalty units.

(2) The records must include, for each sale of fuel by the retailer, details of the price charged per litre and the basis for calculating the price.

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

- (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.
- (4) Each record must be kept for 5 years after it is made.

### **Retail consumer's obligation to repay subsidy**

**39A.(1)** A retail consumer who purchases diesel under a sale made under section 13 and uses it for an off-road purpose must repay to the commissioner the amount of the subsidy for the sale within 7 days after the end of the month in which the diesel is used.

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

(3) Subsection (1) applies to the extent the diesel is used for an off-road purpose.

## **CHAPTER 2A—RETAILERS**

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

#### **Entitlement to subsidy**

**39B.(1)** Retailers are, under this chapter, entitled to a subsidy for fuel purchased, and sold as retail fuel under section 39C(1)—

- (a) after 30 November 2000; and
- (b) while the retailer is a licensed retailer.

(2) However, if a claim for a subsidy for fuel is not made within 2 years after the fuel was sold as retail fuel, the entitlement to the subsidy ends.

**Sale of fuel by licensed retailers**

**39C.(1)** A licensed retailer who sells retail fuel to a retail consumer must not recover (directly or indirectly) from the consumer the part of the sale price that is an amount equal to the subsidy benefit for the sale other than by making a claim under this chapter.

Maximum penalty—200 penalty units.

**(2)** If a sale of fuel by a licensed retailer in a retail quantity is not a sale of retail fuel or if, under a single sale, part of the sale was a sale of retail fuel, the retailer must give the purchaser a record of the sale stating—

- (a) the total quantity of fuel sold; and
- (b) the quantity of fuel that was not sold as a net sale.

Maximum penalty—100 penalty units.

**(3)** Subsection (2) does not apply to the sale of diesel by a licensed retailer from a marine site.

**(4)** If a sale of diesel by a licensed retailer from a marine site is a sale of retail fuel, the retailer must give the purchaser a record of the sale stating that fact.

Maximum penalty—100 penalty units.

**Person may hold only 1 licence**

**39D.(1)** A person may hold only 1 retailer's licence.

**(2)** The licence applies to each of the retailer's retail sites stated in the licence.

## **PART 2—SUBSIDY ENTITLEMENT**

### *Division 1—Provisional subsidies*

#### **Paying provisional subsidy**

**39E.(1)** The commissioner must—

- (a) at least 5 days before the beginning of each month, pay to each licensed retailer the provisional subsidy to which the retailer is entitled for the month; and
- (b) give the retailer a written statement showing how the provisional subsidy was calculated and, if section 39L or 129A<sup>4</sup> applies, the basis for the amount paid.

**(2)** However, for the first month in which the person is a licensed retailer, the commissioner must pay the provisional subsidy and give the statement as soon as practicable after granting the licence.

**(3)** For this section, a licensed retailer includes a person to whom a retailer's licence has been issued but is not yet effective.

#### **Calculating provisional subsidy**

**39F.(1)** The provisional subsidy for a licensed retailer for a month is—

- (a) if paragraph (b) does not apply—one-twelfth (the “**amount**”) of the anticipated annual subsidy under subsection (3) or (4); or
- (b) if the person is a licensed retailer for only part of the month—the proportion of the amount equalling the proportion of the month for which the person is a licensed retailer.

**(2)** However, the provisional subsidy for a licensed retailer for each July after the licence is effective is the provisional subsidy under subsection (1) for the retailer for the previous month.

**(3)** The anticipated annual subsidy for a licensed retailer for a financial

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<sup>4</sup> Section 39L (Underpaid provisional subsidy amount) or 129A (Commissioner may apply amounts payable under Act)



year in which the person is a licensed retailer is the quantity of retail fuel sold by the retailer in the previous financial year adjusted by the indexation factor then multiplied by the current subsidy rate.

(4) However, the commissioner may decide the anticipated annual subsidy if—

- (a) the commissioner is not satisfied the anticipated annual subsidy calculated under subsection (3) accurately reflects the subsidy to which the retailer is likely to be entitled for the financial year; or
- (b) the anticipated annual subsidy can not properly be calculated under the subsection.

(5) In making a decision under subsection (4), the commissioner must have regard to the following—

- (a) retail sites acquired or disposed of by the retailer during or after the previous financial year;
- (b) the proportion of the previous financial year in which the person was a retailer;
- (c) the quantity of retail fuel reasonably expected to be sold by the retailer in the financial year;
- (d) any other matter the commissioner considers relevant.

(6) A licensed retailer may, in the approved form, ask the commissioner to decide the anticipated annual subsidy for the retailer.

(7) If the commissioner decides the anticipated annual subsidy for a retailer on the commissioner's own initiative under subsection (4), or does not decide the anticipated annual subsidy as requested by a retailer under subsection (6), the commissioner must give the retailer an information notice about the decision.

### **Changing dates for paying provisional subsidies**

**39G.(1)** Despite section 39E, the commissioner may decide different dates for paying a provisional subsidy to a licensed retailer if the commissioner reasonably believes the retailer—

- (a) has not complied with, or is likely not to comply with, a condition of the retailer's licence; or

- (b) may not be entitled to a subsidy for a month; or
- (c) may not operate as a licensed retailer for the whole of a month.

(2) If the commissioner reasonably believes the licensed retailer has not complied with the licence conditions, the commissioner is not required to decide a date until the commissioner is satisfied the retailer has complied with the conditions.

(3) The commissioner must give the licensed retailer an information notice about the commissioner's decision.

### **Commissioner may require guarantee**

**39H.(1)** The commissioner may require a licensed retailer to give the commissioner a written guarantee from another person before the commissioner pays a provisional subsidy to the retailer.

(2) The requirement must be made by information notice.

(3) The guarantee must be for the amount, in the form and provided in the way, stated in the notice.

(4) However, the commissioner may require the guarantee only if the commissioner is satisfied it is necessary to protect the integrity of the fuel subsidy arrangements under this Act.

(5) The commissioner does not have to pay the retailer a provisional subsidy until the guarantee is given.

(6) This section applies despite section 39E.

## ***Division 2—Claiming and paying subsidies***

### **When subsidies are claimed**

**39I.(1)** For each month for which a provisional subsidy is paid or payable, a licensed retailer must lodge with the commissioner under subsection (2) a claim, in the approved form, for the retailer's subsidy.

Maximum penalty—200 penalty units.

(2) The claim must be lodged—

- (a) within 14 days after the end of each month; or
- (b) by the day stated in a notice given under subsection (3).

(3) The commissioner may, by written notice, require the retailer to lodge claims other than under subsection (2)(a) if, under section 39G, the commissioner decides different dates for paying a provisional subsidy to the retailer.

(4) If the commissioner makes a decision under subsection (3), the commissioner must give the retailer an information notice about the decision.

### **Paying subsidy**

**39J.(1)** After receiving a claim by a licensed retailer for a month, the commissioner must pay to the retailer the subsidy to which the commissioner is satisfied the retailer is entitled less the provisional subsidy paid to the retailer for the month.

(2) If a retailer does not lodge a claim as required under section 39I, the commissioner may decide the subsidy to which the retailer is entitled as if the retailer had lodged the claim.

### ***Division 3—Overpaid and underpaid provisional subsidy amounts***

#### **Overpaid provisional subsidy amount**

**39K.(1)** If the provisional subsidy paid to a licensed retailer for a month is more than the retailer's subsidy for the month, the amount of the difference (the "**amount**") is payable by the retailer to the commissioner when the next provisional subsidy payment is made to the retailer.

(2) However, if the commissioner reasonably believes another provisional subsidy will not be paid to the retailer, the commissioner may, by written notice, require the retailer to pay the amount to the commissioner.

(3) The person must pay the amount to the commissioner in the reasonable time stated in the notice.

(4) An amount not paid as required under subsection (1) or (3) is a debt owing to the commissioner.

**Underpaid provisional subsidy amount**

**39L.(1)** If the provisional subsidy paid to a licensed retailer for a month is less than the retailer's subsidy for the month, the commissioner does not have to pay the amount of the difference until making the next provisional subsidy payment to the retailer.

**(2)** If the commissioner reasonably believes the licensed retailer has not complied with the licence conditions, the commissioner is not required to pay the amount until the commissioner is satisfied the retailer has complied with the conditions.

**(3)** If the commissioner makes a decision under subsection (2), the commissioner must give the licensed retailer an information notice about the decision.

***Division 4—Licensed retailers' notices about operations as licensed retailers, or for retail sites***

**Notice of ceasing operations as a retailer**

**39M.(1)** A person who ceases, or intends to cease, operating as a retailer must give the commissioner written notice, under this section, stating when the person ceased, or intends to cease, operating as a retailer.

Maximum penalty—200 penalty units.

**(2)** The notice must be in the approved form and given—

- (a) on or before the 21st day of the month in which the person ceases, or intends to cease, operating as a retailer; or
- (b) if the person lodges the person's final claim under division 2 on an earlier day—the earlier day.

**Notice of ceasing to operate a retail site**

**39N.(1)** A licensed retailer who ceases, or intends to cease, operating a particular retail site stated in the retailer's licence, must give the commissioner written notice, under this section, stating when the retailer ceased, or intends to cease, operating the site.

Maximum penalty—200 penalty units.

- (2) The notice must be in the approved form and given—
- (a) on or before the 21st day of the month in which the licensed retailer ceases, or intends to cease, operating the site; or
  - (b) if the retailer first lodges a claim under division 2 on an earlier day after starting to operate the site—the earlier day.

### **Notice of starting to operate a further retail site**

**39O.(1)** A licensed retailer who starts operating a retail site not stated on the retailer's licence, must give the commissioner a written notice, under this section, stating when the retailer started operating the site.

Maximum penalty—100 penalty units.

(2) The notice must be in the approved form and given when the licensed retailer next lodges a claim under division 2.

## **PART 3—RECORD KEEPING AND RETURNS**

### **Records to be kept**

**39P.(1)** A licensed retailer must keep records as required under this section.

Maximum penalty—100 penalty units.

(2) The records must include the following details for each sale of fuel by the person as a retailer—

- (a) details of the price charged per litre and the basis for calculating the price;
- (b) the address of the retail site from, or through, which the fuel was sold;
- (c) the date of the sale;
- (d) the type of fuel sold;

- (e) the quantity sold;
- (f) if the fuel is retail fuel delivered from a marine site into the running tank of a registered recreational ship—the ship's registration number;
- (g) another matter prescribed under a regulation.

(3) The records must include the following details for each purchase of fuel by the person as a retailer—

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

(4) The records must include daily records of the stock of fuel on hand and the time when the stock was determined.

(5) The person, whether or not the person ceases to be a licensed retailer, must keep each record for 5 years after it is made.

## **Return**

**39Q.(1)** A person who was a licensed retailer for a financial year or part of a financial year, must lodge a return, under this section, with the commissioner.

Maximum penalty—100 penalty units.

(2) The return must be in the approved form and lodged before 1 August in the next financial year or a later date advised by the commissioner.

## **PART 4—OBLIGATIONS OF PURCHASERS OF DIESEL**

### **Purchaser's obligation to advise retailer of off-road purpose for diesel**

**39R.(1)** Before a person buys diesel in a retail quantity from a licensed retailer for an off-road purpose, the person must advise the retailer of the quantity that is to be used for an off-road purpose.

Maximum penalty—100 penalty units.

