

WESTERN AUSTRALIA

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**FUEL SUPPLIERS LICENSING  
AND DIESEL SUBSIDIES ACT 1997**

(No. 55 of 1997)

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ARRANGEMENT

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WESTERN AUSTRALIA

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**FUEL SUPPLIERS LICENSING  
AND DIESEL SUBSIDIES ACT 1997**

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**No. 55 of 1997**

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**AN ACT to provide for the licensing of suppliers of certain  
fuel and for the payment of subsidies for certain  
diesel.**

*[Assented to 12 December 1997.]*

The Parliament of Western Australia enacts as follows:

## **PART 1 — PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Fuel Suppliers Licensing and Diesel Subsidies Act 1997*.

### **Commencement**

2. (1) This Act comes into operation on such day as is fixed by proclamation.

(2) Despite subsection (1) and without limiting the operation of section 25 of the *Interpretation Act 1984*, the provisions of this Act relating to the application for and issue of fuel supplier's licences and ORD distributor's authorities, including any provisions of this Part that relate to those provisions and this subsection, apply and have effect to such extent as is necessary or expedient to enable such licences and authorities to be issued before this Act comes into operation.

### **Interpretation**

3. (1) In this Act, unless the contrary intention appears —

“**approved form**” means a form approved by the Commissioner;

“**authorized distributor**” means a person who holds a valid ORD distributor's authority;

“**certified user**” means a person who holds a valid ORD user's certificate;

“**Commissioner**” means the chief executive officer of the department of the Public Service principally assisting the Minister in the administration of this Act;

**“diesel”** means any petroleum or shale product —

- (a) that is used or is capable of being used to propel a diesel engined road vehicle; and
- (b) that is prescribed to be diesel for the purposes of this Act;

**“diesel subsidy”** means a general diesel subsidy or an ORD subsidy;

**“general diesel subsidy rate”** means 0.65 cents per litre or such other rate as is prescribed;

**“holder”**, in relation to a fuel supplier’s licence, an ORD distributor’s authority or an ORD user’s certificate, means the person to whom it is issued;

**“licensed supplier”** means a person who holds a valid fuel supplier’s licence;

**“ORD subsidy rate”** means 7.45 cents per litre or such other rate as is prescribed;

**“permit”** means a fuel supplier’s licence, an ORD distributor’s authority or an ORD user’s certificate;

**“prescribed fuel”** means fuel that is prescribed for the purposes of this definition;

**“public road”** means a road or street open to or used by the public;

**“record”** means any thing or process —

- (a) on or by which information is recorded or stored;  
or

- (b) by means of which a meaning can be conveyed in visible or recoverable form,

whether or not the use or assistance of some electronic, electrical, mechanical, chemical or other device or process is required to recover or convey the information or meaning;

**“road vehicle”** means a vehicle designed solely or principally for transporting people or things by road;

**“supply”** includes deliver, give and sell.

- (2) In this Act these abbreviations are used:

**“ORD”** for off-road diesel;

**“WA”** for the State of Western Australia.

- (3) For the purposes of this Act, if a person —

(a) is both an authorized distributor and a certified user;  
and

(b) under the ORD user’s certificate, uses diesel that the person is in possession of as an authorized distributor,

the use of that diesel is to be taken to be a supply by that person as an authorized distributor to a certified user.

(4) For the purposes of this Act, diesel is used to propel a road vehicle even though the engine propelling the vehicle also operates equipment on the vehicle that does not propel the vehicle.

(5) For the purposes of this Act, if the diesel used to propel a road vehicle is drawn from a tank on the vehicle that also supplies diesel for purposes other than for propelling the vehicle, all diesel drawn from that tank is taken to be used to propel the vehicle.



**Supply at the subsidized price**

4. (1) For the purposes of this Act, a quantity of diesel is supplied at the general subsidized price if it is supplied at a price per litre that is less than the price that would otherwise have been charged for supplying that quantity at the place of supply by an amount that is equal to or greater than the general diesel subsidy rate.

(2) For the purposes of this Act, a quantity of diesel is supplied at the ORD subsidized price if it is supplied at a price per litre that is less than the price that would otherwise have been charged for supplying that quantity at the place of supply by an amount that is equal to or greater than the ORD subsidy rate.

**Crown bound**

5. This Act binds the Crown.

**PART 2 — SUPPLIERS OF FUEL**

**Suppliers of fuel to be licensed**

6. (1) A person must not carry on a business in WA of making initial supplies of prescribed fuel to places in WA unless the person holds a valid fuel supplier's licence.

(2) A person must not carry on a business in another State or a Territory of supplying prescribed fuel to other persons who take delivery of the fuel at a place in WA unless the person holds a valid fuel supplier's licence.

(3) A person must not carry on a business in WA of supplying prescribed fuel to other persons who take delivery of the fuel in another State or a Territory unless the person holds a valid fuel supplier's licence.

(4) A person who contravenes this section commits an offence.

(5) For the purpose of subsection (1), a person makes an initial supply of prescribed fuel to a place in WA if the person —

- (a) for the purposes of the *Customs Act 1901* or *Excise Act 1901* of the Commonwealth, enters the fuel for home consumption or delivers the fuel for or into home consumption; and
- (b) either —
  - (i) supplies the fuel to another person who takes delivery of the fuel at a place in WA; or
  - (ii) consumes the fuel at a place in WA for the person's own purposes.

