

FUEL SUBSIDY BILL 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives

The objectives of the Bill are—

- (a) To provide the following subsidies in order to avoid increases in fuel prices in Queensland.
 - A subsidy to be paid in respect of purchases of diesel fuel (other than retail purchases) by licensed off-road diesel users for their own use in Queensland other than for propelling diesel engine road vehicles on public roads.
 - Retail consumers of fuel will be entitled to the benefit of a subsidy, as licensed Queensland fuel retailers will be entitled to obtain retail fuel from fuel sellers at the subsidised price.
 - A subsidy to be paid to all consumers who purchased fuel (other than retail fuel or diesel for off-road use) in Queensland during the 1996/1997 financial year for their own use. These consumers may purchase at the subsidised price that same amount of fuel (subject to indexation) during the 1997/1998 financial year for their own use.
- (b) To introduce appropriate transitional, administrative and enforcement provisions to facilitate effective administration of the subsidies.

Reasons for the Bill

The fuel subsidy schemes are required to avoid increases in fuel prices in Queensland following the High Court decision of 5 August 1997 in *Ha & Anor v. State of New South Wales* and *Walter Hammond & Associates Pty Limited v. State of New South Wales* affecting State and Territory business

franchise fees.

Following the High Court decision, the Commonwealth Government imposed customs and excise duty and wholesale sales tax surcharges across all States and Territories on fuel, liquor and tobacco in order to protect State revenues previously recovered through franchise fees imposed on these products.

The increase in the customs and excise duty on fuel products was made on the understanding that over collections would be returned by the States making subsidy payments to avoid any increases in prices. As Queensland did not previously impose fuel franchise fees, a subsidy of 8.1 cents per litre (cpl) is required to be returned to consumers.

The fuel subsidies introduced by the Bill provide subsidies of 8.1 cpl of fuel to consumers who are either retailers, or certified bulk end users who are either off-road diesel consumers or bulk end users to avoid any increase in fuel prices.

Achievement of Objectives

Off-Road Diesel Consumers' Subsidy

An off-road diesel subsidy is introduced to enable licensed consumers of diesel fuel for off-road purposes in Queensland to obtain fuel (other than retail fuel) at the subsidised price for the consumer's own use including use by the consumer's contractors, partners and joint venture partners. Off-road purposes are purposes other than propelling diesel engine road vehicles on public roads.

An off-road diesel consumer may purchase diesel for off-road use in Queensland from a licensed retailer at the subsidised price without the need to obtain or produce an off-road diesel consumers' licence from the Commissioner. However the quantity purchased must not exceed 3 000 litres (a retail quantity).

Under the off-road subsidy scheme other sellers of fuel to licensed off-road consumers will be required except in limited circumstances to charge the subsidised price where the consumer produces the consumer's licence or the consumer has previously produced the consumer's licence to the seller.

Sellers who make sales at the subsidised price to licensed off-road

consumers will be entitled to claim a subsidy in respect of those sales from the Commissioner. Sellers must, at the request of a licensed consumer, claim the subsidy from the Commissioner and account for the subsidy to the licensed consumer, where the seller did not sell fuel to the licensed consumer at the subsidised price and the consumer subsequently satisfies the seller that the consumer was licensed at the time of the sale. Claims will also be permitted where there is a notional sale of off-road diesel fuel.

This occurs where a fuel seller acquires fuel without the benefit of the subsidy and applies the fuel for its own off-road use as the holder of an off-road consumers' licence.

Resale of fuel other than permitted sales (that is sales of retail quantities to persons associated with the licence holder) by licence holders will not be permitted. Where a person has purchased diesel for off-road use in Queensland and subsequently resells or uses the fuel for another purpose, the person will be required to repay the subsidy received in respect of that fuel with interest and penalties.

Retail Consumers' Subsidy

A subsidy is introduced for licensed retailers in respect of fuel purchased under retail licences.

Under the retail fuel scheme, sellers of fuel to licensed retailers will be required to charge the subsidised price. Retailers are persons who purchase fuel for resale as retail fuel. Retail fuel is fuel sold to the public in a retail quantity from a fixed site in Queensland which is specified in a retailer's licence. The retail quantity will be set at 3000 litres for all relevant types of fuel unless prescribed otherwise, and must be delivered into a running tank (that is, a fuel tank for an engine) or into a container which is empty. These requirements for a retail quantity of fuel prevent persons receiving the retail fuel subsidy in respect of commercial quantities of fuel.

Sellers who make sales to licensed retailers at the subsidised price in these circumstances will be entitled to claim a subsidy in respect of those sales from the Commissioner if the licensed retailer has produced the retailer's licence or where the retailer has previously produced the licence. Sellers must, at the request of a licensed retailer, claim the subsidy from the Commissioner and account for the subsidy to the licensed retailer, where the seller did not sell fuel to the licensed retailer at the subsidised price and the retailer subsequently satisfies the seller that the retailer was licensed at

the time of the sale. Claims will also be permitted where there is a notional sale of fuel to a retailer. This occurs where a fuel seller acquires fuel without the benefit of the subsidy and applies the fuel for sale as retail fuel by transfer to its licensed retail site.

Retailers must not pass on any amount in respect of the surcharge to consumers purchasing retail quantities of fuel.

Bulk End Users' Subsidy

A subsidy is introduced to allow licensed consumers who purchased fuel, other than diesel for off-road use or retail fuel, in Queensland during the 1996/1997 financial year for their own use, to purchase that same amount of that fuel, subject to adjustment by an indexation factor, in Queensland during the 1997/1998 financial year at the subsidised price. The fuel must be for the purchaser's own use, or the use of their contractors, joint venturers or partners.

Fuel will be considered as being purchased or sold in Queensland only where the fuel is supplied by the seller from a place in Queensland.

Bulk end users' licenses, which prescribe the maximum quantity of fuel which may be purchased at the subsidised price pursuant to the licence, will be issued to consumers who purchased bulk fuel in Queensland during 1996/1997.

Sellers of fuel to licensed bulk end users will be required to charge the subsidised price where the bulk end user has produced the bulk end user's licence, or in cases where the bulk end user has previously produced the licence. Sellers who have sold fuel at the subsidised price to licensed bulk end users in these circumstances are entitled to claim a subsidy from the Commissioner in respect of those sales. Sellers must, at the request of a licensed bulk end user, claim the subsidy from the Commissioner and account for the subsidy to the licensed bulk end user, where the seller did not sell fuel to the licensed bulk end user at the subsidised price and the bulk end user subsequently satisfies the seller that the bulk end user was licensed at the time of the sale.

A person who did not purchase fuel in Queensland as a bulk end user in 1996-97 may nevertheless apply for a bulk end user's licence in the following circumstances:

- (i) The person is carrying on, or proposes to carry on an activity

other than one which would make the person an off-road diesel user; and

- (ii) On the assumption that all relevant laws of Queensland and other jurisdictions were complied with in relation to the purchase and sale of fuel, it is reasonable to expect that, had the applicant carried on that activity in 1996-97, they would have been a bulk end user who purchased fuel in Queensland. This reasonable expectation is determined having regard to a number of factors listed in the Bill.

If a licence is granted to this applicant, the licensed quantity of fuel is the amount which it is reasonably expected would have been purchased in Queensland during 1996-97.

