

Queensland



FUEL SUBSIDY AMENDMENT BILL 2000

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2000

A BILL

FOR

An Act to amend the Fuel Subsidy Act 1997

The Parliament of Queensland enacts—

1

PART 1—PRELIMINARY

2

Short title

3

Clause **1.** This Act may be cited as the *Fuel Subsidy Amendment Act 2000*.

4

Commencement

5

Clause **2.(1)** Parts 1 and 2 are taken to have commenced on 10 July 2000.

6

(2) Part 3 is taken to have commenced on 1 October 2000.

7

(3) Part 4 commences on assent.

8

(4) Part 5 commences on 1 December 2000.

9

Act amended

10

Clause **3.** This Act amends the *Fuel Subsidy Act 1997*.

11

PART 2—AMENDMENTS COMMENCING ON 10 JULY 2000

12

13

Insertion of new s 4C

14

Clause **4.** After section 4—

15

insert—

16

‘Meaning of “off-road purpose”

17

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

18

19

‘(2) For chapter 2, an **“off-road purpose”** does not include a private or

20

Fuel Subsidy Amendment

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).’.

Insertion of new s 39A

Clause 5. Chapter 2, part 3—

insert—

‘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.’.

Amendment of s 131 (Person incorrectly receiving benefit of subsidy)

Clause 6.(1) Section 131—

insert—

‘(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”**).’.

(2) Section 131(5), after ‘subsidy amount’—

insert—

‘or the amount not repaid as required under section 39A’.

(3) Section 131—

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insert—

‘(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.’.

(4) Section 131(8), after ‘(7)’—

insert—

‘or (7A)’.

Amendment of sch 3 (Dictionary)

Clause 7. Schedule 3—

insert—

‘ “off-road purpose” see section 4C.’.

**PART 3—AMENDMENTS COMMENCING ON
1 OCTOBER 2000**

Replacement of s 4 (Meaning of “bulk end user”)

Clause 8. Section 4—

omit, insert—

‘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

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used for an off-road purpose, that is—	1
(a) purchased by a person other than as retail fuel under chapter 2; and	2 3
(b) delivered, under subsection (3)—	4
(i) from a storage site of the person stated in the person’s bulk end user licence; or	5 6
(ii) in Queensland by a distributor.	7
‘(2) Subsection (1)(b) applies to the extent the delivery is made in a bulk end user quantity.	8 9
‘(3) The fuel must be delivered—	10
(a) directly into the running tank of a vehicle or equipment used by the person, and for operating the vehicle or equipment; or	11 12
(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.	13 14 15
 ‘Meaning of “bulk end user quantity”	 16
‘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.	17 18 19
‘(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).	20 21 22
‘(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).’.	23 24 25
 Replacement of s 7 (Meaning of “net sale”)	 26
Clause 9. Section 7—	27
omit, insert—	28

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‘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.’.

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

Clause **10.** Section 8(6)(b), ‘or 3’—
omit.

Amendment of ss 16, 17 and 20

Clause **11.** Sections 16(1), 17(1) and 20(1)(b) ‘for this chapter or chapter 3’—
omit.

Replacement of ch 3 (Bulk end users)

Clause **12.** Chapter 3—
omit, insert—

‘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

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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

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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

1

‘Records to be kept

2

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

3

4

Maximum penalty—100 penalty units.

5

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

6

7

(a) the date the fuel was purchased;

8

(b) the quantity and type purchased;

9

(c) the seller’s name and address;

10

(d) the price paid per litre;

11

(e) the place of delivery;

12

(f) another matter prescribed under a regulation.

13

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

14

(a) for each storage site stated in the user’s licence—the stock of fuel on hand at the end of each month;

15

16

(b) for diesel not purchased as retail fuel—the way it is used;

17

(c) the vehicles and equipment to which bulk end user fuel is delivered;

18

19

(d) another matter prescribed under a regulation.

20

‘(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.

21

22

‘Return

23

‘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.

24

25

26

Maximum penalty—100 penalty units.

27

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

28

Fuel Subsidy Amendment

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

Amendment of s 150 (Claims for subsidy)

Clause 13. Section 150, ‘or 42(1)’—
omit.

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

Clause 14.(1) Section 152(3), definition “**prescribed section**”, ‘46,’—
omit.
(2) Section 152(3), definition “**prescribed section**”, ‘165, 169’—
omit, insert—
‘165’.

Amendment of s 161 (Definitions for ch 7)

Clause 15.(1) Section 161, definition “**interim guidelines**”, ‘before the commencement of this definition’—
omit.
(2) Section 161, definition “**transitional period**”, ‘or 3’—
omit.

Omission of ch 7, pt 3

Clause 16. Chapter 7, part 3—
omit.

Insertion of new ch 8

Clause 17. After chapter 7—
insert—

‘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.

‘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.

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‘(5) Subsection (2) does not limit the *Acts Interpretation Act 1954*,
section 20.¹

‘Claims by bulk end users

‘175. Despite section 43,² a subsidy for a bulk end user is not payable
before 21 December 2000.