**Applying for a fuel supplier's licence**

7. (1) An application for a fuel supplier's licence must be made to the Commissioner in an approved form.

(2) The application must be accompanied by the prescribed fee for the issue of the fuel supplier's licence.

(3) A person who is a licensed supplier or an authorized distributor, can not apply for a fuel supplier's licence.

**Issue of a fuel supplier's licence**

8. (1) If an application is made in accordance with section 7, the Commissioner may issue the applicant with a fuel supplier's licence.

(2) A fuel supplier's licence is valid for the prescribed period unless it is cancelled under section 40 or 41.

**Conditions of a fuel supplier's licence**

9. A fuel supplier's licence is subject to these conditions:

- (a) the holder must keep the general records that are prescribed;
- (b) the holder must comply with the diesel supply conditions set out in section 10;
- (c) the holder must comply with the ORD compensation conditions set out in section 11;
- (d) the holder must comply with the diesel record conditions set out in section 12;
- (e) the holder must comply with any other conditions that the Commissioner imposes under section 37.

**Diesel supply conditions**

**10.** (1) This section sets out the diesel supply conditions of a fuel supplier's licence.

(2) If the holder supplies diesel to another person who is at a place in WA the holder must supply it at the general subsidized price.

(3) If the holder supplies diesel to a certified user and is satisfied that the diesel will not be used to propel a road vehicle on a public road, the holder must supply the user with diesel at the ORD subsidized price.

**ORD compensation conditions**

**11.** (1) This section sets out the ORD compensation conditions of a fuel supplier's licence.

(2) The holder must compensate an authorized distributor in respect of a quantity of diesel that has been supplied at the ORD subsidized price to a certified user (whether by that distributor or another authorized distributor) if the distributor —

(a) makes a request as referred to in section 20 (2); and

(b) provides the holder with the records referred to in section 20 (3) of that supply to the certified user.

(3) The value of the compensation must be that calculated under the regulations.

(4) The holder must compensate the authorized distributor within 30 days after the distributor provides the records.

**Diesel record conditions**

**12.** (1) This section sets out the diesel record conditions of a fuel supplier's licence.

(2) The holder must keep prescribed records —

- (a) of every supply of diesel by the holder to a person at the general subsidized price;
- (b) of every supply of diesel by the holder to a certified user at the ORD subsidized price;
- (c) of any compensation made by the holder to an authorized distributor in respect of diesel supplied at the ORD subsidized price to a certified user (whether by that distributor or another distributor);
- (d) of any use by the holder of diesel for propelling a road vehicle on a public road; and
- (e) if the holder is also a certified user, of any use of diesel under the user's ORD user's certificate.

(3) The holder must keep those records for 5 years after the date of any claim made under Part 6 for a subsidy for the diesel supplied or used.

(4) Subsection (3) applies even though a person ceases to be a licensed supplier.

**Form of compensation**

**13.** Compensation to be made by a licensed supplier to an authorized distributor is to be in a form agreed by them.

**PART 3 — DISTRIBUTORS OF OFF-ROAD DIESEL**

**Who may apply for an ORD distributor's authority**

14. (1) If a person wants to supply diesel at the ORD subsidized price to certified users, or other authorized distributors, who are at places in WA and to be compensated for doing so, the person may apply for an ORD distributor's authority.

(2) A licensed supplier cannot apply for an ORD distributor's authority.

**Applying for an ORD distributor's authority**

15. An application for an ORD distributor's authority must be made to the Commissioner in an approved form.

**Issue of an ORD distributor's authority**

16. (1) If an application is made in accordance with section 15, the Commissioner may issue the applicant with an ORD distributor's authority.

(2) An ORD distributor's authority is valid on and from the date it is issued until it is cancelled under section 40 or 41.

**Conditions of an ORD distributor's authority**

17. An ORD distributor's authority is subject to these conditions:

- (a) the holder must keep the general records that are prescribed;
- (b) the holder must comply with the diesel supply condition set out in section 18;

- (c) the holder must comply with the ORD compensation conditions set out in section 19;
- (d) the holder must comply with the compensation request conditions set out in section 20;
- (e) the holder must comply with the diesel records conditions set out in section 21;
- (f) the holder must comply with any other conditions that the Commissioner imposes under section 37.

**Diesel supply condition**

**18.** (1) This section sets out the diesel supply condition of an ORD distributor's authority.

(2) If the holder supplies diesel to a certified user and is satisfied that the diesel will not be used to propel a road vehicle on a public road, the holder must supply the user with diesel at the ORD subsidized price.

**ORD compensation conditions**

**19.** (1) This section sets out the ORD compensation conditions of an ORD distributor's authority.

(2) The holder must compensate another authorized distributor in respect of a quantity of diesel that has been supplied at the ORD subsidized price to a certified user (whether by that distributor or a third authorized distributor) if the other distributor —

- (a) makes a request as referred to in section 20 (2); and
- (b) provides the holder with the records referred to in section 20 (3) of that supply to the certified user.

(3) The value of the compensation must be that calculated under the regulations.