The licensed quantity of fuel for a bulk end users' licence issued for the 1997/1998 year will be calculated on a pro-rata basis having regard to:

- an applicant's bulk fuel purchases for their own use in Queensland during 1996/1997;
- the duration of the licence period;
- whether the applicant was in business for the whole of 1996/1997; and
- the fuel purchased as a bulk end user between 14 October 1997 and the date the licence is effective.

Example

If a bulk end user purchased 300 000 litres of bulk fuel in Queensland throughout 1996-1997 where 120 000 litres was for its own use and 180 000 litres was for resale, it can apply for a bulk end users' licence. The licensed quantity of fuel for the bulk end user's licence for the 1997/98 financial year will be 120 000 litres per annum being that part of the total purchases in 1996-1997 which was for its own use adjusted by the indexation factor for 1997/98 and the period on and from 14 October 1997 to 30 June 1998, less the quantity of fuel purchased as a bulk end user from 14 October 1997 to the date the licence is effective.

The licensed quantity of fuel in respect of a licence will also be able to be

varied by the Commissioner to reflect economic growth within Queensland, sales made by licence holders which are not permitted sales (and therefore reduce the licensed quantity for the licence) and any relevant factors including where a licence holder can demonstrate above normal growth in business activity and it is reasonable to expect that they will need to purchase additional fuel in Queensland.

The licensed quantity of fuel in subsequent financial years will be the licensed quantity of fuel for the first year, adjusted by the indexation factor for those years.

Licensing

Applications for off-road diesel consumers' licences, retailers' licences and bulk end users' licences may be made to the Commissioner. The Commissioner may grant an application if the Commissioner is satisfied that the applicant:

- in the case of an off-road diesel consumers' licence, is or will be an off-road diesel consumer,
- in the case of a retailers' licence, is or will operate as a retailer; or
- in the case of a bulk end users' licence:
 - was a bulk end user in the year commencing 1 July 1996 and continues to be, or
 - in other cases if the applicant had carried on the activity which it carries on or proposes to carry on in the 1996/1997 year, the applicant would have been a bulk end user who purchased fuel in Queensland, subject to certain assumptions.

In certain circumstances, a person may be issued with more than one licence.

Example

A person who uses diesel for off-road purposes, but who also purchases fuel in bulk for their own on-road purposes, may be issued with an off-road diesel consumer's licence and a bulk end user's licence which prescribes the maximum amount of fuel which the licensee may purchase for on-road purposes under the

bulk end user licence.

A person may operate a mixed fuel retailing/distribution business. In such a case, the person may be issued with a retailers' licence in relation to that part of the person's place of business which is a retail site. It may also be necessary for the person to register as a subsidy claimant with the Commissioner, to the extent that the person carries on business as a fuel distributor.

Licences will be issued subject to conditions specified in the *Fuel Subsidy Bill 1997* and such other conditions as are appropriate to give effect to the Bill. Conditions may be varied by the Commissioner on giving notice to the licensee. Contravention of licence conditions will amount to an offence and may also lead to cancellation of a licence.

Licences are required to be returned to the Commissioner upon cancellation and surrender. Licences are not transferable. Purchasers of businesses who are entitled to receive subsidised fuel under the subsidy schemes must therefore apply to the Commissioner for the issue of a new licence.

Licences may be cancelled by the Commissioner where the Commissioner has delivered a notice of intended cancellation to the licensee, and the licensee has failed to show cause why the licence should not be cancelled, in the following circumstances:

- The licensee has breached licence conditions,

Example

Licences issued pursuant to the Act are subject to a condition that the licensee must not contravene a provision of the Act. The Commissioner may therefore cancel a licensee's licence where the licensee has breached a provision of the Act.

- The licence was issued because of a materially false or misleading representation of declaration,

Example

In an application for a bulk end user's licence, a bulk end user may be required to declare the fuel products purchased by the bulk end user in Queensland during 1996/1997, and the amount

of those products which were on-sold by the bulk end user. The Commissioner may cancel a bulk end users' licence if the licensee has materially misrepresented these amounts in the licensee's application to the Commissioner.

- The licensee has failed to repay an amount to the Commissioner,

Example

Where a licensee has received a subsidy to which the licensee is not entitled, the licensee is required to repay that subsidy to the Commissioner. The Commissioner may cancel the licensee's licence if the licensee fails to do so.

- The Commissioner believes on reasonable grounds that, if the licensee were then applying for the licence, it would be refused.

Example

The Commissioner may cancel an off-road diesel consumer's licence if the Commissioner reasonably believes that the licensee no longer consumes diesel fuel for off-road purposes in Queensland.

The Commissioner may also immediately suspend a licence pending formal cancellation, if the Commissioner is of the view that the suspension is necessary to protect the integrity of the fuel subsidy schemes. Suspension may only occur if the Commissioner believes a ground exists to cancel the licence or the licensee has been charged with an offence.

Enforcement

Enforcement provisions are introduced to facilitate the effective administration of, and to monitor compliance with, each of the subsidy schemes. Measures to assist compliance include the following requirements:

- Fuel sellers and licence holders must maintain certain records to verify sales and entitlement to subsidies;
- Persons who receive a subsidy and licensed retailers who receive the benefit of a subsidy under the schemes must pass on the full benefit of the subsidy received to purchasers who are entitled to

receive that benefit;

- Subsidies, whether under the Act or interstate subsidy regimes, may only be paid once in relation to particular fuel;
- Claimants for subsidies are required to register with the Commissioner;
- Transporters of fuel in excess of a prescribed quantity are required to maintain transportation records in relation to the fuel, including details as to the seller, purchaser and delivery point for the fuel.

The Commissioner is also granted power to enter and carry out investigations on certain premises, and to seize goods in certain circumstances.

Transitional

Transitional arrangements are also introduced to permit sales at the subsidised price to continue pending finalisation of the issue of licences required under the schemes. The arrangements which are to apply will be published in the form of guidelines and generally will require sellers of fuel to ask a purchaser whether their purchase would qualify for the relevant subsidy if licences were issued. Where a licence is not subsequently issued to a person who purchased fuel at the subsidised price during the transitional period pursuant to these interim arrangements or the person fails to apply for such a licence prior to the end of the transitional period, the Commissioner may require the person to repay the subsidy to the Commissioner. Purchases made by a bulk end user during the transitional period will reduce the licensed quantity of fuel available under the licence which is ultimately issued to the bulk end user.

The transitional arrangements will end on a date which will be gazetted by the Commissioner.

Financing

Arrangements have been reached with the Commonwealth for deferral of payment of the Commonwealth customs and excise surcharge by manufacturers and importers. In discussions, industry representatives have agreed to pass on the benefit of this deferral by a similar arrangement which will permit deferral of payment of the Commonwealth surcharge

component of the sale price of their fuel in respect of fuel purchased by fuel sellers. The effect of these arrangements will be that fuel sellers will be in receipt of the Queensland fuel subsidies which they may be entitled to claim prior to the date of payment of the Commonwealth surcharge component of their fuel purchases to the manufacturers/importers. These arrangements are intended to avoid increased financing costs and consequential increases in fuel prices. The Bill will therefore imply in every contract between a manufacturer/importer and a distributor a term that the surcharge component of the price is not payable earlier than the fifth business day of the month following the sale. Provision is made for the parties to vary the term subject to the Commissioner's power to reinstate the implied term if the term agreed by the parties does not produce the same economic benefit to the distributor. These arrangements ensure that payment arrangements between industry participants continue to minimise additional financing costs and therefore risk of fuel price increases.