‘No retrospective criminal liability

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

Amendment of sch 3 (Dictionary)

Clause **18.(1)** Schedule 3, definitions “**bulk end user’s licence**”, “**fuel**”,
 “**subsidy**” and “**subsidy rate**”—

omit.

(2) Schedule 3—

insert—

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

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

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

“**bulk end user’s licence**” means a licence mentioned in repealed
section 49(1).

“**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,

¹ *Acts Interpretation Act 1954*, section 20 (Saving of operation of repealed Act
etc.)

² Section 43 (Paying subsidies)

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part A, of this Act; or	1
(ii) the goods identified in the <i>Customs Tariff Act 1995</i> (Cwlth), schedule 3, by the subheadings mentioned in schedule 2, part B, of this Act; or	2 3 4
(iii) the goods prescribed under a regulation; or	5
(b) for chapter 3—motor spirit and diesel of the type ordinarily sold by a retailer.	6 7
“fuel tank” includes a container, whether or not a fixture, used for storing fuel, but does not include a running tank.	8 9
“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—	10 11
(a) used only for storing fuel for use by the person; and	12
(b) operated and controlled by the person.	13
“subsidy” , 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 time of sale or use to the quantity of fuel sold or used.	14 15 16
“subsidy rate” , for fuel, means—	17
(a) for chapter 2—8.354c per litre; or	18
(b) for chapter 3—8.4c per litre.’.	19

PART 4—AMENDMENTS COMMENCING ON	20
ASSENT	21

Amendment of long title	22
Clause 19. Long title, from ‘ certain ’—	23
omit, insert—	24
‘ fuel ’.	25

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	Insertion of new s 3A	1
Clause	20. Chapter 1, part 1—	2
	<i>insert—</i>	3
	‘Act binds all persons	4
	‘3A. This Act binds all persons, including the State, and, so far as the	5
	legislative power of the Parliament permits, the Commonwealth and the	6
	other States.’.	7
	Amendment of s 4C (Meaning of “off-road purpose”)	8
Clause	21. Section 4C(2), ‘chapter 2’—	9
	<i>omit, insert—</i>	10
	‘chapters 2 and 2A’.	11
	Amendment of s 5 (Meaning of “retailer”)	12
Clause	22.(1) Section 5, ‘A’—	13
	<i>omit, insert—</i>	14
	‘For chapter 2, a’.	15
	(2) Section 5—	16
	<i>insert—</i>	17
	‘(2) For chapter 2A, a person is a “retailer” —	18
	(a) to the extent the person sells fuel owned by the person to the	19
	public from, or through, a fixed site in Queensland, unless the	20
	person is taken not to be a retailer under subsection (3)(b); or	21
	(b) if the person is taken to be a retailer under subsection (3)(a).	22
	‘(3) A regulation may prescribe the circumstances in which—	23
	(a) a person other than the owner of fuel is taken to be the retailer for	24
	the fuel; or	25
	(b) a retailer of fuel is taken not to be a retailer for the fuel.’.	26

	Insertion of new s 5A	1
Clause	23. After section 5—	2
	<i>insert—</i>	3
	‘Meaning of “retail fuel”	4
	‘5A.(1) For chapter 2, “retail fuel” is fuel sold in a retail quantity from a retail site.	5 6
	‘(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” .’	7 8
	‘(3) However, for chapter 2A, the term does not include—	9
	(a) diesel for which the retailer is given advice under section 39R; ³ or	10
	(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 <i>Transport Operations (Marine Safety) Act 1994—</i>	11 12 13
	(i) on which a current registration number under that Act is displayed; and	14 15
	(ii) to which a current registration label under that Act is fixed.’.	16
	Amendment of s 6 (Meaning of “retail quantity” for fuel)	17
Clause	24.(1) Section 6(1), ‘The’—	18
	<i>omit, insert—</i>	19
	‘For chapter 2, the’.	20
	(2) Section 6—	21
	<i>insert—</i>	22
	‘(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.	23 24 25
	‘(5) However, a quantity of fuel is not a retail quantity unless it is delivered by a metered pump into—	26 27

³ Section 39R (Purchaser’s obligation to advise retailer of off-road purpose for diesel)

Fuel Subsidy Amendment

(a) the running tank of a vehicle; or 1

(b) a container that is empty when the delivery starts. 2

‘(6) Also, a quantity of fuel delivered by a retailer from a retail site to a 3
person in a day is not a retail quantity to the extent that it is more than the 4
quantity mentioned in subsection (4).’. 5

Omission of s 10 (Own use) 6

Clause 25. Section 10— 7
omit. 8

Insertion of new ch 2A 9

Clause 26. After chapter 2— 10
insert— 11

‘CHAPTER 2A—RETAILERS 12

**‘PART 1—SUBSIDY SCHEME FOR LICENSED 13
RETAILERS 14**

‘Entitlement to subsidy 15

‘39B.(1) Retailers are, under this chapter, entitled to a subsidy for fuel 16
purchased, and sold as retail fuel under section 39C(1)— 17