(4) The holder must compensate the other distributor within 30 days after the distributor provides the records.

**Compensation request conditions**

**20.** (1) This section sets out the compensation request conditions of an ORD distributor's authority.

(2) The holder may request a licensed supplier or another authorized distributor to compensate the holder in respect of a quantity of diesel that has been supplied at the ORD subsidized price to a certified user (whether by the holder or a third authorized distributor), but only if —

- (a) the holder provides the supplier or distributor with the records referred to in subsection (3) of the supply of that quantity; and
- (b) in respect of that quantity, the holder —
  - (i) has not requested compensation from a licensed supplier or another authorized distributor; and
  - (ii) has not been compensated by a licensed supplier or another authorized distributor.

(3) The records to be provided must include the following information in respect of the certified user to whom diesel has been supplied at the ORD subsidized price —

- (a) the name and address of that person;
- (b) the number of that person's user's certificate;
- (c) the quantity of diesel supplied and the price at which it was supplied;



- (d) the name and address of the distributor who supplied the diesel and the number of that person's ORD distributor's authority; and
  - (e) any prescribed information.
- (4) The holder must produce the original of the authority —
- (a) to every licensed supplier to whom the holder makes a request under subsection (2); and
  - (b) to every other authorized distributor to whom the holder makes a request under subsection (2),

on the first occasion of making such a request after being issued with the ORD distributor's authority so that the supplier or distributor can inspect it and make a record of it.

(5) If a licensed supplier or an authorized distributor from whom the holder has requested compensation so requests, the holder must produce the original of the authority so that the supplier or distributor can inspect it and make a record of it.

#### **Diesel record conditions**

**21.** (1) This section sets out the diesel record conditions of an ORD distributor's authority.

- (2) The holder must keep prescribed records —
- (a) of every supply of diesel by the holder at the ORD subsidized price to a certified user; and
  - (b) of any compensation made by the holder to another authorized distributor in respect of diesel supplied at the ORD subsidized price to a certified user (whether by that distributor or a third authorized distributor).

(3) The holder must keep those records for 5 years after the date of any request made under section 20 (2).

(4) Subsection (3) applies even though a person ceases to be an authorized distributor.

### **Form of compensation**

**22.** Compensation to be made by an authorized distributor to another authorized distributor is to be in a form agreed by them.

### **Correcting incorrect requests for compensation**

**23.** (1) In this section and section 24 an authorized distributor makes an incorrect request if the distributor purports to make a request under section 20 (2), but in doing so the distributor —

- (a) does not comply with section 20 (2); or
- (b) provides records that are false or misleading or that do not record the supply of diesel at the ORD subsidized price to the certified user referred to in section 20 (2).

(2) If an authorized distributor makes an incorrect request, then the distributor must within 21 days after making the request —

- (a) notify the Commissioner accordingly; and
- (b) pay the Commissioner an amount equal to the value of the unjustified benefit that the distributor has received or will receive.

- (3) The value of the unjustified benefit is —
- (a) the value of the compensation that the distributor has received or will receive by reason of the incorrect request; less
  - (b) the value of the compensation (if any) to which the distributor is entitled under this Act.

**Failure to correct incorrect requests**

**24.** (1) If an authorized distributor makes an incorrect request and does not comply with section 23 (2), the Commissioner may give the distributor a notice that sets out —

- (a) details of the incorrect request; and
- (b) the penalty to be paid by the distributor.

(2) The penalty is to be double —

- (a) the amount that the distributor ought to have paid under section 23 (2); or
- (b) if the Commissioner is not able to determine that amount because of insufficient, false or misleading records or information — an amount determined by the Commissioner.

(3) If the distributor does not pay the penalty on or before the date for payment specified in the notice, the distributor commits an offence and the Commissioner may suspend the operation of the distributor's ORD distributor's authority until the penalty is paid.

(4) The date for payment must be at least 14 days after the date on which the notice is given to the distributor.

(5) The Commissioner may remit not more than half of the penalty.

**Compensation may be recovered**

**25.** A person who is or was an authorized distributor may recover compensation that is not paid under section 11 (2) or 19 (2) from the person who is liable to pay it in a court of competent jurisdiction.

#### **PART 4 — USERS OF OFF-ROAD DIESEL**

##### **Who may apply for an ORD user's certificate**

**26.** (1) If a person uses diesel in WA for purposes other than for propelling a road vehicle on a public road and wants to obtain a supply of that diesel at the ORD subsidized price, the person may apply for an ORD user's certificate.

(2) Such a person may apply for 2 or more ORD user's certificates.

(3) Subject to subsection (1) —

- (a) a licensed supplier may apply for a user's certificate;  
and
- (b) an authorized distributor may apply for a user's certificate.

##### **Applying for an ORD user's certificate**

**27.** An application for a user's certificate must be made to the Commissioner in an approved form.

##### **Issue of an ORD user's certificate**

**28.** (1) If an application is made in accordance with section 27, the Commissioner may issue the applicant with an ORD user's certificate, or with 2 or more if there is a good reason to do so.

(2) An ORD user's certificate is valid on and from the date it is issued until it is cancelled under section 40 or 41.