Alternatives to the Bill

The policy objectives can only be achieved by statutory amendment.

Estimated Cost for Government Implementation

There will be administrative costs of implementing and running the fuel subsidy scheme. However, the Commonwealth Government has given a commitment to ensuring that Queensland is not financially disadvantaged by the fuel safety net arrangements.

Consistency with Fundamental Legislative Principles

The *Fuel Subsidy Bill 1997* raises a number of fundamental legislative principles issues.

A fundamental legislative principle is that legislation must have sufficient regard to the rights and liberties of individuals:

- The *Fuel Subsidy Bill 1997* provides that where a corporation commits an offence, the corporation's executive officers are jointly and severally liable with the corporation for the payment of any penalty imposed under the Act. Regard is had to the rights and liabilities of individuals by providing an exception to protect

the rights of officers of corporations where the officers were not in a position to influence the conduct of the company, or where they have exercised reasonable diligence to ensure that the corporation complied with the provisions.

Experience during the interim fuel subsidy arrangements suggests that some persons will seek to profit from the generous subsidy arrangements by purchasing fuel at the subsidised price and then transporting it to other States and Territories for subsequent sale. Joint and several liability of officers of corporations, in circumstances where those officers have not acted diligently to ensure compliance with the requirements of the Act, is necessary in order to facilitate recovery of subsidies or penalties from unscrupulous corporations engaged in these activities and to discourage breaches of the Act. Given the substantial amount of subsidies which it is anticipated will be paid under the Act, provisions of this nature are necessary to protect the State revenue.

- The *Fuel Subsidy Bill 1997* also provides that a certificate issued by the Commissioner is taken to be conclusive evidence of the matters contained in the certificate. Certificates may, amongst other things, state that a person was the holder of a licence under the Act, and that an amount is payable by a person under the Act and that the amount has not been paid.

However, an issue in relation to a certified matter is open to challenge on appeal.

- The *Fuel Subsidy Bill 1997* provides in certain circumstances for immediate suspension of licences pending a formal cancellation procedure. This provides for immediate suspension of a licence if the contravention of the legislation is such that the integrity of the fuel subsidy arrangement would be jeopardised, for example, by a licensed person onselling fuel contrary to the Bill. The suspension lasts until the cancellation procedure, including a show cause procedure, has been completed. In this way a licensee still has an opportunity to argue their case, but the State is protected in that in extreme cases, the licence is suspended pending the outcome of the cancellation procedure. A similar

suspension may be used where the holder of the licence is charged with an offence and the Commissioner believes it is necessary to immediately suspend the licence to protect the integrity of the fuel subsidy scheme.

- The *Fuel Subsidy Bill 1997* makes certain rights of individuals dependant on administrative powers by
 - . requiring that claims for subsidies be made under the Commissioner's guidelines,
 - . permitting the Commissioner to impose conditions on licences and to vary conditions as the Commissioner considers necessary (subject to a right of appeal),
 - . permitting the Commissioner to issue guidelines which affect people's rights, such as matters about which fuel sellers must be satisfied when selling fuel to a person in the transitional period, the way in which applications for licences may be made and licences issued, the way in which claims must be made and paid and when the subsidy is payable.

It is necessary to make these rights dependant upon the exercise of administrative power in the circumstances in order to permit the effective implementation and administration of the subsidy schemes in the required timeframes, and therefore to prevent fuel price increases in Queensland. The administrative powers are also necessary to permit the Commissioner to administer the scheme so as to prevent unscrupulous operators jeopardising the integrity of the subsidy schemes, and therefore ensures the continuation of current price levels for fuel.

- The *Fuel Subsidy Bill 1997* imposes power to make regulations with retrospective effect about any matter necessary or convenient to give effect to Parliament's intention in relation to the operation of the Act and about which the Act does not make enough provision. The requirement that the regulations reflect Parliament's intention provides a fetter on the ability to adversely affect rights or to impose obligations retrospectively. To the extent to which the Act permits retrospectivity in relation to such matters, it is considered that the risk of potential loss to revenue warrants the ability to take steps, retrospectively, in order to

protect the revenue from unscrupulous subsidy claimants.

- The legislation imports an implied term permitting deferral of payment of the Commonwealth customs and excise duty surcharge component of the price of fuel sold by manufacturers or importers into a contract of sale for such fuel. The implied term will apply to manufacturers and importers' contracts for sale of fuel. While the parties can agree to different terms, the Commissioner has power to decide that the terms of the contract of sale agreed between the manufacturer/importer and purchaser do not provide at least the same economic benefit as the implied term. The Commissioner's decision to apply the implied term is appealable.

The provision is required to ensure that industry is provided with the freedom to agree to alternative terms of contracts, but without jeopardising the economic impact of the subsidy schemes. Without the implied term provision, it would be possible for a manufacturer/importer to require immediate payment of the Commonwealth customs and excise surcharge component of the price of their fuel products. This would place additional financing costs on purchasers, which may be reflected in increases in fuel prices for consumers.

- The *Fuel Subsidy Bill 1997* confers power to enter premises, except residential premises, and to search for and seize things from these premises without a warrant.

However entry of premises is permitted in connection with the administration of the Act only, and powers to seize goods provided in circumstances where an authorised person under the Act reasonably considers that the thing is evidence of an offence, has been used to commit an offence, is necessary to prevent repeat of an offence or is likely to be lost or destroyed unless seized. These limitations on power to enter and seize protect individuals from indiscriminate interference with their rights and liberties.

It is considered that a requirement that warrants be obtained in the case of premises other than residential premises would impede effective compliance activities, particularly where warrants are to

be obtained to enter places in remote locations. It is anticipated that the generous nature of the subsidies will provide an impetus for certain persons to engage in unscrupulous activities to obtain and profit from the subsidies. The ability to search premises and seize in the absence of a warrant is therefore necessary to ensure effective investigation powers and counter avoidance opportunities in relation to the subsidy schemes.

- The *Fuel Subsidy Bill 1997* enables vehicles transporting in excess of a prescribed quantity of fuel to be stopped with the assistance of a police officer, in order to inspect the fuel transport record which is to be carried on the vehicle. Where the transportation record is not produced, a search of the vehicle may be conducted. No warrant is required to take these steps.

These provisions are required for the effective enforcement of the fuel subsidy schemes.

- The *Fuel Subsidy Bill 1997* provides for appeal against any decision of the Commissioner relating to licences and payments specified in the Schedule to the Bill by way of internal review, in the first instance. Appeals to the appropriate Court are then provided in relation to the Commissioner's review of the decision. However, in order to protect the integrity of the scheme, injunctions are not available.
- The definition of fuel for the purposes of the Bill relies on definitions in the *Excise Tariff Act 1921* (Cwlth) and the *Customs Tariff Act 1995* (Cwlth) as it is these classes of product which have attracted the surcharge and which will be eligible for the subsidy.
- The bulk end users' subsidy contained in the *Fuel Subsidy Bill 1997* provides for calculation of a licenced quantity of fuel on a pro rata basis from the date of the public announcement of the scheme on 14 October 1997 to 30 June 1998, where a person was a bulk end user during that time, notwithstanding the commencement date for the legislation is 1 November 1997. This is to overcome the possibility of persons purchasing, pending commencement of the legislation, large quantities of fuel for resale interstate without those purchases being reflected when determining the amount of the licensed quantity for the bulk end user.