(a) after 30 November 2000; and 18

(b) while the retailer is a licensed retailer. 19

‘(2) However, if a claim for a subsidy for fuel is not made within 2 years 20
after the fuel was sold as retail fuel, the entitlement to the subsidy ends. 21

‘Sale of fuel by licensed retailers 22

‘39C.(1) A licensed retailer who sells retail fuel to a retail consumer must 23
not recover (directly or indirectly) from the consumer the part of the sale 24
price that is an amount equal to the subsidy benefit for the sale other than by 25

Fuel Subsidy Amendment

making a claim under this chapter.	1
Maximum penalty—200 penalty units.	2
‘(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—	3
(a) the total quantity of fuel sold; and	4
(b) the quantity of fuel that was not sold as a net sale.	5
Maximum penalty—100 penalty units.	6
‘(3) Subsection (2) does not apply to the sale of diesel by a licensed retailer from a marine site.	7
‘(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.	8
Maximum penalty—100 penalty units.	9
‘Person may hold only 1 licence	10
‘39D.(1) A person may hold only 1 retailer’s licence.	11
‘(2) The licence applies to each of the retailer’s retail sites stated in the licence.	12
	13

‘PART 2—SUBSIDY ENTITLEMENT	14
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‘Division 1—Provisional subsidies	15
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‘Paying provisional subsidy	16
‘39E.(1) The commissioner must—	17
(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	18
	19

Fuel Subsidy Amendment

- (b) give the retailer a written statement showing how the provisional subsidy was calculated and, if section 39L or 129A⁴ 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 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.

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

Fuel Subsidy Amendment

‘(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.

Fuel Subsidy Amendment

‘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

1

‘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.

2

3

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Maximum penalty—100 penalty units.

5

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

6

7

‘PART 3—RECORD KEEPING AND RETURNS

8

‘Records to be kept

9

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

10

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Maximum penalty—100 penalty units.

12

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

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14

- (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.

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

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27

Fuel Subsidy Amendment

(a) the date of the purchase;	1
(b) the type of fuel purchased;	2
(c) the quantity purchased;	3
(d) the seller's name and address;	4
(e) the price paid per litre;	5
(f) the place of delivery;	6
(g) another matter prescribed under a regulation.	7
‘(4) The records must include daily records of the stock of fuel on hand and the time when the stock was determined.	8 9
‘(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.	10 11
‘Return	12
‘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.	13 14 15
Maximum penalty—100 penalty units.	16
‘(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.	17 18 19
‘PART 4—OBLIGATIONS OF PURCHASERS OF DIESEL	20 21
‘Purchaser’s obligation to advise retailer of off-road purpose for diesel	22
‘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.	23 24 25
Maximum penalty—100 penalty units.	26

Fuel Subsidy Amendment

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

‘Retail consumer’s obligation to repay subsidy 3

‘39S.(1) A retail consumer who purchases diesel under a sale made 4
under section 39C(1) and uses it for an off-road purpose must repay to the 5
commissioner the amount of the subsidy for the sale within 7 days after the 6
end of the month in which it is used. 7

‘(2) At the end of the 7 days, the amount is a debt owing to the 8
commissioner. 9

‘(3) Subsection (1) applies to the extent the fuel is used for an off-road 10
purpose.’. 11

Insertion of new ch 3A 12

Clause 27. After section 45— 13

insert— 14

**‘CHAPTER 3A—LICENCES FOR RETAILER AND 15
BULK END USER SUBSIDY SCHEMES 16**

‘PART 1—PRELIMINARY 17

‘Application of ch 3A 18

‘46. This chapter applies for a licence for the subsidy schemes under 19
chapters 2A and 3. 20

‘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;

Fuel Subsidy Amendment

-
- (e) whether the person is an externally administered body corporate within the meaning of the Corporations Law;⁵ 1
2
- (f) if the applicant is a corporation—whether a related body corporate within the meaning of the Corporations Law,⁶ or an executive officer of the corporation or a related body corporate, is a person mentioned in paragraphs (a) to (c); 3
4
5
6
- (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). 7
8
9
10
- ‘(3) For subsection (2)(d), a person is affected by bankruptcy action if the person— 11
12
- (a) is bankrupt; or 13
- (b) has compounded with creditors; or 14
- (c) has otherwise taken, or applied to take, advantage of any law about bankruptcy. 15
16
- ‘Decision on application** 17
- ‘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. 18
19
- ‘(2) If, under section 52(b), the commissioner decides to impose 20

⁵ 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.

⁶ 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.