(2) However, subsection (1) does not apply if the person buys the diesel from a marine site.

### **Retail consumer's obligation to repay subsidy**

**39S.(1)** A retail consumer who purchases diesel under a sale made under section 39C(1) and uses it for an off-road purpose must repay to the commissioner the amount of the subsidy for the sale within 7 days after the end of the month in which it is used.

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

(3) Subsection (1) applies to the extent the fuel is used for an off-road purpose.

## **CHAPTER 3—BULK END USERS**

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

#### **Entitlement to subsidy**

**40.(1)** Bulk end users are, under this chapter, entitled to a subsidy for fuel purchased, and used as bulk end user fuel—

- (a) after 30 September 2000; and
- (b) while the user is a licensed bulk end user.

(2) However, if a claim for a subsidy for fuel is not made within 2 years after the fuel was used as bulk end user fuel, the entitlement to the subsidy ends.

### **Person may hold only 1 bulk end user licence**

**41.(1)** A person may hold only 1 bulk end user licence.

(2) The licence applies—

- (a) to each of the user's storage sites stated in the licence; and
- (b) for each delivery of fuel by a distributor into the running tank of a vehicle or equipment used by the user.

## **PART 2—SUBSIDY ENTITLEMENT**

### **When subsidies are claimed**

**42.(1)** A licensed bulk end user may lodge with the commissioner a claim in the approved form for the subsidy to which the user is entitled for each claim period.

(2) The claim period is 3 months or, if another period is decided by the commissioner under this section, the other period.

(3) The commissioner may decide a claim period for which a subsidy is payable to a licensed bulk end user—

- (a) on the commissioner's own initiative; or
- (b) on application, in the approved form, by the user.

(4) The commissioner may decide a claim period of less than 3 months only if the commissioner reasonably believes—

- (a) the cost of bulk end user fuel is a significant proportion of the total cost in conducting the licensed bulk end user's enterprise;



and

- (b) either of the following apply—
- (i) the amount of bulk end user fuel likely to be used in conducting the enterprise in the next 12 months will be at least 300 000 L or the amount prescribed under a regulation;
  - (ii) the costs of financing for the fuel arising from payment of a subsidy for a 3 month claim period is likely to cause the user significant financial hardship.

(5) If, on the commissioner's own initiative, the commissioner decides the claim period for a bulk end user at more than 3 months, or decides to refuse a bulk end user's application made under subsection (3)(b), the commissioner must give the user an information notice for the decision.

(6) If the commissioner decides a claim period at less than 3 months for a licensed bulk end user, the fee prescribed under a regulation is payable by the user—

- (a) for each claim period; and
- (b) when the subsidy for the claim period is paid to the user.

### **Paying subsidies**

**43.(1)** This section applies if a licensed bulk end user lodges a claim for a subsidy for a claim period with the commissioner under section 42.

(2) The commissioner must pay to the licensed bulk end user the subsidy to which the commissioner is satisfied the user is entitled for the claim period.

(3) The commissioner is not required to pay the subsidy before the 21st day of the month after the end of the claim period.

(4) Also, if the commissioner reasonably believes the licensed bulk end user has not complied with the licence conditions, the commissioner is not required to pay the subsidy until the commissioner is satisfied the user has complied with the conditions.

(5) If the commissioner decides the licensed bulk end user has not complied with the licence conditions, the commissioner must give the user an information notice for the decision.

## **PART 3—RECORD KEEPING AND RETURNS**

### **Records to be kept**

**44.(1)** A licensed bulk end user must keep records as required under this section.

Maximum penalty—100 penalty units.

**(2)** The records must include the following details for each purchase of fuel, other than retail fuel, by the person—

- (a) the date the fuel was purchased;
- (b) the quantity and type 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.

**(3)** Also, the records must include the following details—

- (a) for each storage site stated in the user's licence—the stock of fuel on hand at the end of each month;
- (b) for diesel not purchased as retail fuel—the way it is used;
- (c) the vehicles and equipment to which bulk end user fuel is delivered;
- (d) another matter prescribed under a regulation.

**(4)** The person, whether or not the person ceases to be a licensed bulk end user, must keep each record for 5 years after it is made.

### **Return**

**45.(1)** A person who was a licensed bulk end user for a financial year, or part of a financial year, must lodge a return, under this section, with the commissioner.

Maximum penalty—100 penalty units.

**(2)** The return must be in the approved form and lodged before

1 September in the next financial year or a later date advised by the commissioner.

## **CHAPTER 3A—LICENCES FOR RETAILER AND BULK END USER SUBSIDY SCHEMES**

### **PART 1—PRELIMINARY**

#### **Application of ch 3A**

**46.** This chapter applies for a licence for the subsidy schemes under chapters 2A and 3.

### **PART 2—APPLICATIONS FOR, AND ISSUE OF, LICENCES**

#### **Application for licence**

**47.(1)** An application by a retailer for a licence under this chapter (a “**retailer’s licence**”) or by a bulk end user for a licence under this chapter (a “**bulk end user’s licence**”) must 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**

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

**Criteria for granting application**

**49.(1)** The commissioner may grant the application only if the commissioner is satisfied the applicant is a fit and proper person and—

- (a) for a retailer’s licence—sells, or will sell, retail fuel; or
- (b) for a bulk end user’s licence—uses bulk end user fuel.

**(2)** In deciding whether or not a person is a fit and proper person, the commissioner may have regard to the following matters—

- (a) whether or not the person is likely to breach a licence condition;
- (b) whether the person has been convicted of an offence under this Act, other than an offence for which the rehabilitation period has expired and not been revived under the *Criminal Law (Rehabilitation of Offenders) Act 1986*;
- (c) whether the person has previously been refused a licence or has had a licence suspended or cancelled;
- (d) whether the person is affected by bankruptcy action;
- (e) whether the person is an externally administered body corporate within the meaning of the Corporations Law;<sup>5</sup>
- (f) if the applicant is a corporation—whether a related body corporate within the meaning of the Corporations Law,<sup>6</sup> or an executive officer of the corporation or a related body corporate, is a person mentioned in paragraphs (a) to (c);

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<sup>5</sup> The Corporations Law, section 9—

**“externally-administered body corporate”** means a body corporate:

- (a) that is being wound up;
- (b) in respect of property of which a receiver, or a receiver and manager, has been appointed (whether or not by a court) and is acting;
- (c) that is under administration;
- (ca) that has executed a deed of company arrangement that has not yet terminated; or
- (d) that has entered into a compromise or arrangement with another person the administration of which has not been concluded.

<sup>6</sup> The Corporations Law, section 9—

**“related body corporate”**, in relation to a body corporate, means a body corporate that is related to the first-mentioned body by virtue of section 50.

- (g) whether the person or, if the applicant is a corporation, an executive officer of the corporation or of a related body corporate, is ordinarily accustomed to acting under the direction of a person mentioned in paragraphs (a) to (c).

(3) For subsection (2)(d), a person is affected by bankruptcy action if the person—

- (a) is bankrupt; or
- (b) has compounded with creditors; or
- (c) has otherwise taken, or applied to take, advantage of any law about bankruptcy.

### **Decision on application**

**50.(1)** If the commissioner decides to grant the application, the commissioner must issue a licence and give a copy of it to the licensee.

(2) If, under section 52(b), the commissioner decides to impose conditions on the licence, the commissioner must give the licensee an information notice for the decision.

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

### **When licence becomes effective**

**51.(1)** A licence becomes effective on the day the commissioner is satisfied—

- (a) for a retailer's licence—the retailer started, or will start, selling retail fuel; or
- (b) for a bulk end user's licence—the bulk end user started using bulk end user fuel.

(2) The effective day must be stated in the licence.

(3) If the effective day is not the day stated in the application for the licence, the commissioner must give the licensee an information notice for the decision.

**Conditions of licence**

**52.** A licence is subject to the following conditions—

- (a) the licensee must comply with this Act;
- (b) other reasonable conditions—
  - (i) the commissioner considers appropriate to give effect to this Act; and
  - (ii) stated in the licence.

**Form of retailer's licence**

**53.** A retailer's licence must state the following particulars—

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

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

**54.** A bulk end user's licence must state the following particulars—

- (a) the licensee's name;
- (b) the date the licence becomes effective;
- (c) each storage site for the licence;
- (d) the licence number;
- (e) the licence conditions;
- (f) the claim periods for subsidies.

## **PART 3—CESSATION AND CANCELLATION OF LICENCES**

### **When licence ceases to have effect**

**55.(1)** A retailer's licence ceases to have effect when the holder of the licence ceases to sell retail fuel.

**(2)** A bulk end user's licence ceases to have effect when the holder of the licence ceases to use bulk end user fuel.

### **Cancellation of licence**

**56.** Each of the following is a ground for cancelling a licence—

- (a) the commissioner reasonably believes that if the licensee were to apply now for a 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 failed to pay an amount under this Act to the commissioner when it was payable.

### **Procedure for cancellation**

**57.(1)** If the commissioner believes a ground exists to cancel a 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 immediately give the licensee an information notice for the decision to cancel the licence.

(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**

**58.(1)** This section applies if the commissioner believes—

- (a) a ground exists to cancel a licence; and
- (b) it is necessary to immediately suspend the licence until the formal cancellation procedure is undertaken because an activity of the licensee has jeopardised, or if continued, could jeopardise, the integrity of the fuel subsidy arrangements established under 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 under section 57(1), the immediate suspension of the licence lasts until the first of the following happens—

- (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 under section 57(1) is not given within the 14 days, 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**

**59.(1)** This section applies if—

- (a) the holder of a licence is charged with an offence against this Act; 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 of the following happens—

- (a) the commissioner cancels the immediate suspension;
- (b) proceedings (including appeals) about the offence end 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 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 a 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.

## **PART 4—GENERAL PROVISIONS ABOUT LICENCES**

### **Changing conditions of licence**

**60.(1)** The commissioner may decide to change the conditions of a licence if the commissioner considers it is necessary or desirable to make the change to give effect to this Act.

(2) Subsection (1) does not apply to the condition mentioned in section 52(a).<sup>7</sup>

(3) If the commissioner decides to change the conditions of a licence, the commissioner must give the licensee an information notice for the decision and a copy of the amended licence.

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

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

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

**61.** The holder of a licence must comply with the conditions of the licence.

Maximum penalty—200 penalty units.

### **Changing other provisions of licence**

**62.** If the commissioner is given notice by a licensee that the licensee ceases, or starts, to operate a retail or storage site, the commissioner must amend the licence to give effect to the notice and give a copy of the amended licence to the licensee.

### **Licence not transferable**

**63.** A licence can not be transferred.

### **Duration of licence**

**64.** A licence continues in force until it ceases to have effect or is cancelled under this chapter.

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<sup>7</sup> Section 52 (Conditions of licence)

## **CHAPTER 4—REGISTERED PERSONS**

### **Claimants to be registered**

**75.(1)** 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.

**(2)** However, subsection (1) does not apply to a claim for a subsidy for fuel under chapter 2A or bulk end user fuel.

### **Application for registration**

**76.(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.

## **CHAPTER 5—ENFORCEMENT AND APPEALS**

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

#### *Division 1—Authorised persons*

### **Functions of authorised person**

**77.** 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**

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

**Powers of authorised persons**

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

**Limitation on powers of authorised person**

**80.** 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**

**81.** The commissioner may appoint as an authorised person a person whom the commissioner is satisfied is 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**

**82.(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**

**83.(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**

**84.(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*

#### **Power to enter places**

**85.(1)** An authorised person may enter a place if—

- (a) its occupier consents to the entry; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) it is a place used for conducting an enterprise and the entry is made when—
  - (i) the enterprise is being conducted; or
  - (ii) the place is otherwise open for entry; or
- (d) the entry is authorised by a warrant.