- The *Fuel Subsidy Bill 1997* will be retrospective unless passed prior to its stated commencement date of 1 November 1997.

Consultation

The fuel subsidy schemes have been discussed with and are supported by the Commonwealth, representatives of the State and Territory Treasuries and Revenue Offices, major and independent fuel companies, fuel distributor and retailer representatives, the Motor Trades Association of Queensland, the Australian Institute of Petroleum, APADA, the Australian Competition and Consumer Commission and others.

NOTES ON PROVISIONS

Clause 1 cites the short title of the Act.

Clause 2 sets out the date of commencement of the Act.

Clause 3 refers to the dictionary which includes terms defined for the Act.

Clause 4 defines “bulk end user” and extends the circumstances in which fuel will be taken to be used for a bulk end user’s own use.

Clause 5 defines “off-road diesel consumer” and extends the circumstances in which fuel will be taken to be used for an off-road diesel consumer’s own use.

Clause 6 defines “retailer”. The effect of clauses 4, 5 and 6 is that a person may operate in more than one capacity.

Clause 7 specifies that unless prescribed otherwise a retail quantity of fuel is not more than 3000 litres and the circumstances in which a quantity of fuel will not be a retail quantity. For instance, fuel supplied in 3000 litre amounts into separate compartments of a fuel tanker will be taken to be a retail quantity only to the extent of the first of the 3000 litre volumes supplied as any subsequent deliveries into the other compartments will not be into a container which is empty.

Clause 8 defines “net sale”.

Clause 9 provides that a subsidy is payable only once in respect of an amount of fuel, whether under this Act or a law of another State relating to the payment of fuel subsidies. The commissioner may require the repayment of the subsidy under this Act within 7 days of giving an information notice if a person receives a subsidy paid under this Act and a corresponding law. The circumstances in which a person will be taken to have received a subsidy are specified in the clause.

Clause 10 provides that a subsidy is payable only in respect of fuel and not any product which is not fuel but which has been mingled with fuel. Circumstances where fuel is no longer taken to be fuel are established in the clause.

Clause 11 provides that fuel is not for a person's own use if it is sold by the person.

Clause 12 establishes that licensed off-road diesel consumers are entitled to a subsidy for diesel purchased under their licence. The way in which the benefit of the subsidy is gained is set out in Chapter 2.

Clause 13 prohibits a person from recovering any costs in relation to the surcharge when selling fuel to a licensed off-road diesel consumer other than by making a claim for a subsidy.

Clause 14 prohibits a seller of diesel to a licensed off-road diesel consumer from recovering any part of the sale price in respect of the subsidy other than by making a subsidy claim where the purchaser provides certain evidence of entitlement. The prohibition does not apply in specified cases.

Clause 15 allows a person who makes a net sale to a licensed off-road diesel consumer to claim on behalf of the licensee, under the commissioner's guidelines, the subsidy in relation to the diesel sold.

Clause 16 requires a person who sold diesel other than under a net sale to, on request by a licensee, claim the subsidy in relation to the diesel and to account for the subsidy to the licensee. This would apply, for instance, where a person had applied for, but not been issued with, a licence when buying diesel and then obtains that licence so that the benefit of the subsidy is received by that person.

Clause 17 provides a mechanism to net the amount of a subsidy which would otherwise be required to be repaid against an amount of a subsidy which would otherwise be entitled to be claimed.

Clause 18 requires a person who has bought under a net sale and sold other than under a net sale to repay the subsidy within 7 days.

Clause 19 requires a person who has used diesel which was acquired under a net sale for an unauthorised purpose to repay the subsidy within 7 days.

Clause 20 clarifies that a licence condition prohibiting resale by a licensee has effect although the person may be entitled to a subsidy in respect of the resale or is required to repay the subsidy.

Clause 21 specifies when a notional sale will be taken to be made for the purposes of claiming a subsidy.

Clause 22 facilitates the application for an off-road diesel consumer's licence and the provision of sufficient information.

Clause 23 requires the commissioner to consider and grant or refuse a licence application.

Clause 24 establishes conditions for the grant of a licence.

Clause 25 requires that a licence be promptly issued where a licence is granted or that an information notice be promptly issued if an application is refused.

Clause 26 provides for the effective date of a licence.

Clause 27 establishes the conditions of an off-road diesel consumer's licence and allows the commissioner to impose other conditions considered appropriate.

Clause 28 specifies the form of an off-road diesel consumer's licence

Clause 29 specifies the way in which a licence may be surrendered and requires surrender when a person ceases to be an off-road diesel consumer.

Clause 30 specifies the grounds on which an off-road diesel consumer's licence may be cancelled.

Clause 31 specifies the procedures to be adopted if the commissioner believes that a ground exists to cancel an off-road diesel consumer's licence and the way in which a cancellation has effect. A person has 28 days from receiving a written notice regarding the commissioner's belief that a licence should be cancelled within which to show in writing why the licence should not be cancelled.

Clause 32 allows for the immediate suspension of a licence by the commissioner where the commissioner believes that a ground exists for the licence to be cancelled and suspension is necessary because an activity of the licensee has or could jeopardise the integrity of the arrangements under the Act. The clause also provides for the way in which the suspension has effect.

Clause 33 allows for the immediate suspension of a licence by the commissioner where the licensee has been charged with an offence and the commissioner believes suspension is necessary because an activity of the licensee has or could jeopardise the integrity of the arrangements under the Act. The clause also provides for the way in which the suspension has effect.

Clause 34 requires a licensee to return a cancelled licence within 7 days of receiving an information notice for the cancellation decision.

Clause 35 allows the commissioner to change the licence conditions which were imposed by the commissioner and requires the return of the licence for amendment.

Clause 36 requires a licensee to comply with all licence conditions.

Clause 37 provides that an off-road diesel consumer's licence cannot be transferred.

Clause 38 provides that an off-road diesel consumer's licence continues in force until it is surrendered or cancelled.

Clause 39 specifies the records required to be retained by a person who makes a net sale under chapter 2 of the Act.

Clause 40 specifies the records required to be retained by a licensed off-road diesel consumer.

Clause 41 establishes that licensed retailers are entitled to a subsidy for fuel purchased under their licence. The way in which the benefit of the subsidy is gained is set out in Chapter 3.

Clause 42 prohibits a person from recovering any costs in relation to the surcharge when selling fuel to a licensed retailer other than by making a claim for a subsidy. The clause also prohibits a person selling fuel to retail consumers from recovering any costs in relation to the surcharge other than by having the person from whom the fuel was acquired make a subsidy claim on the retailer's behalf.

Clause 43 prohibits a person who sells fuel to a licensed retailer from

recovering any part of the sale price in respect of the subsidy other than by making a subsidy claim where the purchaser provides certain evidence of entitlement. The prohibition does not apply in specified cases.

Clause 44 allows a person who makes a net sale to a licensed retailer to claim on behalf of the licensee, under the commissioner's guidelines, the subsidy in relation to the fuel sold.