Fuel Subsidy Amendment

conditions on the licence, the commissioner must give the licensee an information notice for the decision. 1
2

‘(3) If the commissioner decides to refuse to grant the application, the commissioner must give the applicant an information notice for the decision. 3
4
5

‘When licence becomes effective 6

‘51.(1) A licence becomes effective on the day the commissioner is satisfied— 7
8

- (a) for a retailer’s licence—the retailer started, or will start, selling retail fuel; or 9
10
- (b) for a bulk end user’s licence—the bulk end user started using bulk end user fuel. 11
12

‘(2) The effective day must be stated in the licence. 13

‘(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. 14
15
16

‘Conditions of licence 17

‘52. A licence is subject to the following conditions— 18

- (a) the licensee must comply with this Act; 19
- (b) other reasonable conditions— 20
 - (i) the commissioner considers appropriate to give effect to this Act; and 21
22
 - (ii) stated in the licence. 23

‘Form of retailer’s licence 24

‘53. A retailer’s licence must state the following particulars— 25

- (a) the licensee’s name; 26
- (b) the date the licence becomes effective; 27

- (c) each retail site for the licence; 1
- (d) the licence number; 2
- (e) the licence conditions. 3

‘Form of bulk end user’s licence 4

‘54. A bulk end user’s licence must state the following particulars— 5

- (a) the licensee’s name; 6
- (b) the date the licence becomes effective; 7
- (c) each storage site for the licence; 8
- (d) the licence number; 9
- (e) the licence conditions; 10
- (f) the claim periods for subsidies. 11

‘PART 3—CESSATION AND CANCELLATION OF 12 LICENCES 13

‘When licence ceases to have effect 14

‘55.(1) A retailer’s licence ceases to have effect when the holder of the 15
licence ceases to sell retail fuel. 16

‘(2) A bulk end user’s licence ceases to have effect when the holder of 17
the licence ceases to use bulk end user fuel. 18

‘Cancellation of licence 19

‘56. Each of the following is a ground for cancelling a licence— 20

- (a) the commissioner reasonably believes that if the licensee were to 21
apply now for a licence the application would be refused; 22
- (b) the licensee has contravened a condition of the licence; 23

Fuel Subsidy Amendment

- (c) the licence was issued because of a materially false or misleading representation or declaration; 1
2
- (d) the licensee failed to pay an amount under this Act to the commissioner when it was payable. 3
4

‘Procedure for cancellation 5

‘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— 6
7
8

- (a) stating the proposed action; and 9
- (b) stating the ground for the proposed action; and 10
- (c) outlining the facts and circumstances forming the basis for the commissioner’s belief; and 11
12
- (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. 13
14
15

‘(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. 16
17
18

‘(3) The commissioner must immediately give the licensee an information notice for the decision to cancel the licence. 19
20

‘(4) The cancellation takes effect on the later of— 21

- (a) the day when the information notice is given to the licensee; or 22
- (b) the day of effect stated in the information notice. 23

‘Immediate suspension pending formal cancellation procedure 24

‘58.(1) This section applies if the commissioner believes— 25

- (a) a ground exists to cancel a licence; and 26
- (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 27
28
29

Fuel Subsidy Amendment

integrity of the fuel subsidy arrangements established under this Act.	1 2
‘(2) The commissioner may immediately suspend the licence.	3
‘(3) The suspension takes effect immediately an information notice for the decision is given to the holder of the licence.	4 5
‘(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—	6 7 8
(a) the commissioner cancels the immediate suspension;	9
(b) a decision to cancel the licence takes effect;	10
(c) a decision is made not to cancel the licence.	11
‘(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.	12 13 14
‘(6) While the licence is suspended it is taken to be cancelled.	15
‘Immediate suspension after charging with offence	16
‘59.(1) This section applies if—	17
(a) the holder of a licence is charged with an offence against this Act; and	18 19
(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.	20 21 22
‘(2) The commissioner may immediately suspend the licence.	23
‘(3) The suspension takes effect immediately an information notice for the decision is given to the holder of the licence.	24 25
‘(4) The immediate suspension of the licence lasts until the first of the following happens—	26 27
(a) the commissioner cancels the immediate suspension;	28
(b) proceedings (including appeals) about the offence end and result in the holder being found not guilty of the offence;	29 30

- (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; 1
2
3
- (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. 4
5
6
- ‘(5) While the licence is suspended it is taken to be cancelled. 7

‘PART 4—GENERAL PROVISIONS ABOUT LICENCES 8 9

‘Changing conditions of licence 10

‘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. 11
12
13

‘(2) Subsection (1) does not apply to the condition mentioned in section 52(a).⁷ 14
15

‘(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. 16
17
18

‘(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. 19
20
21

‘(5) The power of the commissioner under subsection (1) includes the power to add conditions. 22
23

⁷ Section 52 (Conditions of licence)

Fuel Subsidy Amendment

‘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.’.

Amendment of s 75 (Claimants to be registered)

Clause 28. Section 75—

insert—

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

Amendment of s 81 (Appointment of authorised persons)

Clause 29. Section 81, after ‘person’—

insert—

‘a person whom the commissioner is satisfied is’.

Replacement of ss 85 and 86

Clause **30.** Sections 85 and 86—

omit, insert—

‘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.’.