**Conditions of an ORD user's certificate**

**29.** An ORD user's certificate is subject to these conditions:

- (a) the holder must keep the general records that are prescribed;
- (b) the holder must comply with the diesel acquisition conditions set out in section 30;
- (c) the holder must comply with the diesel use conditions set out in section 31;
- (d) the holder must comply with any other conditions that the Commissioner imposes under section 37.

**Diesel acquisition conditions**

**30.** (1) This section sets out the diesel acquisition conditions of an ORD user's certificate.

- (2) The holder must produce the original of the certificate —
  - (a) to every licensed supplier whom the holder requests to supply the holder with a quantity of diesel at the ORD subsidized price; and
  - (b) to every authorized distributor whom the holder requests to supply the holder with a quantity of diesel at the ORD subsidized price,

on the first occasion of making such a request after being issued with the ORD user's certificate so that the supplier or distributor can inspect it and make a record of it.

(3) If a licensed supplier or an authorized distributor from whom the holder has requested a supply of diesel at the ORD subsidized price so requests, the holder must produce the original of the certificate so that the supplier or distributor can inspect it and make a record of it.

**Diesel use conditions**

**31.** (1) This section sets out the diesel use conditions of an ORD user's certificate.

(2) Diesel that is supplied to the holder at the ORD subsidized price must be used by the holder in WA.

(3) The holder must not use diesel that is supplied to the holder at the ORD subsidized price for propelling a road vehicle on a public road.

(4) The holder must not supply any other person with any diesel that is supplied to the holder at the ORD subsidized price.

**Correcting breaches of diesel use conditions**

**32.** (1) If a certified user contravenes a diesel use condition of the ORD user's certificate, the holder must within 21 days after the contravention —

- (a) notify the Commissioner accordingly; and
- (b) pay the Commissioner an amount equal to the value of the unjustified benefit that the user has received.

(2) The value of the unjustified benefit is the quantity of diesel (in litres) that was used or supplied in contravention of the diesel use conditions multiplied by the ORD subsidy rate at the time that the user was supplied with that diesel at the ORD subsidized price.

**Failure to correct breach**

**33.** (1) If a certified user contravenes a diesel use condition of the ORD user's certificate and does not comply with

section 32 (1), the Commissioner may give the user a notice that sets out —

- (a) details of the contravention; and
  - (b) the penalty to be paid by the user.
- (2) The penalty is to be double —
- (a) the amount that the user ought to have paid under section 32 (1); or
  - (b) if the Commissioner is not able to determine that amount because of insufficient, false or misleading records or information — an amount assessed by the Commissioner.
- (3) If the user does not pay the penalty on or before the date for payment specified in the notice, the user commits an offence and the Commissioner may suspend the operation of the user's ORD user's certificate until the penalty is paid.
- (4) The date for payment must be at least 14 days after the date on which the notice is given to the user.
- (5) The Commissioner may remit not more than half of the penalty.



**PART 5 — GENERAL PROVISIONS APPLYING  
TO PERMITS**

**Commissioner may request information from applicant**

**34.** (1) If the Commissioner is not satisfied with the information in an application for a permit the Commissioner may request the applicant to provide further information in relation to the application.

(2) If the applicant does not provide the further information, the Commissioner may refuse to issue the permit.

**Form of permit**

**35.** Each kind of permit is to be in an approved form.

**Commissioner may refuse to issue permit**

**36.** (1) The Commissioner may refuse to issue a permit to an applicant if the applicant —

- (a) was the holder of a permit of the kind being applied for that was cancelled under section 41 (2) or (3); or
- (b) is related to a person who was the holder of a permit of the kind being applied for that was so cancelled.

(2) An applicant who is refused a permit may apply to the Minister for a review of the Commissioner's decision and section 60 applies accordingly.

(3) In this section persons are related if they are related for the purposes of Part IIIA of the *Stamp Act 1921*.

**Commissioner's conditions**

**37.** (1) The Commissioner may impose any conditions on a permit that the Commissioner thinks fit.

(2) Subsection (1) does not require the Commissioner to impose the same conditions on all permits or on all permits of a particular kind.

(3) The Commissioner may impose conditions when issuing the permit or at any time after that.

(4) The Commissioner may at any time amend or cancel such conditions.

(5) If the Commissioner imposes conditions after issuing a permit or amends or cancels conditions, the Commissioner must give the holder of it written notice of the decision and the date on which the decision takes effect.

(6) The holder of a permit who objects to a decision by the Commissioner under this section may apply to the Minister for a review of the Commissioner's decision and section 60 applies accordingly.

**Permits to be handed in if holder no longer eligible**

**38.** (1) The holder of a permit must deliver it to the Commissioner if the holder ceases to be a person that could apply for a permit of that kind.

(2) A person who contravenes subsection (1) commits an offence.

**Lost permits**

**39.** (1) The holder of a permit who loses it must notify the Commissioner accordingly.

(2) Such a person may apply for another permit of the same kind.

(3) A person who contravenes subsection (1) commits an offence.

Penalty: \$1 000.

**Automatic cancellation**

**40.** A permit is to be taken to be cancelled if —

- (a) the holder delivers it to the Commissioner;
- (b) the holder notifies the Commissioner under section 39 (1);
- (c) the holder, being an individual, dies; or
- (d) the holder, being a body corporate, is dissolved.