(2) For the purpose of asking the occupier of a place for consent to enter, an authorised person may, without the occupier's consent or a warrant—

- (a) enter land around the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the authorised person reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

(3) For subsection (1)(c), a place used for conducting an enterprise does not include a part of the place where a person resides.

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

**87.(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>8</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**

**88.(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

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<sup>8</sup> This section does not apply if entry is authorised by section 85 or 86(b).

- (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.

### **Application for warrant**

**89.(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**

**90.(1)** The magistrate may issue a warrant only if the magistrate is satisfied—

- (a) there are reasonable grounds for suspecting—
    - (i) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and
    - (ii) the evidence is at the place, or, within the next 7 days, may be at the place; or
  - (b) the warrant is needed to allow the authorised person to enter the place for monitoring or enforcing compliance with this Act.
- (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 purpose for which the warrant is issued; 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**

**91.(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**

**92.(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**

**93.(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) access, electronically or in another way, a system used at the place; 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, including the use of facilities, to exercise the authorised person's powers under paragraphs (a) to (f); or

*Example of 'facilities'—*

A photocopier for copying a document.

- (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**

**94.(1)** A person required to give reasonable help, including the use of facilities, under section 93(3)(g) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(2) If the requirement is to be complied with by the person giving information, or producing a document, it is not a reasonable excuse for the person to fail to give the information, or produce the document, because giving the information, or producing the document, might tend to incriminate the person.

(3) However, evidence of, or evidence directly or indirectly derived from, the information or document that might tend to incriminate the person is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for an offence about the falsity of the information or document.

**Failure to give information**

**95.(1)** A person of whom a requirement is made under section 93(3)(h) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

**(2)** It is not a reasonable excuse for the person to fail to comply with the requirement because giving the information might tend to incriminate the person.

**(3)** However, evidence of, or evidence directly or indirectly derived from, the information that might tend to incriminate the person is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for an offence about the falsity of the information.

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

**96.(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 exercising the authorised person's powers under this part, the person 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 authorised person's request or signal unless the driver has a reasonable excuse for not complying.

Maximum penalty—100 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—100 penalty units.

(6) For the application of section 109,<sup>9</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 in a reasonable way.

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

**97.(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 109, 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

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<sup>9</sup> Section 109 (Power to require information or production of documents)

powers under this part, the place where the vehicle is stopped is taken to be a place the authorised person has entered lawfully 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**

98. 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**

99. 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**

**100.** 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—100 penalty units.

**Powers to support seizure**

**101.(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 written notice; or
- (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by written notice 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—100 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**

**102.(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**

**103.(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 104.

### **Sale of seized fuel**

**104.(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; or

(b) the authorised person 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**

**105.(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**

**106.(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**

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

### **Failure to give name or address**

**108.(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—100 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 committed an offence against this Act; and
- (b) the person is not proved to have committed the offence.

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

**109.(1)** An authorised person, by written notice given to a person, may require the person—

- (a) to give to the authorised person, either orally or in writing, in the reasonable time and reasonable way stated in the notice, information in the person's knowledge about a matter stated in the notice; or
- (b) to produce to the authorised person, in the reasonable time and reasonable way stated in the notice, a document about a matter stated in the notice that is in the person's possession or control.

(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.

### **Failure to give information or produce document**

**110.(1)** A person of whom a requirement under section 109(1) is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(2) It is not a reasonable excuse for the person to fail to comply with the requirement because giving the information, or producing the document, might tend to incriminate the person.

(3) However, evidence of, or evidence directly or indirectly derived from, the information or document that might tend to incriminate the person is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for an offence about the falsity of the information or document.

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

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

Maximum penalty—100 penalty units.

**Power to require attendance of persons**

**112.(1)** An authorised person may, by written notice given to a person, require the person to attend before the authorised person to do either or both of the following—

- (a) give information about a matter stated in the notice;
- (b) produce a document about a matter stated in the notice.

**(2)** The notice must state a reasonable time and place for the person's attendance.

**(3)** The authorised person may require information given by the person to be given on oath or verified by statutory declaration.

**(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.

**(5)** The person, other than a licensee or a representative of a licensee, to whom the requirement is made is entitled to expenses, at the rate prescribed under a regulation, for attending before the authorised person.

**(6)** In subsection (5)—

“**licensee**” includes a former licensee.

**Power to record giving of information**

**112A.(1)** This section applies if a person is giving information to an authorised person under a requirement under section 112.

**(2)** With the person's knowledge, a recording may be made, in the way the authorised person considers appropriate, of questions asked by the authorised person and answers given by the person.

**(3)** If asked to do so by the person, the authorised person must give the person a copy of the recording.

**Failure to comply with requirement about attendance**

**113.(1)** A person of whom a requirement is made under section 112 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 give information or produce a document; or
  - (ii) state anything the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

(2) It is not a reasonable excuse for the person to fail to comply with the requirement because giving the information or producing the document might tend to incriminate the person.

(3) However, evidence of, or evidence directly or indirectly derived from, the information or document that might tend to incriminate the person is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for an offence about the falsity of the information or document.

#### *Division 4—General enforcement matters*

##### **Access to public records without fee**

**116.** An authorised person is not required to pay any fee to inspect or take copies of a record that is ordinarily open to inspection by members of the public.

##### **Forfeiture on conviction**

**117.(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**

**118.(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**

**119.(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**

**120.(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>10</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.

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<sup>10</sup> Division 3 (Powers of authorised persons)



***Division 5—General enforcement offences*****False or misleading statements**

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

Maximum penalty—100 penalty units.

(2) It is enough for a complaint for an offence against subsection (1) to state the statement made was ‘false or misleading’ to the person’s knowledge, without specifying which.

(3) In this section—

“**false or misleading**” includes false or misleading because of the omission of a statement.

**False, misleading or incomplete documents**

**123.(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—100 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**

**124.(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—100 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; and
- (c) if the person continues to obstruct the authorised person, the authorised person may ask a police officer to help the authorised person exercise the power.

## **PART 2—PROCEEDINGS**

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

**125.(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**

**126.(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**

**127.(1)** If a corporation is liable 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 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**

**128.** 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**

**129.(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—RECOVERY OF AMOUNTS, REPAYMENTS AND PENALTY AMOUNTS**

### **Commissioner may apply amounts payable under Act**

**129A.(1)** This section applies if an amount is payable by a person to the commissioner under this Act.

(2) Without limiting the commissioner's powers under this Act, the commissioner may apply all or part of a subsidy payable to the person in reduction of the amount payable.

### **Commissioner may register a charge to recover overpaid provisional subsidy**

**129B.(1)** This section applies if, under section 39K,<sup>11</sup> a debt is owing by a person to the commissioner.

(2) The amount of the debt, together with any interest or penalty amount relating to the debt payable by the person under this Act, is a charge on the person's property.

(3) The commissioner may, under an Act, register the charge.

(4) Immediately after the amount secured by the charge is paid to the commissioner, the commissioner must take the action necessary to release the charge.

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<sup>11</sup> Section 39K (Overpaid provisional subsidy amount)

**Commissioner may recover amounts from garnishee**

**129C.(1)** This section applies if—

- (a) under this Act, a debt is owing by a person (the **“debtor”**) to the commissioner; and
- (b) the commissioner reasonably believes another person (the **“garnishee”**)—
  - (i) holds, or may receive, an amount for or on account of the debtor; or
  - (ii) is liable, or may become liable, to pay an amount to the debtor; or
  - (iii) has authority to pay an amount to the debtor.

(2) Subsection (1)(b) applies even though the debtor’s entitlement to the amount may be subject to unfulfilled conditions.

(3) The commissioner may, by written notice (the **“garnishee notice”**) given to the garnishee, require the garnishee to pay to the commissioner before the date, or by the time or times, stated in the notice an amount or amounts (the **“garnishee amount”**) stated in the notice.

(4) Without limiting subsection (3), the garnishee notice may require the garnishee to pay to the commissioner an amount out of each payment the garnishee is, or becomes, liable, from time to time, to make to the debtor.

(5) The amount or total of the amounts payable under the garnishee notice must not be more than the debtor’s debt under this Act.

(6) The garnishee notice must not state a date, or time or times, for payment of an amount before the date or time or times the amount is held, or liable to be paid to the debtor, by the garnishee.

(7) The garnishee must comply with the garnishee notice unless the garnishee has a reasonable excuse.

Maximum penalty—100 penalty units.

(8) The commissioner must give to the debtor—

- (a) a copy of the garnishee notice; and
- (b) details in writing of the amount to which the notice relates.

**Duration of garnishee notice**

**129D.** The garnishee notice has effect until the garnishee amount is paid or the commissioner, by written notice given to the garnishee, withdraws the notice.

**Effect of discharge of liability on garnishee notice**

**129E.(1)** This section applies if—

- (a) the debtor's liability is discharged, whether wholly or partly, before the date for payment of the total of the amounts payable under the garnishee notice; and
- (b) the discharge affects the amount to be recovered from the garnishee.

**(2)** The commissioner must give written notice to the garnishee and the debtor—

- (a) informing them of that fact; and
- (b) stating the amount payable under the garnishee notice is reduced accordingly; and
- (c) withdrawing the garnishee notice if the debtor's liability is fully discharged.

**Effect of payment by garnishee**

**129F.** If the garnishee pays an amount to the commissioner under a garnishee notice, the garnishee—

- (a) is taken to have acted under the authority of the debtor and all other persons concerned; and
- (b) if the garnishee is under an obligation to pay an amount to the debtor—is taken to have satisfied the obligation to the extent of the payment.

**Person receiving subsidy without entitlement**

**130.(1)** This section applies if—

*Fuel Subsidy Act 1997*

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- (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 commissioner may, by written notice given to the claimant, require the claimant to pay to the commissioner—

- (a) the amount (the **“overpaid amount”**) that is the difference between the paid amount and the correct amount; and
- (b) a further amount (the **“incorrect payment penalty”**) if the commissioner is satisfied—
  - (i) the purchaser of the fuel for which the claim is made, because of a contravention of the Act, did not fully receive the benefit of the subsidy; or
  - (ii) the claim is materially false; or
  - (iii) the claimant sold the fuel other than in reliance on a licence.

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

(4) Despite subsection (2), 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.

(5) The claimant must pay to the commissioner the overpaid amount and the whole or part of the incorrect payment penalty the claimant is required to pay (the **“penalty payable”**) within the time stated in the notice.

(6) The stated time must not be less than 7 days after the claimant receives the notice.

(7) An amount not paid as required under subsection (5) is a debt owing to the commissioner.



**Person incorrectly receiving benefit of subsidy**

**131.(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 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; and
- (b) at least 1 of the following things applies to the purchaser—
  - (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 or permitted 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**”).

**(4A)** If a purchaser does not repay an amount to the commissioner as required under section 39A, the purchaser must pay to the commissioner a further amount (also the “**incorrect benefit penalty**”).

**(5)** The incorrect benefit penalty is an amount equal to the incorrect subsidy amount or the amount not repaid as required under section 39A.