Amendment of s 90 (Issue of warrant)

Clause **31.(1)** Section 90(1)—

omit, insert—

‘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

Fuel Subsidy Amendment

	may provide evidence of an offence against this Act; and	1
	(ii) the evidence is at the place, or, within the next 7 days, may be at the place; or	2 3
	(b) the warrant is needed to allow the authorised person to enter the place for monitoring or enforcing compliance with this Act.’.	4 5
	(2) Section 90(2)(b) and (c)—	6
	<i>omit, insert—</i>	7
	‘(b) the purpose for which the warrant is issued; and’.	8
	Amendment of s 93 (General powers after entering places)	9
Clause	32.(1) Section 93(3)(e)—	10
	<i>omit, insert—</i>	11
	‘(e) access, electronically or in another way, a system used at the place; or’.	12 13
	(2) Section 93(3)(g), ‘help’—	14
	<i>omit, insert—</i>	15
	‘help, including the use of facilities,’.	16
	(3) Section 93(3)(g)—	17
	<i>insert—</i>	18
	‘Example of ‘facilities’—	19
	A photocopier for copying a document.’.	20
	Amendment of s 94 (Failure to help authorised person)	21
Clause	33.(1) Section 94(1), ‘help’—	22
	<i>omit, insert—</i>	23
	‘help, including the use of facilities,’.	24
	(2) Section 94(1), penalty, ‘40’—	25
	<i>omit, insert—</i>	26

Fuel Subsidy Amendment

‘100’.

(3) Section 94(2)—

omit, insert—

‘(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.’.

Amendment of s 95 (Failure to give information)

Clause 34.(1) Section 95(1), penalty, ‘40’—

omit, insert—

‘100’.

(2) Section 95(2)—

omit, insert—

‘(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.’.

Amendment of s 96 (Stopping vehicle requiring fuel transport record)

Clause 35.(1) Section 96(2)—

omit, insert—

Fuel Subsidy Amendment

	‘(2) For exercising the authorised person’s powers under this part, the person may—	1 2
	(a) if the vehicle is moving—ask or signal the driver of the vehicle to stop the vehicle; and	3 4
	(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.’.	5 6 7 8
	(2) Section 96(3), ‘police officer’s’—	9
	omit, insert—	10
	‘authorised person’s’.	11
	(3) Section 96(3) and (5), penalty, ‘40’—	12
	omit, insert—	13
	‘100’.	14
	(4) Section 96(6), ‘place’—	15
	omit, insert—	16
	‘in a reasonable way’.	17
	Amendment of s 97 (Exercise of authorised person’s powers for vehicle)	18 19
Clause	36. Section 97(2)—	20
	omit, insert—	21
	‘(2) For the exercise by the authorised person of the authorised person’s 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.’.	22 23 24
	Amendment of s 100 (Tampering with seized things)	25
Clause	37. Section 100, penalty, ‘40’—	26
	omit, insert—	27
	‘100’.	28

Amendment of s 101 (Powers to support seizure)

- Clause **38.(1)** Section 101(2), ‘notice in the approved form’—
 omit, insert—
 ‘written notice’.
 (2) Section 101(3), penalty, ‘40’—
 omit, insert—
 ‘100’.

Amendment of s 104 (Sale of seized fuel)

- Clause **39.(1)** Section 104(1)(a), ‘; but’—
 omit, insert—
 ‘; or’.
 (2) Section 104(1)(b), ‘also’—
 omit.

Amendment of s 108 (Failure to give name or address)

- Clause **40.** Section 108(1), penalty, ‘40’—
 omit, insert—
 ‘100’.

Amendment of s 109 (Power to require production of documents)

- Clause **41.(1)** Section 109, heading, before ‘**production**’—
 insert—
 ‘**information or**’.
 (2) Section 109(1)—
 omit, insert—
 ‘**109.(1)** An authorised person, by written notice given to a person, may
 require the person—

Fuel Subsidy Amendment

(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.'.

(3) Section 109(6)—

omit.

Amendment of s 110 (Failure to produce document)

Clause 42.(1) Section 110, heading, before '**produce**'—

insert—

'give information or'.

(2) Section 110(1), 'document production requirement'—

omit, insert—

'requirement under section 109(1)'.

(3) Section 110(1), penalty, '40'—

omit, insert—

'100'.

(4) Section 110(2)—

omit, insert—

'(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.'

	Amendment of s 111 (Failure to certify copy of document)	1
Clause	43. Section 111, penalty, ‘40’—	2
	<i>omit, insert—</i>	3
	‘100’.	4
	Replacement of s 112 (Power to require attendance of persons)	5
Clause	44. Section 112—	6
	<i>omit, insert—</i>	7
	‘Power to require attendance of persons	8
	‘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—	9 10 11
	(a) give information about a matter stated in the notice;	12
	(b) produce a document about a matter stated in the notice.	13
	‘(2) The notice must state a reasonable time and place for the person’s attendance.	14 15
	‘(3) The authorised person may require information given by the person to be given on oath or verified by statutory declaration.	16 17
	‘(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.	18 19 20
	‘(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.	21 22 23
	‘(6) In subsection (5)—	24
	“licensee” includes a former licensee.	25
	‘Power to record giving of information	26
	‘112A.(1) This section applies if a person is giving information to an authorised person under a requirement under section 112.	27 28

Fuel Subsidy Amendment

‘(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.’.