**Permit may be cancelled**

**41.** (1) The Commissioner may cancel a permit at any time if the Commissioner has issued the holder of it with another permit of the same kind.

(2) The Commissioner may cancel a permit at any time if the Commissioner has reasonable grounds to suspect that the holder of it —

- (a) has not complied with the conditions of the permit;
- (b) in purported compliance with the conditions of the permit provided false or misleading information; or
- (c) applied for a diesel subsidy and provided false or misleading information in connection with the application.

(3) The Commissioner may cancel a permit if the holder is convicted of an offence under this Act.

(4) If the Commissioner cancels a permit —

- (a) the Commissioner must give the holder written notice of, and reasons for, the decision; and
- (b) the holder of the permit must return the permit to the Commissioner within 14 days after receiving the notice.

(5) A person who contravenes subsection (4) (b) commits an offence.

Penalty: \$1 000.

(6) The holder of a permit who objects to the cancellation of it by the Commissioner may apply to the Minister for a review of the Commissioner's decision and section 60 applies accordingly.

### **Offences**

**42.** (1) A person who gives false or misleading information in, or in relation to, an application for a permit commits an offence.

(2) The holder of a permit who contravenes a condition of the permit commits an offence.

(3) A person convicted of an offence under subsection (2) may be punished for the offence even if the condition contravened is subsequently amended or cancelled, despite section 11 of *The Criminal Code*.

**PART 6 — DIESEL SUBSIDIES**

**Diesel subsidies to licensed suppliers**

**43.** (1) Subject to this Part, the diesel subsidies in subsection (2) and (3) are payable to a licensed supplier.

(2) A general diesel subsidy is payable to the licensed supplier —

- (a) for diesel that the supplier has supplied at the general subsidized price to a person who is at a place in WA, other than another licensed supplier, if the supply is of a kind referred to in section 6; and
- (b) for diesel that the supplier has used for propelling a road vehicle on a public road.

(3) An ORD subsidy is payable to the licensed supplier —

- (a) for diesel supplied at the ORD subsidized price to a certified user by an authorized distributor in respect of which the supplier has compensated an authorized distributor (whether the authorized distributor who supplied the diesel or another authorized distributor);
- (b) for diesel that the supplier has supplied to certified users at the ORD subsidized price; and
- (c) for diesel that the supplier has used under a valid ORD user's certificate held by the supplier.

**Applying for a subsidy**

**44.** (1) An application for a subsidy must be made to the Commissioner in an approved form.

(2) The application must be made in respect of a prescribed period and at a prescribed time.

(3) If the Commissioner is not satisfied with the information in an application the Commissioner may, whether before or after paying a subsidy in respect of the application, request the applicant to provide further information in relation to the application.

(4) If the applicant does not provide the further information, or the Commissioner is not satisfied with the information provided, the Commissioner may —

(a) refuse to pay the subsidy; or

(b) if the subsidy has been paid, treat the subsidy as having been paid under an incorrect subsidy application and section 49 applies accordingly.

(5) An applicant who objects to a refusal by the Commissioner may apply to the Minister for a review of the Commissioner's decision and section 60 applies accordingly.

#### **Limits to applying for subsidies**

**45.** (1) A licensed supplier must not apply for a general diesel subsidy for diesel for which the supplier or any other person has previously applied for or been paid a general diesel subsidy.

(2) A licensed supplier must not apply for an ORD subsidy for diesel for which the supplier or any other person has previously applied for or been paid an ORD subsidy.

(3) A licensed supplier must not apply for a diesel subsidy for diesel that the supplier has supplied to another licensed supplier.

(4) A licensed supplier must not apply for a diesel subsidy for diesel that the supplier has supplied to a person at a place outside Australia.

(5) A person who applies for a subsidy in contravention of this section commits an offence unless the person has complied with section 48 (2).

#### **Commissioner to pay subsidies**

**46.** (1) If a licensed supplier applies for a subsidy in accordance with sections 44 and 45, the Commissioner is to pay the supplier a subsidy calculated under the regulations.

(2) The regulations may provide for the reduction of the amount of a diesel subsidy (including a reduction to zero) for a quantity of diesel in a case where a subsidy is payable for that diesel under a law or scheme operating in another State or a Territory.

#### **Consolidated Fund appropriated**

**47.** The money required to pay diesel subsidies is to be charged to the Consolidated Fund which is appropriated accordingly.

#### **Correcting incorrect subsidy applications**

**48.** (1) In this section and section 49 a licensed supplier makes an incorrect subsidy application if the supplier applies for a diesel subsidy —

- (a) in contravention of section 45;
- (b) for diesel that has been supplied or used in circumstances involving a breach of a condition of the person's fuel supplier's licence;
- (c) in circumstances where a subsidy, or the subsidy applied for, is not payable for the diesel; or

- (d) in circumstances where the amount of the subsidy applied for is greater than the amount of the subsidy that ought to have been applied for.

(2) If a licensed supplier makes an incorrect subsidy application, then the supplier must within 21 days after making the application —

- (a) notify the Commissioner accordingly; and
- (b) pay the Commissioner an amount equal to the unjustified benefit that the supplier has received or will receive.