Clause 45 requires a person who sold fuel other than under a net sale to claim the subsidy in relation to the fuel on request by the licensee and to account for the subsidy to the licensee.

Clause 46 provides a mechanism to net the amount of a subsidy which would otherwise be required to be repaid against an amount of a subsidy which would otherwise be entitled to be claimed.

Clause 47 requires a person who has bought under a net sale and sold other than under a net sale to repay the subsidy within 7 days.

Clause 48 requires a person who has sold fuel which was acquired under a net sale other than as retail fuel to repay the subsidy within 7 days.

Clause 49 clarifies that a licence condition prohibiting resale by a licensee has effect although the person may be entitled to a subsidy in respect of the resale or is required to repay the subsidy.

Clause 50 specifies when a notional sale will be taken to be made for the purposes of claiming a subsidy.

Clause 51 facilitates the application for an retailer's licence and the provision of sufficient information.

Clause 52 requires the commissioner to consider and grant or refuse a licence application.

Clause 53 establishes conditions for the grant of a licence.

Clause 54 requires that a licence be promptly issued where a licence is granted or that an information notice be promptly issued if an application is refused.

Clause 55 provides for the effective date of a licence.

Clause 56 establishes the conditions of an retailer's licence and allows the commissioner to impose other conditions considered appropriate.

Clause 57 specifies the form of a retailer's licence.

Clause 58 specifies the way in which a licence may be surrendered and requires surrender when a person ceases to be a retailer.

Clause 59 specifies the grounds on which a retailer's licence may be cancelled.

Clause 60 specifies the procedures to be adopted if the commissioner believes that a ground exists to cancel a retailer's licence and the way in which a cancellation has effect. A person has 28 days from receiving a written notice regarding the commissioner's belief that a licence should be cancelled within which to show in writing why the licence should not be cancelled.

Clause 61 allows for the immediate suspension of a licence by the commissioner where the commissioner believes that a ground exists for the licence to be cancelled and suspension is necessary because an activity of the licensee has or could jeopardise the integrity of the arrangements under the Act. The clause also provides for the way in which the suspension has effect.

Clause 62 allows for the immediate suspension of a licence by the commissioner where the licensee has been charged with an offence and the commissioner believes suspension is necessary because an activity of the licensee has or could jeopardise the integrity of the arrangements under the Act. The clause also provides for the way in which the suspension has effect.

Clause 63 requires a licensee to return a cancelled licence within 7 days of receiving an information notice for the cancellation decision.

Clause 64 allows the commissioner to change the licence conditions which were imposed by the commissioner and requires the return of the licence for amendment.

Clause 65 requires a licensee to comply with all licence conditions.

Clause 66 provides that a retailer's licence cannot be transferred.

Clause 67 provides that a retailer's licence continues in force until it is surrendered or cancelled.

Clause 68 specifies the records required to be retained by a person who makes a net sale under chapter 3 of the Act.

Clause 69 specifies the records required to be retained by a licensed

retailer.

Clause 70 establishes that licensed bulk end users are entitled to a subsidy for fuel purchased under their licence. The way in which the benefit of the subsidy is gained is set out in Chapter 4.

Clause 71 establishes when fuel is purchased or sold in Queensland.

Clause 72 prohibits a person from recovering any costs in relation to the surcharge when selling fuel to a licensed bulk end user other than by making a claim for a subsidy.

Clause 73 prohibits a person who sells fuel to a licensed bulk end user from recovering any part of the sale price in respect of the subsidy other than by making a subsidy claim where the purchaser provides certain evidence of entitlement. The prohibition does not apply in specified cases.

Clause 74 allows a person who makes a net sale to a licensed bulk end user to claim on behalf of the licensee, under the commissioner's guidelines, the subsidy in relation to the fuel sold.

Clause 75 requires a person who sold fuel other than under a net sale to claim the subsidy in relation to the fuel on request by the licensee and to account for the subsidy to the licensee.

Clause 76 provides a mechanism to net the amount of a subsidy which would otherwise be required to be repaid against an amount of a subsidy which would otherwise be entitled to be claimed.

Clause 77 requires a person who has bought under a net sale and sold other than under a net sale to repay the subsidy within 7 days.

Clause 78 clarifies that a licence condition prohibiting resale by a licensee has effect although the person may be entitled to a subsidy in respect of the resale or is required to repay the subsidy.

Clause 79 specifies when a notional sale will be taken to be made for the purposes of claiming a subsidy.

Clause 80 facilitates the application for a bulk end user's licence and the provision of sufficient information.

Clause 81 requires the commissioner to consider and grant or refuse a licence application.

Clause 82 specifies the circumstances for granting a bulk end user's

licence. The commissioner must grant a licence where the applicant was a bulk end user purchasing fuel in Queensland during 1996/97 and continues to be a bulk end user purchasing fuel in Queensland during 1997/98. Where the applicant was not a bulk end user purchasing fuel in Queensland during 1996/97, the commissioner may grant a licence where certain conditions are satisfied, including where it is reasonable to expect that, having regard to specified matters, if the applicant was carrying on the same activity in 1996/97 which it is now carrying on or proposing to carry on, it would have purchased fuel as a bulk end user in Queensland during that period.

In addition to the matters set out in the clause, the commissioner can have regard to any other matters considered to be relevant in deciding whether there is a reasonable expectation as required.

Clause 83 requires that a licence be promptly issued where a licence is granted or that an information notice be promptly issued if an application is refused.

Clause 84 provides for the effective date of a licence.

Clause 85 establishes the conditions of an bulk end user's licence and allows the commissioner to impose other conditions considered appropriate.

Clause 86 specifies the form of a bulk end user's licence.

Clause 87 requires the commissioner to decide the licensed quantity of fuel for each licence and establishes the effect of the decision.

Clause 88 establishes the way in which the licensed quantity of fuel for the first year in which a licence is issued is calculated. The manner of calculating the licensed quantity of fuel varies depending on whether the person was a bulk end user purchasing fuel in Queensland during 1996/97, or commenced activity as a bulk end user after that financial year.

The licensed quantity of fuel is adjusted where a person carried on an activity to which the licence relates for part only of the 1996/97 year and also where the licence will be issued for part of a financial year. In the case of a licensee who was a bulk end user before 14 October 1997, the licensed quantity of fuel is determined having regard to the period from 14 October 1997 to the end of that financial year and is adjusted for the non-retail fuel purchased between 14 October 1997 and the date the licence becomes effective. Where a person is first licensed in the 1997/98 financial year and

did not carry on activity as a bulk end user before 14 October 1997, the licensed quantity of fuel is determined having regard to the period from which the person became a bulk end user to the end of the financial year and is adjusted for the non-retail fuel purchased between 14 October 1997 and the date the licence becomes effective.

Clause 89 specifies the method of determining the licensed quantity of fuel for the second and subsequent years of a licence.

Clause 90 allows an applicant to apply for a variation in the licensed quantity of fuel and for the commissioner to vary the licensed quantity of fuel on the commissioner's own initiative.

Clause 91 without limiting the commissioner, specifies the matters to which the commissioner may have regard when deciding whether or not to vary the licensed quantity of fuel.

Clause 92 specifies the process to be followed when making a decision as to whether or not to vary the licensed quantity of fuel.