Amendment of s 113 (Failure to comply with requirement about attendance)

Clause 45.(1) Section 113(1)(b)(i), from ‘answer’ to ‘information’—

omit, insert—

‘give information or produce a document’.

(2) Section 113(1), penalty, ‘40’—

omit, insert—

‘100’.

(3) Section 113(2)—

omit, insert—

‘(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.’.

Omission of ss 114–116

Clause 46. Sections 114 to 116—

omit.

	Insertion of new s 116	1
Clause	47. Chapter 5, part 1, division 4—	2
	<i>insert—</i>	3
	‘Access to public records without fee	4
	‘116. An authorised person is not required to pay any fee to inspect or	5
	take copies of a record that is ordinarily open to inspection by members of	6
	the public.’.	7
	Amendment of s 121 (Protecting officials from liability)	8
Clause	48. Section 121—	9
	<i>relocate and renumber</i> as section 159A.	10
	Replacement of s 122 (False or misleading statements)	11
Clause	49. Section 122—	12
	<i>omit, insert—</i>	13
	‘False or misleading statements	14
	‘122.(1) A person must not state anything to an authorised person that	15
	the person knows is false or misleading in a material particular.	16
	Maximum penalty—100 penalty units.	17
	‘(2) It is enough for a complaint for an offence against subsection (1) to	18
	state the statement made was ‘false or misleading’ to the person’s	19
	knowledge, without specifying which.	20
	‘(3) In this section—	21
	“false or misleading” includes false or misleading because of the omission	22
	of a statement.’.	23

Amendment of ss 123 and 124

1

- Clause 50. Sections 123(1) and 124(1), penalty, ‘40’—
 omit, insert—
 ‘100’.

2

3

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

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6

- Clause 51. Section 127(1), ‘under section 130, 131 or 155’—
 omit.

7

8

Amendment of ch 5, pt 3

9

- Clause 52. Chapter 5, part 3, heading—
 omit, insert—

10

11

**‘PART 3—RECOVERY OF AMOUNTS,
 REPAYMENTS AND PENALTY AMOUNTS’.**

12

13

Insertion of new ss 129A–129F

14

- Clause 53. Chapter 5, part 3—
 insert—

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‘Commissioner may apply amounts payable under Act

17

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

18

19

‘(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.

20

21

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‘Commissioner may register a charge to recover overpaid provisional subsidy

‘129B.(1) This section applies if, under section 39K,⁸ 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.

‘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

⁸ Section 39K (Overpaid provisional subsidy amount)

Fuel Subsidy Amendment

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.	1 2
‘(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.	3 4
‘(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.	5 6 7
‘(7) The garnishee must comply with the garnishee notice unless the garnishee has a reasonable excuse.	8 9
Maximum penalty—100 penalty units.	10
‘(8) The commissioner must give to the debtor—	11
(a) a copy of the garnishee notice; and	12
(b) details in writing of the amount to which the notice relates.	13
‘Duration of garnishee notice	14
‘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.	15 16 17
‘Effect of discharge of liability on garnishee notice	18
‘129E.(1) This section applies if—	19
(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	20 21 22
(b) the discharge affects the amount to be recovered from the garnishee.	23 24
‘(2) The commissioner must give written notice to the garnishee and the debtor—	25 26
(a) informing them of that fact; and	27
(b) stating the amount payable under the garnishee notice is reduced accordingly; and	28 29

Fuel Subsidy Amendment

- (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.'

Amendment of s 131 (Person incorrectly receiving benefit of subsidy)

Clause 54.(1) Section 131(1)(b) and (2)(a) 'or 3'—

omit.

(2) Section 131(2)(b)(i)—

omit.

Amendment of s 134 (Definitions for div 2)

Clause 55.(1) Section 134, definition "court", paragraph (a), 'part A'—

omit, insert—

'part 1'.

(2) Section 134, definition "court", paragraph (b), 'part B'—

omit, insert—

'part 2'.

Amendment of s 135 (Failure to make decision taken to be decision)

Clause 56.(1) Section 135(1)(b), 'a reasonable time'—

omit, insert—

Fuel Subsidy Amendment

‘28 days’. 1

(2) Section 135(2) and (4), ‘The’— 2

omit, insert— 3

‘For this part, the’. 4

(3) Section 135(3), from ‘or has failed’ to ‘the licence’— 5

omit. 6

Amendment of s 139 (Review decision) 7

Clause 57. Section 139(4)— 8

omit, insert— 9

‘(4) If the commissioner fails to decide an application for a review within 10
60 days after the application is made, the commissioner is taken to have 11
made a review decision confirming the decision.’. 12

Amendment of s 147 (Delegation by commissioner) 13

Clause 58. Section 147, after ‘to’— 14

insert— 15

‘a person whom the commissioner is satisfied is’. 16

Amendment of s 151 (Transportation records for bulk transport of fuel) 17
18

Clause 59.(1) Section 151(2), after ‘vehicle,’— 19

insert— 20

‘for inspection at all times during the transportation of the fuel,’. 21

(2) Section 151(2), penalty, ‘40’— 22

omit, insert— 23

‘100’. 24

(3) Section 151— 25

insert— 26

Fuel Subsidy Amendment

‘(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.’.