(3) The unjustified benefit is the amount by which the diesel subsidy applied for in the incorrect subsidy application is greater than the diesel subsidy to which the supplier is entitled under this Act.

#### **Failure to correct incorrect subsidy applications**

**49.** (1) If a licensed supplier makes an incorrect subsidy application and does not comply with section 48 (2), the Commissioner may give the supplier a notice that sets out —

- (a) details of the incorrect application; and
- (b) the penalty to be paid by the supplier.

(2) The penalty is to be double —

- (a) the amount that the supplier ought to have paid under section 48 (2); or
- (b) if the Commissioner is not able to determine that amount because of insufficient, false or misleading records or information — an amount determined by the Commissioner.



(3) If the supplier does not pay the penalty on or before the date for payment specified in the notice —

- (a) the supplier commits an offence;
- (b) the Commissioner may suspend the operation of the supplier's fuel supplier's licence until it is paid; and
- (c) the Commissioner may retain the amount of it from any other diesel subsidy payable to the supplier.

(4) The date for payment must be at least 14 days after the date on which the notice is given to the person.

(5) The Commissioner may remit not more than half of the penalty.

## PART 7 — INVESTIGATIONS

### Interpretation

50. (1) In this Part —

“**authorized investigation**” has the definition in section 51;

“**authorized investigator**” means a person appointed under section 52;

“**premises**” means —

- (a) land (whether built on or not);
- (b) a building or structure on land;
- (c) a vehicle,

and includes a part of premises;

“**relevant material**” means a record or thing relevant to an authorized investigation;

“**vehicle**” means any thing used or capable of being used to transport people or things by air, rail, road or water.

(2) In this Part, the Commissioner has the functions of an authorized investigator.

### Authorized investigations

51. An authorized investigation is an investigation for the purposes of one or more of the following:

- (a) ascertaining whether there has been any overpayment of a diesel subsidy;

- (b) ascertaining whether a diesel subsidy has been paid when it should not have been;
- (c) ascertaining whether a diesel subsidy has been paid to a person who was not entitled to it;
- (d) ascertaining whether the holder of a permit has complied with the conditions of it;
- (e) auditing any records required to be kept under this Act or relevant to any matter provided for by this Act;
- (f) gathering evidence of any contravention of this Act;
- (g) any other matter relevant to the administration of this Act.

**Power to appoint authorized investigators**

**52.** (1) The Commissioner may appoint any person to be an authorized investigator.

(2) The Commissioner must issue an authorized investigator with an identity card which is to include a photograph of the investigator.

(3) On ceasing to be appointed as an authorized investigator, the investigator must immediately return the identity card to the Commissioner.

Penalty: \$1 000.

**Power to require information and production of records**

**53.** (1) For the purposes of an authorized investigation, the Commissioner may require a person —

- (a) to provide the Commissioner with written answers to specified questions;

(b) to produce to the Commissioner specified relevant material or relevant material of a specified class, in the person's possession, custody or power.

(2) A requirement made under this section —

(a) may be made whether or not the person to whom the requirement is addressed is the holder of a permit; and

(b) is to be made by notice in writing given to the person to whom the requirement is addressed.

(3) A person required, by notice under this section, to provide answers to questions must, if the notice so requires, verify the answers by statutory declaration.

(4) A person who does not comply with a requirement of a notice under this section within the time specified in the notice (or any further time the Commissioner, in the exercise of an absolute discretion, allows) commits an offence.

**Power to require person to attend for examination**

54. (1) For the purposes of an authorized investigation, the Commissioner may require a person to attend at a specified time and place before an authorized investigator for examination on a subject specified in the notice.

(2) A requirement made under this section —

(a) may be made whether or not the person to whom it is addressed is the holder of a permit; and

(b) is to be made by notice in writing given to the person to whom it is addressed.

(3) A notice requiring a person to attend for examination may require the person to bring and produce to the authorized investigator conducting the examination any relevant material in the person's possession, custody or power relating to the subject of the examination.

(4) An authorized investigator conducting an examination may require a person attending for examination —

- (a) to take an oath to answer all questions truthfully and may administer the oath;
- (b) to answer a question relevant to the subject matter of the examination asked by the investigator or, with the consent of the investigator, by another person present at the examination; and
- (c) to produce for examination by the investigator any relevant material in the person's possession at the examination.

(5) A person who contravenes a requirement under this section commits an offence.

(6) The regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

#### **Power to enter premises**

**55.** (1) For the purposes of an authorized investigation, an authorized investigator —

- (a) may enter and remain on premises to exercise the powers of investigation in section 57; and
- (b) may stop and detain a vehicle and give reasonable directions as to the movement of it.

(2) The authorized investigator may only enter residential premises as follows —

- (a) the investigator may enter the premises at any reasonable time with the consent of the occupier of them;

- (b) the investigator may enter the premises under the authority of a search warrant issued under section 56; or
- (c) if the investigator believes, on reasonable grounds, that it is urgently necessary to do so in order to prevent the destruction of or interference with relevant material, he or she may enter the premises at any time without the consent of the occupier and without a warrant.

(3) The authorized investigator must not exercise the power in subsection (2) (c) unless the Commissioner in the particular case has authorized the investigator to do so.