**(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.

(7) The incorrect subsidy amount and the whole or part of the incorrect benefit penalty the purchaser is required to pay (the “**penalty payable**”), must be paid—

- (a) if this section applies to the purchaser under subsection (1)—within 7 days after the sale; or
- (b) if this section applies to the purchaser under subsection (2)—within 7 days after the thing mentioned in subsection (2)(b) applies to the purchaser.

(7A) An incorrect benefit penalty mentioned in subsection (4A) must be paid immediately after the amount of the subsidy for the sale was required to be repaid under section 39A.

(8) An amount not paid as required under subsection (7) or (7A) is a debt owing to the commissioner.

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

**132.(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**

**133.(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 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**

**134.** In this division—

“**court**” means—

- (a) for an appeal against a decision in schedule 1, part 1—the Supreme Court; or
- (b) for an appeal against a decision in schedule 1, part 2—a Magistrates Court.

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

“**review decision**” see section 139.

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

**135.(1)** Subsection (2) applies if the commissioner has failed to decide an application for a retailer’s licence—

- (a) if paragraph (b) does not apply—within 28 days after the application is made; or
- (b) if within 28 days 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) For this part, 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—

- (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) For this part, the failure is taken to be a decision refusing the application.

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

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

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

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

**137.(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 135 applies.

#### **Applying for review**

**138.(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**

**139.(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) If the commissioner fails to decide an application for a review within 60 days after the application is made, the commissioner is taken to have made a review decision confirming the decision.

### ***Subdivision 3—Appeals***

#### **Who may appeal**

**140.** 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**

**141.** 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**

**142.(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**

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

### **Hearing procedures**

**144.(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**

**145.(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**

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

## **CHAPTER 6—MISCELLANEOUS**

**Delegation by commissioner**

**147.** The commissioner may delegate the commissioner's powers under this Act to a person whom the commissioner is satisfied is an appropriately qualified officer or employee of the department or an appropriately qualified officer of another State or the Commonwealth.

**Approved forms**

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



**Person must not pretend to be licensee**

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

Maximum penalty—40 penalty units.

**Claims for subsidy**

**150.** A subsidy is not payable unless the claimant satisfies the commissioner that the claimant has not contravened section 12(1).

**Transportation records for bulk transport of fuel**

**151.(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 for inspection at all times during the transportation of the fuel, a record of the fuel (the “**fuel transport record**”) complying with subsections (3) and (4).

Maximum penalty—100 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.

(5) The driver, or if the driver is an employee, the driver's employer, must keep each fuel transport record for 5 years after the date the transportation of the fuel started.

Maximum penalty—100 penalty units.

### **No entitlement to subsidy if insufficient records**

**151A.(1)** This section applies if the commissioner decides the records kept by a person are not sufficient to satisfy the commissioner the person is entitled to a subsidy, or part of it, (the “**unsubstantiated amount**”).

(2) The commissioner must give the person an information notice about the decision.

(3) The person—

- (a) is taken not to be, or not to have been, entitled to the unsubstantiated amount; and
- (b) if a subsidy has been paid—must repay the unsubstantiated amount to the commissioner within 7 days after the information notice is given to the person.

(4) If the unsubstantiated amount is not paid as required under subsection (3)(b), it is a debt owing to the commissioner.

### **Form of records**

**151B.(1)** A person who is required under this Act to keep a record must keep the record—

- (a) in a way that is able to be readily produced to the commissioner; and
- (b) either—

- (i) in the form of a document written in English with information about amounts expressed in Australian currency; or
- (ii) in a form that can be readily converted or translated into the form mentioned in subparagraph (i).

(2) The commissioner may, by written notice, require a person to convert or translate a document into a written document in the English language and Australian currency.

(3) The notice must state the reasonable time for compliance with the requirement.

(4) The person must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(5) If the person does not comply with the requirement, the commissioner may—

- (a) have the document translated or converted; and
- (b) by written notice given to the person, require the person to pay to the commissioner, within 7 days after receiving the notice, the commissioner's reasonable costs and expenses incurred in translating or converting the document.

(6) If the person does not pay an amount required under subsection (5)(b), the amount is a debt owing to the commissioner.

### **Commissioner to give information notice for certain decisions**

**152.(1)** This section applies if—

- (a) the commissioner decides a prescribed section applies to a person; or
- (b) under a prescribed section, the commissioner decides to require a person to pay an amount.

(2) The commissioner must give the person an information notice for the decision.

(3) In this section—

**“prescribed section”** means section 17, 18, 39A, 39S, 130, 131, 165 or 171.

### **Recovery of amounts owing to commissioner**

**153.(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 5, 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**

**154.(1)** This section applies if—

- (a) a person has paid an amount to the commissioner; and
- (b) on an appeal under chapter 5, part 4, division 2, about a decision under section 152, 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**

**155.(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**

**156.(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—100 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**

**157.(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—100 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**

**158.(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) the chief executive officer of customs under the *Customs Administration Act 1985* (Cwlth) or a delegate of the chief executive officer; or
- (c) an entity administering a corresponding law.

(4) In this section—

**“corresponding law”** includes a law of the Commonwealth about the payment of subsidies for fuel.

**“information”** includes a document.

**Service of documents on commissioner**

**159.(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—

- (a) delivering it to—
  - (i) the commissioner; or
  - (ii) an agent of the commissioner; or
  - (iii) 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; or
- (b) posting it to a person mentioned in paragraph (a); or
- (c) another way prescribed under a regulation.

**Protecting officials from liability**

**159A.(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.

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

**Regulation-making power**

**160.(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 7—TRANSITIONALS

### PART 1—PRELIMINARY

#### Definitions for ch 7

**161.** In this chapter—

“**interim guidelines**” means the guidelines titled ‘Transitional arrangements for fuel subsidy scheme’ issued by the commissioner.<sup>12</sup>

“**transitional period**”, for chapter 2, 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—RETAILERS

#### Purpose of pt 2

**162.** The purpose of this part is to give effect to Parliament’s intention under chapter 2 for fuel purchased in the transitional period by retailers.

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<sup>12</sup> A copy of the guidelines may be obtained at the commissioner’s office.



**Application of ch 2 in transitional period**

**163.(1)** This section states how chapter 2 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 164.

**When part ceases to apply to persons**

**164.** 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**

**165.(1)** This section applies if—

- (a) in the transitional period, a person purchases fuel under a net sale for chapter 2; 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.

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## PART 4—TRANSITIONAL PROVISIONS FOR GST AND RELATED MATTERS ACT 2000

### Person receiving reimbursement for surcharge

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

- (a) before 1 July 2000, the seller of the fuel did not recover from the purchaser the part of the sale price that is an 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 as in force when the sale was made; and
- (b) on or after 1 July 2000, the purchaser receives, other than under this Act or a corresponding law, an amount for the surcharge for the fuel (the “**reimbursed amount**”).

**(2)** The purchaser must pay the reimbursed amount to the commissioner within 7 days after the amount is received.

**(3)** An amount not paid as required under subsection (2) is a debt owing to the commissioner.

**(4)** In this section—

“**surcharge**” has the meaning it had under this Act immediately before the commencement of this section.<sup>13</sup>

### Continuation of rights and obligations under Act for particular sellers and purchasers of diesel

**172.(1)** This section applies to a purchase of diesel if—

- (a) before 1 July 2000, the seller of the diesel did not recover from the purchaser the part of the sale price that is an amount equal to the subsidy for the sale, because the purchase of the diesel was, or

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<sup>13</sup> Immediately before the commencement, “surcharge” was defined as follows—  
 ‘ “**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  
 (b) the amount per litre prescribed under a regulation.’

purportedly was, a net sale for chapter 2 as in force when the sale was made; and

- (b) on or after 1 July 2000, the seller or purchaser does or does not do something that, but for the repeal of chapter 2, would have constituted a contravention of this Act.

(2) Despite the repeal of chapter 2, this Act, as in force immediately before the repeal, applies in relation to the seller and purchaser.

(3) Subsection (2) does not limit the *Acts Interpretation Act 1954*, section 20.<sup>14</sup>

## **CHAPTER 8—TRANSITIONAL PROVISIONS FOR FUEL SUBSIDY AMENDMENT ACT 2000**

### **Record of stock on hand—bulk end users**

**173.** A person who, as a bulk end user, is entitled to a subsidy for fuel used as bulk end user fuel on 1 October 2000 must, until 1 October 2005, keep a record of the types of fuel, and quantities of each type, on hand in the user's storage sites at the beginning of 1 October 2000.

Maximum penalty—100 penalty units.

### **Record of stock on hand—retailers**

**173A.** A person who, as a retailer, is entitled to a subsidy for sales of retail fuel made on 1 December 2000, must, until 1 December 2005, keep a record of the types of fuel, and quantities of each type, on hand at the beginning of 1 December 2000.

Maximum penalty—100 penalty units.

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<sup>14</sup> *Acts Interpretation Act 1954*, section 20 (Saving of operation of repealed Act etc.)

**Continuation of rights and obligations under Act for particular sellers and purchasers of fuel**

**174.(1)** This section applies to a purchase of fuel if—

- (a) before 1 October 2000, the seller of the fuel did not recover from the purchaser the part of the sale price that is an amount equal to the subsidy for the sale, because the purchase of the fuel was, or purportedly was, a net sale for chapter 3 as in force when the sale was made; and
- (b) on or after 1 October 2000, the seller or purchaser does or does not do something that, but for the repeal of chapter 3, would have constituted a contravention of this Act.

**(2)** Despite the repeal of chapter 3, but subject to subsections (3) to (4), this Act, as in force immediately before the repeal, applies in relation to the seller and purchaser.

**(3)** Section 72, as in force immediately before the repeal, does not apply for the financial year ended 30 June 2000.

**(4)** For subsection (2), section 131, as in force immediately before the repeal, applies as if the reference to a purchaser who was not the holder of the appropriate licence includes a person who, although the person satisfied the seller the purchaser was a licensed bulk end user under the interim guidelines, was not entitled to a bulk end user's licence under chapter 3 as in force immediately before the repeal.

**(5)** Subsection (2) does not limit the *Acts Interpretation Act 1954*, section 20.<sup>15</sup>

**Claims by bulk end users**

**175.** Despite section 43,<sup>16</sup> a subsidy for a bulk end user is not payable before 21 December 2000.

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<sup>15</sup> *Acts Interpretation Act 1954*, section 20 (Saving of operation of repealed Act etc.)

<sup>16</sup> Section 43 (Paying subsidies)

**No retrospective criminal liability**

**176.** Chapter 3 and section 173 are not effective to impose criminal liability retrospectively.

**Paying start-up allowance**

**177.(1)** This section applies to a licensed retailer whose retailer's licence becomes effective on 1 December 2000.

**(2)** The commissioner must pay a start-up allowance of \$200 to the retailer.

**(3)** The commissioner must pay the start-up allowance once only, when the commissioner first pays a provisional subsidy to the retailer.