Insertion of new ss 151A and 151B

Clause **60.** After section 151—

insert—

‘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

Fuel Subsidy Amendment

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.’.

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

Clause **61.(1)** Section 152(3), definition “**prescribed section**”, ‘200,’—
omit.

(2) Section 152(3), definition “**prescribed section**”, after ‘18,’—
insert—

‘39A, 39S,’.

Amendment of ss 156 and 157

- Clause 62. Sections 156(1) and 157(1), penalty, ‘40’—
 omit, insert—
 ‘100’.

Amendment of s 159 (Service of documents on commissioner)

- Clause 63. Section 159(2)—
 omit, insert—
 ‘(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.’.

Amendment of s 172 (Requirement to keep particular records continues)

- Clause 64. Section 172, heading—
 omit, insert—
 ‘Continuation of rights and obligations under Act for particular
 sellers and purchasers of diesel’.

Insertion of new s 173A

- Clause 65. After section 173—
 insert—

*Fuel Subsidy Amendment***‘Record of stock on hand—retailers**

1

‘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.’

Insertion of new ss 177 and 178

7

Clause 66. After section 176—

8

insert—

9

‘Paying start-up allowance

10

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

11

12

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

13

14

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

15

16

‘Retailer’s licence not effective before 1 December 2000

17

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

18

19

Replacement of sch 1 (Decisions subject to review and appeal)

20

Clause 67. Schedule 1—

21

omit, insert—

22

‘SCHEDULE 1

1

‘DECISIONS SUBJECT TO REVIEW AND APPEAL

2

section 134

3

PART 1—DECISIONS APPEALABLE TO SUPREME COURT

4

5

Section**Description of decision**

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

6

7

Section**Description of decision**

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

Fuel Subsidy Amendment

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’.

Amendment of sch 3 (Dictionary)

Clause	68.(1) Schedule 3, definitions “ bulk end user’s licence ”, “ document production requirement ”, “ financial records requirement ”, “ fuel subsidy entity ”, “ fuel subsidy place ”, “ licensed quantity of fuel ”, “ retailer’s licence ”, “ retail fuel ”, “ retail site ” and “ subsidy ”—	1
	<i>omit.</i>	2
	(2) Schedule 3—	3
	<i>insert—</i>	4
	‘ “ bulk end user’s licence ” see section 47(1).	5
		6
		7
		8
		9

“debtor” see section 129C(1)(a).	1
“garnishee” see section 129C(1)(b).	2
“garnishee amount” see section 129C(3).	3
“garnishee notice” see section 129C(3).	4
“marine purpose” means any use of diesel by or on a vessel that ordinarily travels by sea.	5 6
“marine site” means a site from which a retailer mainly sells fuel for marine purposes.	7 8
“provisional subsidy” , for a licensed retailer, means the provisional subsidy payable to the retailer under chapter 2A, part 2.	9 10
“reasonably believes” means believes on grounds that are reasonable in the circumstances.	11 12
“registered recreational ship” means a registered recreational ship under the <i>Transport Operations (Marine Safety) Act 1994</i> .	13 14
“retailer’s licence” for—	15
(a) chapter 2—see section 21(1); or	16
(b) chapter 2A—see section 47(1).	17
“retail fuel” see section 5A.	18
“retail site” means—	19
(a) for chapter 2—a retail site stated in a retailer’s licence; or	20
(b) for chapter 2A—a fixed site in Queensland operated by a retailer for selling fuel.	21 22
“subsidy” —	23
(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 time of sale or use to the quantity of fuel sold or used; and	24 25 26
(b) for a sale of retail fuel—includes a provisional subsidy.	27
“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.	28 29 30

“subsidy benefit rate”, for fuel, means—	1
(a) unless a rate is prescribed under paragraph (b)—8.354c per litre;	2
or	3
(b) the rate prescribed under a regulation.’.	4
(3) Schedule 3, definition “fuel”, paragraph (b), ‘chapter 3’—	5
<i>omit, insert—</i>	6
‘chapters 2A and 3’.	7
(4) Schedule 3, definition “subsidy rate”, paragraph (b), ‘chapter 3’—	8
<i>omit, insert—</i>	9
‘chapters 2A and 3’.	10

PART 5—AMENDMENTS COMMENCING ON 1 DECEMBER 2000

	Amendment of s 4A (Meaning of “bulk end user fuel”)	13
Clause	69. Section 4A(1)(a), ‘under chapter 2’—	14
	<i>omit.</i>	15
	Amendment of s 4C (Meaning of “off-road purpose”)	16
Clause	70. Section 4C(2), ‘chapters 2 and 2A’—	17
	<i>omit, insert—</i>	18
	‘chapter 2A’.	19
	Amendment of s 5 (Meaning of “retailer”)	20
Clause	71.(1) Section 5(1)—	21
	<i>omit.</i>	22