(4) The authorized investigator must, at the reasonable request of a person apparently in charge of the premises or any other person on the premises, display the investigator's identity card.

### **Search warrants**

**56.** (1) For the purposes of an authorized investigation, an authorized investigator may apply to a justice for a search warrant.

(2) If a justice is satisfied by evidence on oath that there are reasonable grounds to suspect that there may be relevant material on any premises the justice may issue a search warrant to an authorized investigator.

(3) A search warrant authorizes an authorized investigator —

- (a) to enter the premises specified in the warrant at the time or within the period specified in the warrant; and
- (b) to exercise the powers in section 57.

(4) A search warrant may be executed by the authorized investigator to whom it was issued or by any other authorized investigator.

(5) An authorized investigator executing a warrant must, at the reasonable request of a person apparently in charge of the premises or any other person on the premises, display the warrant.

**Powers of authorized investigators while on premises**

**57.** (1) An authorized investigator who enters premises under section 55 or under a warrant issued under section 56 may exercise any one or more of these powers:

- (a) search the premises and examine anything on the premises;
- (b) break into any room or container on the premises in order to search it;
- (c) operate equipment or facilities on the premises for a purpose relevant to the authorized investigation;
- (d) take possession of any relevant material and retain it for as long as may be necessary —
  - (i) to examine it to determine its evidentiary value;
  - (ii) to copy it; or
  - (iii) if it is relevant to possible legal proceedings — for the purposes of those proceedings;
- (e) if any relevant material found on the premises cannot be conveniently removed, secure it against interference;

- (f) request any person who is on the premises —
  - (i) to state his or her full name, date of birth and address;
  - (ii) to answer (orally or in writing) questions asked by the authorized officer relevant to the authorized investigation;
  - (iii) to produce relevant material;
  - (iv) to operate equipment or facilities on the premises for a purpose relevant to the authorized investigation;
  - (v) to give other assistance the authorized investigator reasonably requires to carry out the authorized investigation.

(2) An authorized investigator must not exercise the power in subsection (1) (b) unless the Commissioner has, in the particular case, authorized the investigator to do so.

(3) If an authorized investigator takes anything from the premises, the investigator must issue a receipt, in an approved form, and —

- (a) if the occupier or a person apparently responsible to the occupier is present, give it to him or her; or
- (b) otherwise, leave it on the premises in an envelope addressed to the occupier.

(4) A person who hinders an authorized investigator commits an offence.

(5) A person hinders an authorized investigator if the person —

- (a) hinders or obstructs the investigator in the exercise of powers under this section;



- (b) does not comply with a request of the investigator under this section; or
- (c) gives the investigator information that the person knows is false or misleading.

**Use of force**

**58.** (1) An authorized investigator may use reasonable force to exercise the power to enter premises under section 55 or under a warrant issued under section 56 or to exercise the powers in section 57 (1) (a) to (e).

(2) An authorized investigator must not use the power in subsection (1) unless the Commissioner has, in the particular case, authorized the investigator to do so.

(3) No liability is incurred as a result of injury or damage arising from the use of reasonable force under this section.

**PART 8 — ADMINISTRATIVE MATTERS**

**Commissioner may delegate**

**59.** (1) The Commissioner may delegate any of the Commissioner's functions under this Act except —

- (a) this power of delegation;
- (b) the functions in section 52; and
- (c) the powers in sections 55 (3), 57 (2) and 58 (2).

(2) Performance of a function by a delegate is to be treated as performance by the Commissioner.

**Ministerial review**

**60.** (1) If within 60 days after a decision of the Commissioner the Minister receives an application under a section that provides for a person to apply to the Minister for a review of the decision, the Minister is to review the decision and may confirm, vary or reverse it.

(2) If the application is for a review of a decision of the Commissioner made under section 37 (6) or 41 (6), the Commissioner's decision is suspended from the time the application is received by the Minister until the applicant is given notice of the Minister's decision; at which time, unless the Commissioner's decision has been reversed, it has effect subject to the Minister's decision.

(3) The Commissioner must give effect to the Minister's decision on a review.

(4) The Minister's decision on a review is final.

(5) The Commissioner must give the applicant written notice of the Minister's decision.

**Confidentiality**

**61.** (1) These persons are subject to the duty of confidentiality in this section:

- (a) a person who is or was the Commissioner;
- (b) people who are or were engaged or employed in the administration or enforcement of this Act;
- (c) other people —
  - (i) to whom information or records are disclosed under this Act; or
  - (ii) who gain access (properly or improperly) to information or records obtained under this Act.

(2) A person subject to the duty of confidentiality in this section must not record, disclose, or make use of information or records obtained under this Act except —

- (a) for a purpose related to the administration or enforcement of this Act;
- (b) as required or allowed by this Act or another written law that specifically or by necessary implication overrides this duty of confidentiality;
- (c) as authorized by the person to whose affairs the information or records relate; or
- (d) for the purpose of legal proceedings, or a report of legal proceedings, arising out of this Act.