**Retailer's licence not effective before 1 December 2000**

**178.** Despite section 51, a retailer's licence is not effective before 1 December 2000.

**SCHEDULE 1****DECISIONS SUBJECT TO REVIEW AND APPEAL**

section 134

**PART 1—DECISIONS APPEALABLE TO SUPREME COURT**

<b>Section</b>	<b>Description of decision</b>
24(2)	Refusing application for a retailer's licence
30(2)	Cancelling a retailer's licence
31(2)	Suspending a retailer's licence
32(2)	Suspending a retailer's licence
50(3)	Refusing application for a licence
57(2)	Cancelling a licence
58(2)	Suspending a licence
59(2)	Suspending a licence

**PART 2—DECISIONS APPEALABLE TO MAGISTRATES COURT**

<b>Section</b>	<b>Description of decision</b>
8(2)	Requiring person to refund a subsidy
25(1)(b)	Fixing effective date for a retailer's licence
26(2)	Subjecting a retailer's licence to conditions
34(1)	Changing conditions of a retailer's licence

## SCHEDULE 1 (continued)

- 39F(4) Deciding anticipated annual subsidy or refusing a request to decide an anticipated annual subsidy
- 39G(1) Changing dates for paying a provisional subsidy
- 39H(1) Requiring a retailer to give a written guarantee
- 39I(3) Requiring a retailer to lodge claims on stated day
- 39L(2) Deciding a licensed retailer has not complied with the licence conditions
- 42(3) Deciding a claim period for a bulk end user
- 43(4) Deciding a licensed bulk end user has not complied with the licence conditions
- 50(2) Deciding to impose conditions on a licence
- 51(3) Fixing effective date for a licence other than as applied for
- 60(1) Changing conditions of a licence
- 103(1)(c) Forfeiting a thing to the commissioner
- 151A(1) Deciding records not sufficient to satisfy commissioner that subsidy amount paid was correct
- 152(1) Requiring a person to pay an amount under a prescribed section

**SCHEDULE 2**

**FUEL**

schedule 3, definition “fuel”

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(CWLTH)**

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**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 148.

**“associate”**, of a bulk end user, means an independent contractor, joint venturer or partner of the bulk end user.

**“authorised person”** means a person who is an authorised person for this Act.

**“bulk end user”** see section 4.

**“bulk end user fuel”** see section 4A.

**“bulk end user’s licence”** see section 47(1).

**“bulk end user quantity”** see section 4B.

**“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 87.

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

**“debtor”** see section 129C(1)(a).

## SCHEDULE 3 (continued)

“**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.

“**document certification requirement**” see section 109.

“**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.

“**fuel**” means—

- (a) for chapter 2—
  - (i) 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
  - (ii) 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
  - (iii) the goods prescribed under a regulation; or
- (b) for chapters 2A and 3—motor spirit and diesel of the type ordinarily sold by a retailer.

“**fuel tank**” includes a container, whether or not a fixture, used for storing fuel, but does not include a running tank.

“**fuel transport record**” see section 151.

“**garnishee**” see section 129C(1)(b).

“**garnishee amount**” see section 129C(3).

“**garnishee notice**” see section 129C(3).

## SCHEDULE 3 (continued)

**“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 131.

**“incorrect payment penalty”** see section 130.

**“incorrect subsidy amount”** see section 131.

**“indexation factor”**, for a financial year, means the forecast increase in 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.

**“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).

**“marine purpose”** means any use of diesel by or on a vessel that ordinarily travels by sea.

**“marine site”** means a site from which a retailer mainly sells fuel for marine purposes.

**“net sale”** see section 7.

**“off-road purpose”** see section 4C.

**“overpaid amount”** see section 130.

**“penalty amount”** means an incorrect benefit penalty or incorrect payment penalty.

**“personal details requirement”** see section 107.

**“place of seizure”** see section 99.

## SCHEDULE 3 (continued)

**“provisional subsidy”**, for a licensed retailer, means the provisional subsidy payable to the retailer under chapter 2A, part 2.

**“public road”** means a road, in any State, that is open to the public, whether or not on payment of money.

**“reasonably believes”** means believes on grounds that are reasonable in the circumstances.

**“registered recreational ship”** means a registered recreational ship under the *Transport Operations (Marine Safety) Act 1994*.

**“retail consumer”** means a person who purchases retail fuel.

**“retailer”** see section 5.

**“retailer’s licence”** for—

- (a) chapter 2—see section 21(1); or
- (b) chapter 2A—see section 47(1).

**“retail fuel”** see section 5A.

**“retail quantity”** see section 6.

**“retail site”** means—

- (a) for chapter 2—a retail site stated in a retailer’s licence; or
- (b) for chapter 2A—a fixed site in Queensland operated by a retailer for selling fuel.

**“running tank”** means that part of machinery in which fuel for powering the machinery is stored.

**“special warrant”** see section 91.

**“storage site”**, for a person, means a fuel tank at a site in Queensland, whether or not the fuel tank is owned by the person, that is—

- (a) used only for storing fuel for use by the person; and
- (b) operated and controlled by the person.

**“subsidy”**—

- (a) for a sale of retail fuel or use of bulk end user fuel—means the amount calculated by applying the subsidy rate for the fuel at the

## SCHEDULE 3 (continued)

time of sale or use to the quantity of fuel sold or used; and

- (b) for a sale of retail fuel—includes a provisional subsidy.

**“subsidy benefit”**, for a sale of retail fuel, means the amount calculated by applying the subsidy benefit rate for the fuel at the time of the sale to the quantity of fuel sold.

**“subsidy benefit rate”**, for fuel, means—

- (a) unless a rate is prescribed under paragraph (b)—8.354c per litre;  
or
- (b) the rate prescribed under a regulation.

**“subsidy rate”**, for fuel, means—

- (a) for chapter 2—8.354c per litre; or
- (b) for chapters 2A and 3—8.4c per litre.

**“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). Accordingly, this reprint includes all amendments that commenced operation on or before 15 November 2000. 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
amdt	=	amendment	prov	=	provision
ch	=	chapter	pt	=	part
def	=	definition	pubd	=	published
div	=	division	R[X]	=	Reprint No.[X]
exp	=	expires/expired	RA	=	Reprints Act 1992
gaz	=	gazette	reloc	=	relocated
hdg	=	heading	renum	=	renumbered
ins	=	inserted	rep	=	repealed
lap	=	lapsed	s	=	section
notfd	=	notified	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
om	=	omitted	SIA	=	Statutory Instruments Act 1992
orig	=	original	SIR	=	Statutory Instruments Regulation 1992
p	=	page	SL	=	subordinate legislation
para	=	paragraph	sub	=	substituted
prec	=	preceding	unnum	=	unnumbered
pres	=	present			
prev	=	previous			

### 4 Table of earlier reprints

#### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	6 November 1997
1A	to Act No. 13 of 1999	8 April 1999
1B	to Act No. 49 of 1999	9 November 1999
2	to Act No. 20 of 2000	26 July 2000

### 5 Tables in earlier reprints

#### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Corrected minor errors	2

## **6 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)

as amended by—

### **Revenue and Other Legislation Amendment Act 1999 No. 13 ss 1–2(1)–(5) pt 3**

date of assent 30 March 1999

ss 7–9, 12 commenced 10 December 1997 (see s 2(2))

ss 14–15, 18–19 commenced 31 July 1998 (see s 2(5))

s 17 commenced 22 December 1997 (see s 2(3))

s 20 commenced 31 January 1998 (see s 2(4))

remaining provisions commenced on date of assent (see s 2 (1))

### **Revenue and Other Legislation Amendment Act (No. 2) 1999 No. 49 ss 1, 2(3) pt 2**

date of assent 4 November 1999

commenced on date of assent

### **Police Powers and Responsibilities Act 2000 No. 5 ss 1–2, 461 (prev s 373) sch 3**

date of assent 23 March 2000

ss 1–2 commenced on date of assent (see s 2(2))

remaining provisions commenced 1 July 2000 (see s 2(1), (3) and 2000 SL No. 174)

### **GST and Related Matters Act 2000 No. 20 ss 1, 2(4), 7, pt 4 sch 2**

date of assent 23 June 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2(4))

### **Fuel Subsidy Amendment Act 2000 No. 47**

date of assent 25 October 2000

pts 1–2 commenced 10 July 2000 (see s 2(1))

pt 3 commenced 1 October 2000 (see s 2(2))

pt 4 commenced 25 October 2000 (see s 2(3))

pt 5 commences 1 December 2000 (see s 2(4))

## **7 List of annotations**

**This reprint has been renumbered—see table of renumbered provisions in endnote 9.**

### **Preamble**

om 2000 No. 20 s 8

### **Title**

amd 2000 No. 47 s 19

**Act binds all persons**

s 3A ins 2000 No. 47 s 20

**Meaning of “bulk end user”**

s 4 amd 1999 No. 49 s 4; 2000 No. 20 s 9  
sub 2000 No. 47 s 8

**Meaning of “bulk end user fuel”**

s 4A ins 2000 No. 47 s 8  
amd 2000 No. 47 s 69

**Meaning of “bulk end user quantity”**

s 4B ins 2000 No. 47 s 8

**Meaning of “off road-purpose”**

s 4C ins 2000 No. 47 s 4  
amd 2000 No. 47 ss 21, 70

**Meaning of “retailer”**

s 5 prev s 5 om 2000 No. 20 s 10  
pres s 5 amd 2000 No. 47 ss 22, 71

**Meaning of “retail fuel”**

s 5A ins 2000 No. 47 s 23  
amd 2000 No. 47 s 72

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

s 6 amd 2000 No. 47 ss 24, 73

**Meaning of “net sale” for ch 2**

s 7 amd 2000 No. 20 s 7 sch 2  
sub 2000 No. 47 ss 9, 74

**Only 1 subsidy payable for fuel**

s 8 amd 1999 No. 49 s 5; 2000 No. 20 s 7 sch 2; 2000 No. 47 ss 10, 75

**Own use**

s 10 amd 2000 No. 20 s 7 sch 2  
om 2000 No. 47 s 25

**CHAPTER 2—RETAILERS**

ch hdg prev ch hdg om 2000 No. 20 s 11  
pres ch hdg om 2000 No. 47 s 76

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

pt hdg prev pt hdg om 2000 No. 20 s 11  
pres pt hdg om 2000 No. 47 s 76

**Purpose of ch 2**

s 11 prev s 11 om 2000 No. 20 s 11  
pres s 11 om 2000 No. 47 s 76

**Sales of fuel to licensed retailers**

s 12 prev s 12 om 2000 No. 20 s 11  
pres s 12 om 2000 No. 47 s 76

**Licensed retailer must not recover particular amounts**

**s 13** prev s 13 om 2000 No. 20 s 11  
 pres s 13 ins 2000 No. 20 s 13  
 om 2000 No. 47 s 76

**Claim not subsidy—net sales**

**s 14** prev s 14 amd 1999 No. 13 s 8  
 om 2000 No. 20 s 11  
 pres s 14 om 2000 No. 47 s 76

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

**s 15** prev s 15 om 2000 No. 20 s 11  
 pres s 15 om 2000 No. 47 s 76

**Net sales by licensed retailers**

**s 16** prev s 16 om 2000 No. 20 s 11  
 pres s 16 amd 2000 No. 20 ss 14, 7 sch 2; 2000 No. 47 s 11  
 om 2000 No. 47 s 76