Fuel Subsidy Amendment

	(2) Section 5(2), ‘For chapter 2A, a’—	1
	<i>omit, insert—</i>	2
	‘A’.	3
	Amendment of s 5A (Meaning of “retail fuel”)	4
Clause	72.(1) Section 5A(1)—	5
	<i>omit.</i>	6
	(2) Section 5A(2), ‘For chapter 2A, fuel’—	7
	<i>omit, insert—</i>	8
	‘Fuel’.	9
	Amendment of s 6 (Meaning of “retail quantity” for fuel)	10
Clause	73.(1) Section 6(1) to (3)—	11
	<i>omit.</i>	12
	(2) Section 6(4), ‘For chapter 2A, the’—	13
	<i>omit, insert—</i>	14
	‘The’.	15
	Replacement of s 7 (Meaning of “net sale”)	16
Clause	74. Section 7—	17
	<i>omit, insert—</i>	18
	‘Meaning of “net sale”	19
	‘7. A “net sale” is a sale of fuel made under section 39C(1). ⁹ ’.	20

⁹ Section 39C (Sale of fuel by licensed retailers)

Fuel Subsidy Amendment

	Amendment of s 8 (Only 1 subsidy payable for fuel)	1
Clause	75. Section 8(6)—	2
	<i>omit.</i>	3
	Omission of chs 2 and 4	4
Clause	76. Chapters 2 and 4—	5
	<i>omit.</i>	6
	Amendment of s 127 (Executive officers liable for payment of certain amounts)	7
		8
Clause	77. Section 127(1), ‘an incorrect subsidy amount,’—	9
	<i>omit.</i>	10
	Replacement of ss 130 and 131	11
Clause	78. Sections 130 and 131—	12
	<i>omit, insert—</i>	13
	‘Person receiving subsidy without entitlement	14
	‘130.(1) This section applies if—	15
	(a) the commissioner pays an amount as a subsidy to a person and 1 of the following applies—	16
		17
	(i) the amount is paid for fuel that is not retail fuel or bulk end user fuel;	18
		19
	(ii) the amount is paid for retail fuel that is not sold under a net sale;	20
		21
	(iii) the amount otherwise exceeds the amount of the subsidy to which the person was entitled; or	22
		23

Fuel Subsidy Amendment

-
- (b) a person is required under section 39K, 39S or 151A¹⁰ to repay an amount to the commissioner. 1
2
- ‘(2) The commissioner may, by written notice given to a person mentioned in subsection (1)(a), require the person to pay to the commissioner— 3
4
5
- (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 6
7
8
- (b) a further amount (the **“incorrect payment penalty”**) equal to the overpaid amount. 9
10
- ‘(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”**). 11
12
13
14
15
- ‘(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. 16
17
18
19
20
- ‘(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. 21
22
23
- ‘(6) The stated time must not be less than 7 days after the person receives the notice. 24
25
- ‘(7) An amount not paid as required under subsection (5) is a debt owing to the commissioner.’. 26
27

¹⁰ Section 39K (Overpaid provisional subsidy amount), 39S (Retail consumer’s obligation to repay subsidy) or 151A (No entitlement to subsidy if insufficient records)

Fuel Subsidy Amendment

	Omission of ss 149 and 150	1
Clause	79. Sections 149 and 150—	2
	<i>omit.</i>	3
	Amendment of s 152 (Commissioner to give information notice for certain decisions)	4
		5
Clause	80. Section 152(3), definition “ prescribed section ”, from ‘section’—	6
	<i>omit, insert—</i>	7
	‘section 39S, 130 or 171.’.	8
	Amendment of s 155 (Interest on amounts owing to commissioner)	9
Clause	81. Section 155—	10
	<i>insert—</i>	11
	‘ (3) For this section, an amount required to be repaid under	12
	section 130(2)(a) is taken to be owing when the subsidy payment creating	13
	the overpayment was made.’.	14
	Insertion of new s 160A	15
Clause	82. After section 160—	16
	<i>insert—</i>	17
	‘Numbering and renumbering of Act	18
	‘ 160A. In the next reprint of this Act produced under the <i>Reprints Act</i>	19
	1992, the provisions of this Act must be numbered and renumbered as	20
	permitted by the <i>Reprints Act</i> 1992, section 43.’.	21
	Amendment of ch 7 (Transitionals)	22
Clause	83. Chapter 7, parts 1 and 2—	23
	<i>omit.</i>	24

Amendment of s 177 (Paying start-up allowance)

Clause **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

Clause **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 20.¹¹’.

¹¹ *Acts Interpretation Act 1954*, section 20 (Saving of operation of repealed Act etc.)

Fuel Subsidy Amendment

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

- Clause **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)

- Clause **87.** Schedule 2—
 omit.

Amendment of sch 3 (Dictionary)

- Clause **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.

Fuel Subsidy Amendment

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

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