Clause 93 specifies the way in which a licence may be surrendered and requires surrender when a person ceases to be a bulk end user

Clause 94 specifies the grounds on which a bulk end user's licence may be cancelled.

Clause 95 specifies the procedures to be adopted if the commissioner believes that a ground exists to cancel a bulk end user's licence and the way in which a cancellation has effect. A person has 28 days from receiving a written notice regarding the commissioner's belief that a licence should be cancelled within which to show in writing why the licence should not be cancelled.

Clause 96 allows for the immediate suspension of a licence by the commissioner where the commissioner believes that a ground exists for the licence to be cancelled and suspension is necessary because an activity of the licensee has or could jeopardise the integrity of the arrangements under the Act. The clause also provides for the way in which the suspension has effect.

Clause 97 allows for the immediate suspension of a licence by the commissioner where the licensee has been charged with an offence and the commissioner believes suspension is necessary because an activity of the licensee has or could jeopardise the integrity of the arrangements under the

Act. The clause also provides for the way in which the suspension has effect.

Clause 98 requires a licensee to return a cancelled licence within 7 days of receiving an information notice for the cancellation decision.

Clause 99 allows the commissioner to change the licence conditions which were imposed by the commissioner and requires the return of the licence for amendment.

Clause 100 requires a licensee to comply with all licence conditions.

Clause 101 provides that a bulk end user's licence cannot be transferred.

Clause 102 provides that a bulk end user's licence continues in force until it is surrendered or cancelled.

Clause 103 requires licensees to submit an annual return to allow the commissioner to notify the licensed quantity of fuel for the financial year. The clause facilitates licensees purchasing fuel under a net sale pending notification of the licensed quantity of fuel. A licence expires on the date the return was due where a return is not lodged in the required time.

Clause 104 specifies the records required to be retained by a person who makes a net sale under chapter 4 of the Act.

Clause 105 specifies the records required to be retained by a licensed bulk end user.

Clause 106 requires a person to be registered or to have applied for registration before making a claim for subsidy.

Clause 107 provides for registration of an applicant.

Clause 108 specifies the terms which are to be implied in any contract for sale of fuel other than under a net sale to enable the payment by the purchaser of the amount of the sale price equal to the subsidy to be deferred. The parties to a contract may agree to vary the implied terms if the new terms give the purchaser at least the same economic benefit as provided by the implied terms. The parties may be required to adopt the implied terms where, on the commissioner's own initiative or on application by a party to the contract, the commissioner decides that the new terms do not give the purchaser at least the same economic benefit as the implied terms. The commissioner's decision has effect subject only to an appeal under the Act and from the date an information notice is given.

Clause 109 gives authorised persons the function of conducting investigations and inspections and monitoring and enforcing compliance with the Act.

Clause 110 provides that an authorised person is subject to the commissioner's directions when exercising the authorised person's powers.

Clause 111 confirms an authorised person has the powers which are granted to the authorised person under the Act.

Clause 112 provides for limitations on the powers of an authorised person to be contained in a regulation, condition of appointment, or written notice from the commissioner.

Clause 113 empowers the commissioner to appoint an appropriately qualified officer or employee of the department or the public service of any State or the Commonwealth as an authorised person.

An appropriately qualified person includes a person with appropriate qualifications, experience or standing to exercise the powers of an authorised person.

Clause 114 states that the conditions of an authorised person's appointment will be contained in the instrument of appointment, and clarifies when an authorised person will cease to hold office as an authorised person.

Clause 115 provides for the issue and return of identity cards for authorised persons.

Clause 116 requires that except in cases where it is not practicable to do so, an authorised person must produce the person's identity card for inspection, or display the identity card so that it is clearly visible, prior to exercising powers in relation to another person.

Clause 117 empowers an authorised person to, without consent or warrant, enter a public place, a fuel subsidy place which is not or is not located in a dwelling house, or land around a fuel subsidy place to ask its occupier for consent.

A fuel subsidy place is a premises which is used in connection with the activities of a bulk end user, distributor, importer, manufacturer, off-road diesel consumer or retailer, including premises where the fuel subsidy entity ordinarily resides or carries on business or stores records or other materials. Prior to entering a fuel subsidy place the authorised person must make a

reasonable attempt to obtain the occupier's consent to the entry.

Clause 118 provides that unless entry by an authorised person is otherwise expressly authorised by the Act, an authorised person may only enter premises with the occupier's consent or a warrant.

Clause 119 prescribes the procedure which an authorised person must adopt when seeking and recording an occupier's consent to entry.

Clause 120 clarifies that if in court proceedings a consent acknowledgment is not produced and it is not proved that the occupier consented to entry, the court may presume that the occupier did not consent.

Clause 121 empowers an authorised person to apply to a magistrate for a warrant to enter a place.

Clause 122 limits the ability of a magistrate to issue a warrant to specified circumstances.

Clause 123 empowers an authorised person to apply for a special warrant by any means of communication necessary in urgent or other special circumstances.

Clause 124 clarifies that if in court proceedings an issue arises as to whether an authorised person exercised powers pursuant to a special warrant and the special warrant is not produced in evidence, the court may presume that the authorised person did not exercise powers pursuant to a special warrant, unless the contrary is proved.

Clause 125 empowers an authorised person to exercise certain powers when the authorised person has entered a place, including, but not limited to, powers to search, take things from the place for testing, copy documents, and in the case of a fuel subsidy place to access electronically any system which is used in connections with the operations of a fuel subsidy entity or the subsidy arrangements. An authorised person may also request a person to assist the authorised person, and to provide information to assist the authorised person to ascertain whether the Act is being complied with.

Clause 126 creates an offence against the Act where a person fails, without reasonable excuse, to provide assistance requested by an authorised person who has entered a place.

Clause 127 creates an offence where a person fails, without reasonable

excuse, to provide information requested by an authorised person who has entered a place.

Clause 128 clarifies the role of police officers in assisting authorised persons to exercise their powers under the Act.

Clause 129 clarifies the circumstances and manner in which an authorised person may request a vehicle to stop. Offences are created where a driver fails to comply with directions to stop a vehicle, and where once a vehicle has stopped the driver, without reasonable excuse, fails to comply with certain directions of an authorised person.

Clause 130 empowers an authorised person to conduct a search and to exercise other investigation powers in relation to a vehicle where the driver of a vehicle is required to carry transportation records, and the driver has failed to comply with a request by an authorised person to immediately (or otherwise) produce the required transportation records.

Clause 131 empowers an authorised person who has entered a place to seize things in certain circumstances.

Clause 132 empowers an authorised person to move a seized thing from the place of seizure, or to leave the seized thing at the place of seizure.

Clause 133 creates an offence against the Act where a person tampers with, or attempts to tamper with a seized thing or something restricting access to the seized thing without authorisation from an authorised person.

Clause 134 empowers an authorised person to require a person in control of a thing which is to be seized to take the seized thing to a stated place, or to remain in control of the thing at the stated place, and provides for an offence against the Act where the person fails to comply without reasonable excuse.

Clause 135 requires an authorised person to provide a receipt for things seized to the person from whom goods are seized, or to leave a receipt in a conspicuous and secure position at the place of seizure, unless it would be impracticable or unreasonable to do so.