**Other sales by licensed retailers**

**s 17** prev s 17 om 2000 No. 20 s 11  
 pres s 17 amd 2000 No. 20 s 7 sch 2; 2000 No. 47 s 11  
 om 2000 No. 47 s 76

**Non-licensed use by licensed retailers**

**s 18** prev s 18 om 2000 No. 20 s 11  
 pres s 18 om 2000 No. 47 s 76

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

**s 19** prev s 19 amd 1999 No. 13 s 9  
 om 2000 No. 20 s 11  
 pres s 19 om 2000 No. 47 s 76

**Notional sales**

**s 20** prev s 20 om 2000 No. 20 s 11  
 pres s 20 amd 2000 No. 20 s 7 sch 2; 2000 No. 47 s 11  
 om 2000 No. 47 s 76

**PART 2—RETAILERS' LICENCES**

**pt hdg** prev pt hdg om 2000 No. 20 s 11  
 pres pt hdg om 2000 No. 47 s 76

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

**div hdg** prev div hdg om 2000 No. 20 s 11  
 pres div hdg om 2000 No. 47 s 76

**Application for retailer's licence**

**s 21** prev s 21 om 2000 No. 20 s 11  
 pres s 21 om 2000 No. 47 s 76

**Consideration of application**

**s 22** prev s 22 om 2000 No. 20 s 11  
 pres s 22 om 2000 No. 47 s 76

**Condition for granting application**

- s 23** prev s 23 om 2000 No. 20 s 11  
pres s 23 om 2000 No. 47 s 76

**Decision on application**

- s 24** prev s 24 om 2000 No. 20 s 11  
pres s 24 om 2000 No. 47 s 76

**When licence becomes effective**

- s 25** prev s 25 om 2000 No. 20 s 11  
pres s 25 om 2000 No. 47 s 76

**Conditions of licence**

- s 26** prev s 26 om 2000 No. 20 s 11  
pres s 26 om 2000 No. 47 s 76

**Form of retailer's licence**

- s 27** prev s 27 amd 1999 No. 13 s 10  
om 2000 No. 20 s 11  
pres s 27 om 2000 No. 47 s 76

**Division 2—Surrender and cancellation of retailers' licences**

- div hdg** prev div hdg om 2000 No. 20 s 11  
pres div hdg om 2000 No. 47 s 76

**Surrender of retailer's licence**

- s 28** prev s 28 om 2000 No. 20 s 11  
pres s 28 om 2000 No. 47 s 76

**Cancellation of retailer's licence**

- s 29** prev s 29 om 2000 No. 20 s 11  
pres s 29 om 2000 No. 47 s 76

**Procedure for cancellation**

- s 30** prev s 30 om 2000 No. 20 s 11  
pres s 30 om 2000 No. 47 s 76

**Immediate suspension pending formal cancellation procedure**

- s 31** prev s 31 om 2000 No. 20 s 11  
pres s 31 om 2000 No. 47 s 76

**Immediate suspension after charging with offence**

- s 32** prev s 32 om 2000 No. 20 s 11  
pres s 32 om 2000 No. 47 s 76

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

- s 33** prev s 33 amd 1999 No. 13 s 13  
om 2000 No. 20 s 11  
pres s 33 om 2000 No. 47 s 76

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

- div hdg** prev div hdg om 2000 No. 20 s 11  
pres div hdg om 2000 No. 47 s 76

**Changing conditions of retailer's licence**

- s 34** prev s 34 amd 1999 No. 13 s 11  
om 2000 No. 20 s 11  
pres s 34 amd 2000 No. 20 s 7 sch 2  
pres s 34 om 2000 No. 47 s 76

**Licensee must comply with licence conditions**

- s 35** prev s 35 om 2000 No. 20 s 11  
pres s 35 om 2000 No. 47 s 76

**Retailer's licence not transferable**

- s 36** prev s 36 om 2000 No. 20 s 11  
pres s 36 om 2000 No. 47 s 76

**When licensee taken not to have contravened licence condition**

- s 36A** ins 1999 No. 13 s 12  
om 2000 No. 20 s 11

**Duration of retailer's licence**

- s 37** prev s 37 om 2000 No. 20 s 11  
pres s 37 om 2000 No. 47 s 76

**PART 3—GENERAL**

- pt hdg** prev pt hdg om 2000 No. 20 s 11  
pres pt hdg om 2000 No. 47 s 76

**Records of sales to be kept**

- s 38** prev s 38 amd 1999 No. 49 s 8  
om 2000 No. 20 s 11  
pres s 38 amd 2000 No. 20 s 15  
om 2000 No. 47 s 76

**Records to be kept by licensed retailers**

- s 39** prev s 39 amd 1999 No. 49 s 6  
om 2000 No. 20 s 11  
pres s 39 amd 1999 No. 49 s 9  
sub 2000 No. 20 s 16  
om 2000 No. 47 s 76

**Retail consumer's obligation to repay subsidy**

- s 39A** ins 2000 No. 47 s 5  
om 2000 No. 47 s 76

**CHAPTER 2A—RETAILERS**

- ch 2A (ss 39B–39S)** ins 2000 No. 47 s 26

**CHAPTER 3—BULK END USERS**

- ch hdg** sub 2000 No. 47 s 12

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

- pt hdg** sub 2000 No. 47 s 12

**Entitlement to subsidy**

**s 40** prev s 40 amd 1999 No. 49 s 7  
om 2000 No. 20 s 11  
pres s 40 sub 2000 No. 47 s 12

**Person may hold only 1 bulk end user licence**

**s 41** sub 2000 No. 47 s 12

**PART 2—SUBSIDY ENTITLEMENT**

**pt hdg** sub 2000 No. 47 s 12

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

**div hdg** om 2000 No. 47 s 12

**When subsidies are claimed**

**s 42** prev s 42 om 2000 No. 20 s 12  
pres s 42 sub 2000 No. 47 s 12

**Paying subsidies**

**s 43** sub 2000 No. 47 s 12

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

**div hdg** om 2000 No. 47 s 12

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

**div hdg** om 2000 No. 47 s 12

**Division 4—General provisions about bulk end users' licences**

**div hdg** om 2000 No. 47 s 12

**PART 3—RECORD KEEPING AND RETURNS**

**pt hdg** sub 2000 No. 47 s 12

**Records to be kept**

**s 44** sub 2000 No. 47 s 12

**Return**

**s 45** amd 2000 No. 20 ss 18, 7 sch 2  
sub 2000 No. 47 s 12

**CHAPTER 3A—LICENCES FOR RETAILER AND BULK END USER  
SUBSIDY SCHEMES**

**ch hdg** ins 2000 No. 47 s 27

**PART 1—PRELIMINARY**

**pt hdg** ins 2000 No. 47 s 27

**Application of ch 3A**

**s 46** prev s 46 amd 2000 No. 20 s 7 sch 2  
om 2000 No. 47 s 12  
pres s 46 ins 2000 No. 47 s 27

**PART 2—APPLICATIONS FOR, AND ISSUE OF, LICENCES**

**pt hdg** ins 2000 No. 47 s 27

**Application for licence**

- s 47**      prev s 47 om 2000 No. 47 s 12  
              pres s 47 ins 2000 No. 47 s 27

**Consideration of application**

- s 48**      prev s 48 amd 2000 No. 20 s 7 sch 2  
              om 2000 No. 47 s 12  
              pres s 48 ins 2000 No. 47 s 27

**Criteria for granting application**

- s 49**      prev s 49 om 2000 No. 47 s 12  
              pres s 49 ins 2000 No. 47 s 27

**Decision of application**

- s 50**      prev s 50 om 2000 No. 47 s 12  
              pres s 50 ins 2000 No. 47 s 27

**When licence becomes effective**

- s 51**      prev s 51 amd 2000 No. 20 s 19  
              om 2000 No. 47 s 12  
              pres s 51 ins 2000 No. 47 s 27

**Conditions of licence**

- s 52**      prev s 51 om 2000 No. 47 s 12  
              pres s 51 ins 2000 No. 47 s 27

**Form of retailer's licence**

- s 53**      prev s 53 om 2000 No. 47 s 12  
              pres s 53 ins 2000 No. 47 s 27

**Form of bulk end user's licensee**

- s 54**      prev s 54 amd 2000 No. 20 ss 20, 7 sch 2  
              om 2000 No. 47 s 12  
              pres s 54 ins 2000 No. 47 s 27

**PART 3—CESSATION AND CANCELLATION OF LICENCES**

- pt hdg**     ins 2000 No. 47 s 27

**When licence ceases to have effect**

- s 55**      prev s 55 om 2000 No. 47 s 12  
              pres s 55 ins 2000 No. 47 s 27

**Cancellation of licence**

- s 56**      prev s 56 om 2000 No. 47 s 12  
              pres s 56 ins 2000 No. 47 s 27

**Procedure for cancellation**

- s 57**      prev s 57 om 2000 No. 47 s 12  
              pres s 57 ins 2000 No. 47 s 27

**Immediate suspension pending formal cancellation procedure**

- s 58**      prev s 58 om 2000 No. 47 s 12  
              pres s 58 ins 2000 No. 47 s 27



**Immediate suspension after charging with offence**

**s 59** prev s 59 ins om 2000 No. 47 s 12  
pres s 59 ins 2000 No. 47 s 27

**PART 4—GENERAL PROVISIONS ABOUT LICENCES**

**pt hdg** ins 2000 No. 47 s 27

**Changing conditions of licence**

**s 60** prev s 60 om 2000 No. 47 s 12  
pres s 60 ins 2000 No. 47 s 27

**Licensee must comply with licence conditions**

**s 61** prev s 61 om 2000 No. 47 s 12  
pres s 61 ins 2000 No. 47 s 27

**Changing other provisions of licence**

**s 62** prev s 62 om 2000 No. 47 s 12  
pres s 62 ins 2000 No. 47 s 27

**Licence not transferable**

**s 63** prev s 63 om 2000 No. 47 s 12  
pres s 63 ins 2000 No. 47 s 27

**Duration of licence**

**s 64** prev s 64 om 2000 No. 47 s 12  
pres s 64 ins 2000 No. 47 s 27

**Immediate suspension pending formal cancellation procedure**

**s 65** om 2000 No. 47 s 12

**Immediate suspension after charging with offence**

**s 66** om 2000 No. 47 s 12

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

**s 67** sub 1999 No. 13 s 14  
om 2000 No. 47 s 12

**Changing conditions of bulk end user's licence**

**s 68** amd 2000 No. 20 s 7 sch 2  
om 2000 No. 47 s 12

**Licensee must comply with licence conditions**

**s 69** om 2000 No. 47 s 12

**Bulk end user's licence not transferable**

**s 70** om 2000 No. 47 s 12

**Duration of bulk end user's licence**

**s 71** om 2000 No. 47 s 12

**Returns by licensed bulk end users**

**s 72** prev s 72 om 2000 No. 20 s 17  
pres s 72 amd 1999 No. 13 s 15  
om 2000 No. 47 s 12

**Records of sales to be kept**

**s 73**      amd 1999 No. 13 s 16; 1999 No. 49 s 10; 2000 No. 20 s 21  
              om 2000 No. 47 s 12

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

**s 74**      amd 1999 No. 49 s 11  
              om 2000 No. 47 s 12

**CHAPTER 4—REGISTERED PERSONS**

**pt hdg**    om 2000 No. 47 s 76

**Claimants to be registered**

**s 75**      amd 2000 No. 47 s 28  
              om 2000 No. 47 s 76

**Application for registration**

**s 76**      om 2000 No. 47 s 76

**Appointment of authorised persons**

**s 81**      amd 2000 No. 47 s 29

**Power to enter places**

**s 85**      sub 2000 No. 47 s 30

**Entry with consent or warrant**

**s 86**      om 2000 No. 47 s 30

**Issue of warrant**

**s 90**      amd 2000 No. 47 s 31

**General powers after entering places**

**s 93**      amd 2000 No. 47 s 32

**Failure to help authorised person**

**s 94**      amd 2000 No. 47 s 33

**Failure to give information**

**s 95**      amd 2000 No. 47 s 34

**Stopping vehicle requiring fuel transport record**

**s 96**      amd 2000 No. 47 s 35

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

**s 97**      amd 2000 No. 47 s 36

**Tampering with seized things**

**s 100**     amd 2000 No. 47 s 37

**Powers to support seizure**

**s 101**     amd 2000 No. 47 s 38

**Sale of seized fuel**

**s 104**     amd 2000 No. 47 s 39

**Power to require name and address**

**s 107**     amd 2000 No. 5 s 461 sch 3

**Failure to give name or address**

- prov hdg** sub 1999 No. 13 s 17(1)  
**s 108** prev s 108 amd 1999 No. 13 s 17(2)  
 om 2000 No. 20 s 22  
 pres s 108 amd 2000 No. 47 s 40