(3) This section does not prevent the disclosure of information or records —

- (a) to the Treasury Department;
- (b) to an officer of Customs for a purpose connected with the administration or enforcement of the *Customs Act 1901*, *Customs Tariff Act 1995*, *Excise Act 1901*, or

*Excise Tariff Act 1921* of the Commonwealth, as amended from time to time;

- (c) to an official administering a taxation law of another State, a Territory or the Commonwealth for a purpose related to the administration of that law;
- (d) to an official of another State, a Territory or the Commonwealth administering a scheme for the payment of subsidies for fuel;
- (e) in connection with the investigation of an offence to —
  - (i) a member of the Police Force of Western Australia or the Australian Federal Police;
  - (ii) the Director of Public Prosecutions for WA or the Commonwealth;
  - (iii) an officer of another law enforcement agency established under the law of a State or Territory or the Commonwealth authorized by regulation to receive confidential information under this paragraph;
- (f) in a statistical or other form that could not reasonably be expected to lead to the identification of any person to whose affairs it relates;
- (g) in other circumstances in which its disclosure is permitted by the regulations.

(4) If information or records are lawfully disclosed under this section, this section does not prevent the further disclosure of the information or records, or the recording or use of the information or records, for the purpose for which the disclosure was made.

(5) A person subject to the duty of confidentiality in this section who contravenes it commits an offence.

**PART 9 — MISCELLANEOUS**

**Recovery of penalties**

**62.** If a person does not pay a penalty under section 24, 33 or 49 —

- (a) a court that convicts the person of an offence of not paying it may order the person to pay it; or
- (b) the Commissioner may recover it in a court of competent jurisdiction as a debt due to the Crown.

**Recovery of certain subsidies**

**63.** (1) If —

- (a) a person who is not an authorized distributor is compensated in respect of a quantity of diesel; or
- (b) a person who is not a certified user obtains a quantity of diesel at the ORD subsidized price,

and an ORD subsidy is paid in respect of that diesel, the person must pay the Commissioner an amount equal to double the value of the benefit that the person received.

(2) The Commissioner may recover the amount in a court of competent jurisdiction as a debt due to the Crown.

(3) The Commissioner may remit not more than one half of the amount.

**Offences**

**64.** (1) If a person uses a permit for a purpose under this Act and the permit has not been issued to that person, the person commits an offence.

(2) A person who uses a permit that is cancelled commits an offence.

**General penalty**

**65.** The penalty for an offence under this Act is \$20 000 unless otherwise stated.

**Minister may order subsidies to cease**

**66.** (1) The Minister may at any time order any or all of the following:

- (a) that diesel is no longer required to be supplied under this Act at the general subsidized price;
- (b) that diesel is no longer required to be supplied under this Act at the ORD subsidized price;
- (c) that general diesel subsidies are to cease being paid under this Act;
- (d) that ORD subsidies are to cease being paid under this Act.

(2) The Minister by a subsequent order may amend or cancel such an order.

(3) The Minister may, either in an order or in a subsequent order, give any directions reasonably necessary to give effect to an order made under this section.

(4) Without limiting subsection (3), directions may modify the operation of this Act.

(5) An order made under this section must be published in the *Gazette*.

(6) An order made under this section comes into operation on the day on which it is published or on a later date specified in it.

(7) An order made under this section is to be laid before each House of Parliament under section 42 of the *Interpretation Act 1984* and that section applies as if the order were a regulation.

### **Transitional provisions**

**67.** Schedule 1 has effect.

### **Regulations**

**68.** The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

### **Review of Act**

**69.** (1) As soon as practicable after the 4th anniversary of the day on which this Act receives the Royal Assent, the Minister must carry out a review of, and prepare a report about, the operation and effectiveness of this Act.

(2) The Minister must cause the report to be tabled in each House of Parliament as soon as practicable after it is prepared.

### **Act to expire**

**70.** (1) This Act expires 5 years after the date on which it receives the Royal Assent.

(2) Without otherwise limiting the operation of section 37 of the *Interpretation Act 1984*, a person who commits an offence under this Act before it expires may be punished after it expires to the same extent as the person could have been punished immediately before the expiry.



**SCHEDULE 1 — TRANSITIONAL PROVISIONS**

[s. 67]

**Interpretation**

1. In this Schedule —

“**commencement**” means the date on which this Act comes into operation;

“**old certificate**” means —

- (a) a Commonwealth certificate; or
- (b) a diesel fuel certificate,

as those expressions are defined in regulation 2 of the *Transport Co-ordination (Petroleum Products Licensing) Regulations 1985*;

“**transitional period**” means the period beginning on commencement and ending on a prescribed date or 31 December 1998, whichever occurs first.

**Old certificates to be temporarily valid under this Act**

2. If immediately before commencement a person is the holder of a valid old certificate or if after commencement a person is issued an old certificate, then the person is to be taken to be a certified user until —

- (a) the person is issued an ORD user’s certificate;
- (b) the Commissioner refuses to issue the person with an ORD user’s certificate; or
- (c) the end of the transitional period,

whichever occurs first.

**Transport regulations continued temporarily**

3. Despite the repeal of Part IIIA of the *Transport Co-ordination Act 1966* by the *Acts Amendment (Franchise Fees) Act 1997*, the *Transport Co-ordination (Petroleum Products Licensing) Regulations 1985* continue in operation for the transitional period to the extent necessary for the purposes of this Schedule.