Clause 136 provides for the forfeiture of seized things to the commissioner where authorised persons after making reasonable efforts cannot find the owner or return the things to the owner, or where an authorised person reasonably believes it is necessary to retain the thing to prevent it being used to commit an offence against the Act.

Clause 137 empowers an authorised person to sell fuel which is seized, and to account to the owner for the proceeds of sale, unless the authorised person reasonably believes that the fuel was used to commit an offence or was the subject of an offence in which case the authorised person may retain the proceeds of sale.

The authorised person may exercise this power to sell seized fuel where the authorised person reasonably believes that it is not practicable to return the fuel to its owner but it is not practicable for the commissioner to retain the fuel.

Where an authorised person is required to account for the proceeds of sale of seized fuel to the owner, the proceeds of sale may nevertheless be forfeited to the commissioner if the commissioner cannot find the owner or return the proceeds to the owner of the fuel after making reasonable efforts to do so.

Clause 138 provides that unless a seized thing or the proceeds of sale of seized fuel have already been forfeited to the commissioner, the commissioner must return the seized thing or proceeds six months after seizure; unless a proceeding for an offence involving the seized thing or the seized fuel has been started, in which case the commissioner must return the seized thing or proceeds at the end of those proceedings or appeal from those proceedings.

Clause 139 requires an authorised person to give the owner of a seized thing access to inspect or copy the thing in certain circumstances.

Clause 140 empowers an authorised person to issue a personal details requirement, requiring a person to state their name and address, where the authorised person finds that person committing an offence or the authorised person reasonably suspects that the person has just committed an offence.

Clause 141 provides an offence against the Act where a person fails to comply with a personal details requirement without reasonable excuse, except in specific circumstances.

Clause 142 clarifies the powers of a police officer where a person has failed to comply with a personal details requirement.

Clause 143 empowers an authorised person to issue document production and document certification requirements, requiring the production of documents or certification that a copy of a document is a true copy respectively.

Clause 144 creates an offence where a person fails to comply with a document production requirement without reasonable excuse.

Clause 145 creates an offence where a person fails to comply with a document certification requirement without reasonable excuse.

Clause 146 empowers an authorised person to require certain persons to attend to answer questions or to give information about a document to which a document production requirement relates.

An authorised person is also empowered to require the attendance of certain persons to answer questions or to give information about the operation with respect to a fuel subsidy entity, of the subsidy arrangements established by the Act.

A fuel subsidy entity is a bulk end user, distributor, importer, manufacturer, off-road diesel consumer or retailer.

Clause 147 provides an offence where a person fails to comply with a requirement of an authorised person to attend and to answer questions or give information, unless the person has a reasonable excuse.

Clause 148 empowers an authorised person to, with the written consent of the commissioner, issue a financial records requirement to a person who is the manager or other principal officer at a financial institution at which a fuel subsidy entity keeps accounts, requiring that person to give to the authorised person documentation in relation to that account.

Clause 149 clarifies that no liability attaches to the manager or other principal officer of a financial institution, or the financial institution merely because the manager or other principal officer complies with a financial records requirement.

Clause 150 provides an offence where a person fails to comply with a financial records requirement without reasonable excuse.

Clause 151 clarifies that on conviction of a person for an offence against the Act, the Court may order the forfeiture to the commissioner of any thing used to commit or which was the subject of the offence (including the proceeds of sale of any fuel used to commit or the subject of the offence) whether or not the thing was seized or returned to the owner.

Clause 152 clarifies that when any forfeited thing or forfeited proceeds of sale become the property of the commissioner, they may be dealt with by

the commissioner as the commissioner considers appropriate.

Clause 153 requires an authorised person to provide written notice to a person who appears to be the owner of property damaged when the authorised person, or a person acting under the direction of the authorised person, has purported to exercise a power in specified cases.

Clause 154 permits a person to make a claim against the commissioner for the cost of repair or replacing property damaged because of the exercise or purported exercise of certain powers granted by the Act in specified circumstances. A Court may order that an amount be ordered to the claimants only where the Court is satisfied that it is just to do so in the circumstances.

Clause 155 provides certain officials with protection from civil liability in respect of an act done or omission made honestly and without negligence, and imports the civil liability which would otherwise attach to officials in these circumstances to the State.

Clause 156 creates an offence where a person states a matter to an authorised person which the person knows is false or misleading in a material particular.

Clause 157 provides for offences in specified circumstances where a person provides an authorised person with a document which the person knows is false, misleading or incomplete in a material particular.

Clause 158 creates an offence where a person obstructs an authorised person in the exercise of their powers without reasonable excuse.

Clause 159 clarifies the steps which a police officer may take where a person has obstructed an authorised person.

Clause 160 states that if it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show that 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. The clause specifies the persons who will be regarded as the representatives of a corporation or an individual respectively.

Where a person's representative has done or omitted to do an act within the scope of the representative's authority, unless the person can prove that they could not by the exercise of reasonable diligence have prevented the act or omission, the act or omission will also be taken to have been done or omitted to be done by the person.

Clause 161 confirms that the executive officers of a corporation must ensure that the corporation complies with the Act and that the executive officers of a corporation will be regarded as having failed to do so where the corporation has committed an offence. An exception is provided where an officer can show that the officer exercised reasonable diligence to ensure that the corporation complied with the provision, or was not in a position to influence the conduct of the corporation.

An executive officer of a corporation is a person who is concerned with or takes part in the management of the of the corporation, whether or not as director or in a position which is named executive officer.

Clause 162 confirms that in certain cases where a corporation is liable to pay overpaid amounts, an incorrect subsidy amount, a penalty amount or an amount of interest to the commissioner, each of the corporation's officers will be jointly and severally liable with the corporation to pay the amount to the commissioner. However an exception is provided where an officer can show that the officer exercised reasonable diligence to ensure that the corporation complied with the provision, or was not in a position to influence the conduct of the corporation.

Clause 163 states that in a proceeding a certificate as to specified matters which is signed by the commissioner is to be evidence of those matters.

Clause 164 clarifies the procedures for commencing proceedings for an offence by way of summary proceeding.

Clause 165 empowers the commissioner to demand payment of any overpaid amounts of subsidies paid to a person.

The person must also pay the commissioner an incorrect payment penalty equivalent to the overpaid amount of any subsidy where the commissioner is satisfied that the purchaser of fuel for which the subsidy claim was made did not receive the full benefit of the subsidy paid to the claimant, the claim for the subsidy was materially false, or the claimant sold the fuel other than in reliance on a licence.

However the commissioner is granted a discretion to direct that a claimant need not pay any part of an incorrect payment penalty if the commissioner is satisfied that it would be unreasonable to require the claimant to pay the whole of the penal

Clause 166 confirms that where a purchaser has purchased fuel under a net sale and the purchaser was not entitled to do so, the purchaser must pay to the commissioner the subsidy for the sale.

The person must also pay to the commissioner an incorrect benefit penalty equivalent to the subsidy for the sale.

However the commissioner is granted a discretion to direct that a claimant need not pay any part of an incorrect benefit penalty if the commissioner is satisfied that it would be unreasonable to require the claimant to pay the whole of the penalty.

Clause 167 clarifies that if payment of any part of an incorrect payment penalty or an incorrect benefit penalty is required because of an act or omission of a person, payment of those penalty amounts is to be alternative to prosecution of the person for the offence arising out of that act or omission.