**Power to require information or production of documents**

- prov hdg** amd 2000 No. 47 s 41(1)  
**s 109** amd 2000 No. 47 s 41(2)–(3)

**Failure to give information or produce document**

- prov hdg** amd 2000 No. 47 s 42(1)  
**s 110** amd 2000 No. 47 s 42(2)–(4)

**Failure to certify copy of document**

- s 111** amd 2000 No. 47 s 43

**Power to require attendance of persons**

- s 112** sub 2000 No. 47 s 44

**Power to record giving of information**

- s 112A** ins 2000 No. 47 s 44

**Failure to comply with requirement about attendance**

- s 113** amd 2000 No. 47 s 45

**Power to require financial records**

- s 114** om 2000 No. 47 s 46

**Effect of compliance with financial records requirement**

- s 115** om 2000 No. 47 s 46

**Access to public records without fee**

- s 116** prev s 116 om 2000 No. 47 s 46  
 pres s 116 ins 2000 No. 47 s 47

**False or misleading statements**

- s 122** sub 2000 No. 47 s 49

**False, misleading or incomplete documents**

- s 123** amd 2000 No. 47 s 50

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- s 124** amd 2000 No. 5 s 461 sch 3; 2000 No. 47 s 50

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

- s 127** amd 2000 No. 47 ss 51, 77

**Evidentiary aids**

- s 128** prev s 128 om 2000 No. 5 s 461 sch 3

**PART 3—RECOVERY OF AMOUNTS, REPAYMENTS AND PENALTY AMOUNTS**

- pt hdg** sub 2000 No. 47 s 52

**Commissioner may apply amounts payable under Act**

- s 129A** ins 2000 No. 47 s 53

**Commissioner may register a charge to recover overpaid provisional subsidy****s 129B** ins 2000 No. 47 s 53**Commissioner may recover amounts from garnishee****s 129C** ins 2000 No. 47 s 53**Duration of garnishee notice****s 129D** ins 2000 No. 47 s 53**Effect of discharge of liability on garnishee notice****129E** ins 2000 No. 47 s 53**Effect of payment by garnishee****s 129F** ins 2000 No. 47 s 53**Person receiving subsidy without entitlement****s 130** amd 1999 No. 49 s 12  
sub 2000 No. 47 s 78**Person incorrectly receiving benefit of subsidy****s 131** amd 1999 No. 49 s 13; 2000 No. 20 ss 23, 7 sch 2; 2000 No. 47 s 6;  
2000 No. 47 s 54  
om 2000 No. 47 s 78**Definitions for div 2****s 134** amd 2000 No. 47 s 55**Failure to make decision taken to be decision****s 135** amd 2000 No. 20 s 7 sch 2; 2000 No. 47 s 56**Review decision****s 139** amd 2000 No. 47 s 57**Starting appeal****s 142** prev s 142 om 2000 No. 5 s 461 sch 3**Delegation by commissioner****s 147** amd 2000 No. 47 s 58**Person must not pretend to be licensee****s 149** om 2000 No. 47 s 79**Claims for subsidy****s 150** sub 2000 No. 20 s 25  
amd 2000 No. 47 s 13  
om 2000 No. 47 s 79**Transportation records for bulk transport of fuel****s 151** amd 2000 No. 47 s 59**No entitlement to subsidy if insufficient records****s 151A** ins 2000 No. 47 s 60**Form of records****s 151B** ins 2000 No. 47 s 60

**Commissioner to give information notice for certain decisions****prov hdg** sub 1999 No. 49 s 15(1)**s 152** amd 1999 No. 49 s 15(2)–(3); 2000 No. 20 s 7 sch 2; 2000 No. 47 s 14;  
2000 No. 47 ss 61, 80**Interest on amounts owing to commissioner****s 155** amd 2000 No. 47 s 81**False, misleading or incomplete documents given to commissioner****s 156** ins 2000 No. 47 s 62**False, misleading or incomplete document entries****s 157** ins 2000 No. 47 s 62**Confidentiality of information****s 158** amd 1999 No. 49 s 16**Service of documents on commissioner****s 159** prev s 159 om 2000 No. 5 s 461 sch 3

pres s 159 amd 2000 No. 47 s 63

**Protecting officials from liability****s 159A** prev s 121 renum as s 159A 2000 No. 47 s 48**Numbering and renumbering of Act****s 160A** ins 2000 No. 47 s 82**CHAPTER 7—TRANSITIONALS****PART 1—PRELIMINARY****pt hdg** om 2000 No. 47 s 83**Definitions for ch 7****s 161** def “**interim guidelines**” amd 2000 No. 47 s 15(1)def “**transitional period**” amd 2000 No. 20 s 7 sch 2; 2000 No. 47 s 15(2)  
om 2000 No. 47 s 83**PART 2—RETAILERS****pt hdg** prev pt hdg om 2000 No. 20 s 27pres pt hdg om 2000 No. 47 s 83**Purpose of pt 2****s 162** om 2000 No. 47 s 83**Application of ch 2 in transitional period****s 163** om 2000 No. 47 s 83**When part ceases to apply to persons****s 164** om 2000 No. 47 s 83**Repayments of subsidies by certain persons****s 165** om 2000 No. 47 s 83**PART 3—BULK END USERS****pt hdg** om 2000 No. 47 s 16**Purpose of pt 4****s 166** om 2000 No. 47 s 16

**Application of ch 4 in transitional period**

s 167 om 2000 No. 47 s 16

**Person receiving reimbursement for surcharge**s 167A ins 1999 No. 49 s 14  
om 2000 No. 20 s 24**When part ceases to apply to persons**

s 168 om 2000 No. 47 s 16

**Repayments of subsidies by certain persons**

s 169 om 2000 No. 47 s 16

**Special provision for certain new bulk end users**

s 170 om 2000 No. 47 s 16

**PART 4—TRANSITIONAL PROVISIONS FOR GST AND RELATED MATTERS ACT 2000**

pt hdg ins 2000 No. 20 s 28

**Person receiving reimbursement for surcharge**

s 171 ins 2000 No. 20 s 28

**Continuation of rights and obligations under Act for particular sellers and purchasers of diesel**prov hdg sub 2000 No. 47 s 64  
s 172 ins 2000 No. 20 s 28**CHAPTER 8—TRANSITIONAL PROVISIONS FOR FUEL SUBSIDY AMENDMENT ACT 2000**

ch hdg ins 2000 No. 47 s 17

**Record of stock on hand—bulk end users**

s 173 ins 2000 No. 47 s 17

**Record of stock on hand—retailers**

s 173A ins 2000 No. 47 s 65

**Continuation of rights and obligations under Act for particular sellers and purchasers of fuel**

s 174 ins 2000 No. 47 s 17

**Claims by bulk end users**

s 175 ins 2000 No. 47 s 17

**No retrospective criminal liability**

s 176 ins 2000 No. 47 s 17

**Paying start-up allowance**s 177 ins 2000 No. 47 s 66  
amd 2000 No. 47 s 84**Retailer's licence not effective before 1 December 2000**

s 178 ins 2000 No. 47 s 66

**Continuation of rights and obligations under Act for particular sellers and purchasers of fuel**s 179 ins 2000 No. 47 s 85**Numbering and renumbering of Act**s 195A ins 2000 No. 20 s 26  
om R2 (see RA s 37)**Purpose of pt 2**

s 197 om 2000 No. 20 s 27

**Application of ch 2 in transitional period**

s 198 om 2000 No. 20 s 27

**When part ceases to apply to persons**

s 199 om 2000 No. 20 s 27

**Repayments of subsidies by certain persons**

s 200 om 2000 No. 20 s 27

**PART 5—SPECIAL TRANSITIONAL PROVISIONS FOR REVENUE AND OTHER LEGISLATION AMENDMENT ACT 1999**pt hdg prev pt hdg sub 1999 No. 13 s 18  
exp 1 July 1999 (see s 211)**Transitional provisions about returns by licensed bulk end users**s 210 orig s 210 exp 1 November 1998 (see s 210(4))  
new s 210 ins 1999 No. 13 s 18  
exp 1 July 1999 (see s 211)**Expiry of part**s 211 ins 1999 No. 13 s 18  
exp 1 July 1999 (see s 211)**SCHEDULE 1—DECISIONS SUBJECT TO REVIEW AND APPEAL**amd 1999 No. 13 s 19; 2000 No. 20 s 7 sch 2  
sub 2000 No. 47 s 67  
amd 2000 No. 47 s 86**SCHEDULE 2—FUEL**sub 1999 No. 13 s 20; 2000 No. 20 s 7 sch 2  
om 2000 No. 47 s 87**SCHEDULE 3—DICTIONARY**def “**associate**” ins 2000 No. 47 s 18(2)  
def “**bulk end user fuel**” ins 2000 No. 47 s 18(2)  
def “**bulk end user quantity**” ins 2000 No. 47 s 18(2)  
def “**bulk end user’s licence**” sub 2000 No. 47 ss 18(1)–(2), 68(1)–(2)  
def “**commissioner’s guidelines**” om 2000 No. 47 s 88(1)  
def “**corresponding law**” ins 1999 No. 49 s 17  
def “**debtor**” ins 2000 No. 47 s 68(2)  
def “**distributor**” amd 2000 No. 47 s 88(3)  
def “**document production requirement**” om 2000 No. 68(1)  
def “**financial records requirement**” om 2000 No. 47 s 68(1)

- def **“fuel”** sub 2000 No. 47 s 18(1)–(2)  
 amd 2000 No. 47 s 68(3)  
 sub 2000 No. 47 s 88(1)–(2)
- def **“fuel subsidy entity”** amd 2000 No. 20 s 7 sch 2  
 om 2000 No. 47 s 68(1)
- def **“fuel subsidy place”** om 2000 No. 47 s 68(1)
- def **“fuel tank”** ins 2000 No. 47 s 18(2)
- def **“garnishee”** ins 2000 No. 47 s 68(2)
- def **“garnishee amount”** ins 2000 No. 47 s 68(2)
- def **“garnishee notice”** ins 2000 No. 47 s 68(2)
- def **“importer”** om 2000 No. 47 s 88(1)
- def **“incorrect benefit penalty”** om 2000 No. 47 s 88(1)
- def **“incorrect subsidy amount”** om 2000 No. 47 s 88(1)
- def **“licensed quantity of fuel”** om 2000 No. 47 s 68(1)
- def **“manufacturer”** om 2000 No. 47 s 88(1)
- def **“marine purpose”** ins 2000 No. 47 s 68(2)
- def **“marine site”** ins 2000 No. 47 s 68(2)
- def **“off-road diesel consumer”** om 2000 No. 20 s 7 sch 2
- def **“off-road diesel consumer’s licence”** om 2000 No. 20 s 7 sch 2
- def **“off-road purpose”** ins 2000 No. 47 s 7
- def **“penalty amount”** amd 2000 No. 47 s 88(3)
- def **“public road”** sub 2000 No. 20 s 7 sch 2
- def **“provisional subsidy”** ins 2000 No. 47 s 68(2)
- def **“reasonably believes”** ins 2000 No. 47 s 68(2)
- def **“registered recreational ship”** ins 2000 No. 47 s 68(2)
- def **“retailer’s licence”** sub 2000 No. 47 ss 68(1)–(2), 88(1)–(2)
- def **“retail fuel”** sub 2000 No. 47 s 68(1)–(2)
- def **“retail site”** sub 2000 No. 47 ss 68(1)–(2), 88(1)–(2)
- def **“storage site”** ins 2000 No. 47 s 18(2)
- def **“subsidy”** sub 2000 No. 47 ss 18(1)–(2), 68(1)–(2)
- def **“subsidy benefit”** ins 2000 No. 47 s 68(2)
- def **“subsidy benefit rate”** ins 2000 No. 47 s 68(2)
- def **“subsidy rate”** sub 2000 No. 47 s 18(1)–(2)  
 amd 2000 No. 47 s 68(3)  
 sub 2000 No. 47 s 88(1)–(2)
- def **“surcharge”** om 2000 No. 20 s 7 sch 2

## 8 List of forms

**Form QFSS1 Version 1—Application for Retailer’s Licence—*Fuel Subsidy Act 1997*—section 51**

pubd gaz 14 November 1997 p 1145

**Form QFSS2 Version 1—Application for Off-road Diesel Consumer’s Licence—*Fuel Subsidy Act 1997*—section 22**

pubd gaz 14 November 1997 p 1145



- Form QFSS3 Version 1—Application for Bulk End User’s Fuel Licence—*Fuel Subsidy Act 1997*—section 80**  
pubd gaz 14 November 1997 p 1145
- Form QFSS4 Version 1—Registration Form—Fuel Subsidy Scheme**  
pubd gaz 14 November 1997 p 1145
- Form QFSS5 Version 1—Claim Form—Fuel Subsidy Scheme**  
pubd gaz 14 November 1997 p 1145
- Form QFSS6 Version 1—Certificate of Registration**  
pubd gaz 14 November 1997 p 1145
- Form QFSS10 Version 1—Application for Variation of Licensed Quantity of Fuel—*Fuel Subsidy Act 1997*—section 90(2)**  
pubd gaz 5 June 1998 p 759
- Form QFSS11 Version 1—Bulk End Users Licence—Return for Year Ended 30 June 1998—*Fuel Subsidy Act 1997*—section 103**  
pubd gaz 5 June 1998 p 759
- Form QFSS12 Version 1—Notice in Relation to Thing to be Seized *Fuel Subsidy Act 1997*—Section 134(2)**  
pubd gaz 30 July 1999 p 1900

## 9 Table of renumbered provisions

### TABLE OF RENUMBERED PROVISIONS

under the Reprints Act 1992 s 43 as required by the Fuel Subsidy Act 1997 s 195A

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## **10 Provisions that have not commenced and are not incorporated into reprint**

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

**Fuel Subsidy Amendment Act 2000, part 5, reads as follows—**

### **PART 5—AMENDMENTS COMMENCING ON 1 DECEMBER 2000**

#### **Amendment of s 4A (Meaning of “bulk end user fuel”)**

**69.** Section 4A(1)(a), ‘under chapter 2’—  
*omit.*

#### **Amendment of s 4C (Meaning of “off-road purpose”)**

**70.** Section 4C(2), ‘chapters 2 and 2A’—  
*omit, insert—*  
‘chapter 2A’.

#### **Amendment of s 5 (Meaning of “retailer”)**

**71.(1)** Section 5(1)—  
*omit.*  
**(2)** Section 5(2), ‘For chapter 2A, a’—  
*omit, insert—*  
‘A’.

#### **Amendment of s 5A (Meaning of “retail fuel”)**

**72.(1)** Section 5A(1)—  
*omit.*

(2) Section 5A(2), ‘For chapter 2A, fuel’—  
*omit, insert*—  
‘Fuel’.

#### **Amendment of s 6 (Meaning of “retail quantity” for fuel)**

73.(1) Section 6(1) to (3)—  
*omit.*

(2) Section 6(4), ‘For chapter 2A, the’—  
*omit, insert*—  
‘The’.

#### **Replacement of s 7 (Meaning of “net sale”)**

74. Section 7—  
*omit, insert*—

#### **Meaning of “net sale”**

‘7. A “net sale” is a sale of fuel made under section 39C(1).<sup>17</sup>’.

#### **Amendment of s 8 (Only 1 subsidy payable for fuel)**

75. Section 8(6)—  
*omit.*

#### **Omission of chs 2 and 4**

76. Chapters 2 and 4—  
*omit.*

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<sup>17</sup> Section 39C (Sale of fuel by licensed retailers)

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**Amendment of s 127 (Executive officers liable for payment of certain amounts)**

77. Section 127(1), ‘an incorrect subsidy amount,’—  
*omit.*

**Replacement of ss 130 and 131**

78. Sections 130 and 131—  
*omit, insert—*

**‘Person receiving subsidy without entitlement**

**‘130.(1)** This section applies if—

- (a) the commissioner pays an amount as a subsidy to a person and 1 of the following applies—
  - (i) the amount is paid for fuel that is not retail fuel or bulk end user fuel;
  - (ii) the amount is paid for retail fuel that is not sold under a net sale;
  - (iii) the amount otherwise exceeds the amount of the subsidy to which the person was entitled; or
- (b) a person is required under section 39K, 39S or 151A<sup>18</sup> to repay an amount to the commissioner.

**‘(2)** The commissioner may, by written notice given to a person mentioned in subsection (1)(a), require the person to pay to the commissioner—

- (a) the amount (the **“overpaid amount”**) that is the difference between the amount paid as a subsidy and the amount of the subsidy to which the person was entitled; and
- (b) a further amount (the **“incorrect payment penalty”**) equal to the overpaid amount.

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<sup>18</sup> Section 39K (Overpaid provisional subsidy amount), 39S (Retail consumer’s obligation to repay subsidy) or 151A (No entitlement to subsidy if insufficient records)



‘(3) Also, the commissioner may, by written notice given to a person mentioned in subsection (1)(b), require the person to pay to the commissioner an amount (also the **“incorrect payment penalty”**) equal to the amount the person has not repaid as required under section 39K, 39S or 151A (also the **“overpaid amount”**).

‘(4) Despite subsection (2) or (3), the commissioner may direct that the person 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 person to be required to pay the whole of the incorrect payment penalty.

‘(5) The person must pay to the commissioner the overpaid amount and the whole or part of the incorrect payment penalty the person is required to pay within the time stated in the notice.

‘(6) The stated time must not be less than 7 days after the person receives the notice.

‘(7) An amount not paid as required under subsection (5) is a debt owing to the commissioner.’.

### **Omission of ss 149 and 150**

**79.** Sections 149 and 150—

*omit.*

### **Amendment of s 152 (Commissioner to give information notice for certain decisions)**

**80.** Section 152(3), definition **“prescribed section”**, from ‘section’—

*omit, insert—*

‘section 39S, 130 or 171.’.

### **Amendment of s 155 (Interest on amounts owing to commissioner)**

**81.** Section 155—

*insert—*

‘(3) For this section, an amount required to be repaid under

section 130(2)(a) is taken to be owing when the subsidy payment creating the overpayment was made.’.

### **Insertion of new s 160A**

**82.** After section 160—

*insert—*

### **‘Numbering and renumbering of Act**

‘**160A.** In the next reprint of this Act produced under the *Reprints Act 1992*, the provisions of this Act must be numbered and renumbered as permitted by the *Reprints Act 1992*, section 43.’.

### **Amendment of ch 7 (Transitionals)**

**83.** Chapter 7, parts 1 and 2—

*omit.*

### **Amendment of s 177 (Paying start-up allowance)**

**84.** Section 177—

*insert—*

‘(4) Section 130 applies to the start-up allowance as if it were an amount paid to the retailer for a subsidy.’.

### **Insertion of new s 179**

**85.** After section 178—

*insert—*

### **‘Continuation of rights and obligations under Act for particular sellers and purchasers of fuel**

‘**179.(1)** This section applies to a purchase of fuel if—

- (a) before 1 December 2000, the seller of the fuel did not recover from the purchaser the part of the sale price that is an amount equal to the subsidy for the sale, because the purchase of the fuel

was, or purportedly was, a net sale for chapter 2 as in force when the sale was made; and

- (b) on or after 1 December 2000, the seller or purchaser does or does not do something that, but for the repeal of chapter 2, would have constituted a contravention of this Act.

‘(2) Despite the repeal of chapter 2, this Act, as in force immediately before the repeal, applies in relation to the seller and purchaser.

‘(3) For subsection (2), section 131, as in force immediately before the repeal, applies as if the reference to a purchaser who was not the holder of the appropriate licence includes a person who, although the person satisfied the seller the purchaser was a licensed retailer under the interim guidelines, was not entitled to a retailer’s licence under chapter 2 as in force immediately before the repeal.

‘(4) Subsection (2) does not limit the *Acts Interpretation Act 1954*, section 20.<sup>19</sup>’.

### **Amendment of sch 1 (Decisions subject to review and appeal)**

**86.(1)** Schedule 1, part 1, entries for sections 24(2), 30(2), 31(2) and 32(2)—

*omit.*

(2) Schedule 1, part 2, entries for sections 25(1)(b), 26(2) and 34(1)—

*omit.*

### **Omission of sch 2 (Fuel)**

**87.** Schedule 2—

*omit.*

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<sup>19</sup> *Acts Interpretation Act 1954*, section 20 (Saving of operation of repealed Act etc.)

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### Amendment of sch 3 (Dictionary)

**88.(1)** Schedule 3, definitions “**commissioner’s guidelines**”, “**fuel**”, “**importer**”, “**incorrect benefit penalty**”, “**incorrect subsidy amount**”, “**manufacturer**”, “**retailer’s licence**”, “**retail site**” and “**subsidy rate**”—

*omit.*

**(2)** Schedule 3—

*insert—*

“**fuel**” means motor spirit and diesel of the type ordinarily sold by a retailer.

“**retailer’s licence**” see section 47(1).

“**retail site**” means a fixed site in Queensland operated by a retailer for selling fuel.

“**subsidy rate**”, for fuel, means—

- (a) unless a rate is prescribed under paragraph (b)—8.4c per litre; or
- (b) the rate prescribed under a regulation.

**(3)** Schedule 3, definition “**distributor**”, ‘, manufacturer or importer’—

*omit.*

**(4)** Schedule 3, definition “**penalty amount**”, ‘incorrect benefit penalty or’—

*omit.*