Clause 168 states that unless a review of a decision is permitted in Division 2 of Part 4 of Chapter 6 of the Act, a decision made under the Act is to be final and conclusive and without limitation cannot be challenged, appealed or reviewed under the provisions of the *Judicial Review Act 1991* or otherwise by any Court authority, tribunal or person.

Clause 169 defines “court”, “decision” and “review decision” for the purposes of Division 2 of Part 4 of Chapter 6 of the Act.

Clause 170 sets out the circumstances in which failure by the commissioner, to make a decision in relation to an application for a retailer’s, off-road diesel consumers’ or bulk end user’s licence, or an application for variation of the licensed quantity of fuel for a bulk end user’s licence, will be regarded as being a decision refusing the application.

Clause 171 requires that every appeal against a decision is to be by way of an application for internal review at first instance.

Clause 172 provides that any person who receives or who is entitled to receive an information notice for a decision may apply for internal review of the decision.

Clause 173 sets out the time limits and process for applying for internal review of a decision.

Clause 174 clarifies that after review, the commissioner must make a review decision regarding the original decision, and notify the person seeking the review of the review decision and the person’s appeal rights. The clause also specifies the circumstances in which failure by the commissioner to make a decision will be considered to be a review decision

by the commissioner confirming the original decision.

Clause 175 confirms that a person who is dissatisfied with a review decision may appeal to the Court against the review decision.

Clause 176 sets out where, in the case of appeal to a Magistrates Court, appeals may be made.

Clause 177 sets out the time limits and procedures for commencing an appeal in relation to a review decision.

Clause 178 restricts a Court from granting a stay of the operation of a review decision.

Clause 179 prescribes the procedures which apply to a Court hearing an appeal against a review decision.

Clause 180 sets out the powers of a Court deciding an appeal in relation to a review decision.

Clause 181 limits appeals from a decision of a Court in relation to a review decision to questions of law.

Clause 182 empowers the commissioner to delegate the commissioner's powers to an appropriately qualified officer or employee of the department, or of another State or the Commonwealth.

Clause 183 empowers the commissioner to approve forms.

Clause 184 provides an offence where a person pretends to be the holder of a licence when purchasing fuel.

Clause 185 clarifies that subsidies will not be payable by the commissioner unless the commissioner is satisfied that the claimant, in setting the price for the fuel, has not recovered or sought to recover part or all of the increased cost of fuel which results from the imposition of the surcharge, other than by making the claim for the subsidy.

Clause 186 requires drivers of certain vehicles to maintain and carry on the vehicle a fuel transport record and creates an offence where the driver fails to carry the fuel transport record. The clause also specifies the information which must be included in a fuel transport record.

Clause 187 imposes an obligation on the commissioner to deliver an information notice to a person whom the commissioner decides to require to pay an amount owing under prescribed sections of the Act.

Clause 188 clarifies that in a proceeding against a person for recovery of an amount payable by the person under the Act, a signed certificate issued

by the commissioner or an information notice given to the person shall be conclusive evidence that the amount in the certificate or notice is payable by the person to the commissioner.

Clause 189 imposes an obligation on the commissioner to, in certain cases, repay an amount where it is decided on appeal that the amount owing by the person is less than the amount which the person has paid to the commissioner.

Clause 190 provides that interest at the prescribed rate is payable on amounts owing to the commissioner. However the commissioner may direct that part or all of the interest is not payable where the commissioner is satisfied that it would be unreasonable to require payment of the whole interest.

Clause 191 provides for an offence in specified circumstances where a person gives the commissioner a document which the person knows is false, misleading or incomplete in a material particular.

Clause 192 provides for an offence in specified circumstances when a person makes an entry in a document which the person knows to be false, misleading or incomplete.

Clause 193 imposes confidentiality obligations on persons in relation to information gained by the person in performing functions or exercising powers under the Act.

Clause 194 sets out the procedure for service of documents on the commissioner.

Clause 195 empowers the Governor in Council to make certain regulations under the Act.

Clause 196 defines “interim guidelines” and “transitional period” for the purposes of Chapter 8 of the Act.

Clause 197 states that the intention of Part 2 of Chapter 8 of the Act is to give effect to Parliament’s intention to provide a subsidy in respect of diesel purchased by off-road diesel consumers for use by them in Queensland, during the transitional period.

Clause 198 states that Chapter 2 of the Act applies in the transitional period, as if references to a licensed off-road diesel consumer in that

Chapter were references to a person who has satisfied the fuel seller that the person is an off-road diesel consumer under the interim guidelines.

Clause 199 clarifies that the transitional arrangements in Part 2 of Chapter 8 of the Act cease to apply on the earlier of a person being issued with an off-road diesel consumer's licence or the end of the transitional period.

Clause 200 empowers the commissioner to require repayment of subsidies received in respect of the purchase of diesel where the purchaser's application for an off-road diesel consumer's licence is refused or the person fails to make an application for such a licence prior to the end of the transitional period.

Clause 201 states that the intention of Part 3 of Chapter 8 of the Act is to give effect to Parliament's intention to provide a subsidy for fuel purchased by retailers during the transitional period.

Clause 202 states that Chapter 3 of the Act applies in the transitional period as if references to a licensed retailer were references to a person who has satisfied fuel sellers that the person is a licensed retailer under the interim guidelines.

Clause 203 clarifies that the transitional arrangements in Part 3 of Chapter 8 of the Act cease to apply on the earlier of a person being issued with a retailer's licence or the end of the transitional period.

Clause 204 empowers the commissioner to require repayment of subsidies received in respect of the purchase of fuel under Chapter 3 of the Act where the purchaser's application for a retailer's licence is refused or the person fails to make an application for such a licence prior to the end of the transitional period.

Clause 205 states that the purpose of Part 4 of Chapter 8 of the Act is to give effect to Parliament's intention to provide a subsidy for purchases of fuel by bulk end users during the transitional period.

Clause 206 states that Chapter 4 of the Act applies in the transitional period as if a reference to a licensed bulk end user were a reference to a person who has satisfied a fuel seller that the person is a bulk end user under the interim guidelines, and provides for the operation of the interim guidelines in a specific case.

Clause 207 clarifies that the transitional arrangements in Part 4 of

Chapter 6 of the Act cease to apply on the earlier of a person being issued with a bulk end user's licence or the end of the transitional period.

Clause 208 empowers the commissioner to require repayment of subsidies received in respect of the purchase of fuel under Chapter 4 of the Act where the purchaser's application for a bulk end user's licence is refused or the person fails to make an application for such a licence prior to the end of the transitional period.

Clause 209 clarifies that nothing in the interim guidelines entitles a person who first becomes a bulk end user on or after 1 November 1997 to purchase under a net sale. The clause also specifies the licensed quantity for a person who first becomes a bulk end user in the period starting on 1 July 1997 and ending on 31 October 1997.

Clause 210 empowers the Governor in Council to, within 1 year of the commencement of the Act, make regulations of a savings, transitional or validating nature, and to give the regulations retrospective operation to a date not earlier than 1 November 1997 in certain circumstances.

Schedule 1 specifies the decisions made under the Act which are appealable to the Supreme Court, and the decisions under the Act which are appealable to the District Court.

Schedule 2 specifies the goods which are fuel for the purposes of the Act.

Schedule 3 defines terms used in the Act.