



AUSTRALIAN CAPITAL TERRITORY

# Subsidies (Liquor and Diesel) Act 1998

No. 19 of 1998

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AUSTRALIAN CAPITAL TERRITORY

## Subsidies (Liquor and Diesel) Act 1998

No. 19 of 1998

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**An Act to subsidise the sale of low-alcohol liquor by wholesale and the sale of diesel to certain persons**

*[Notified in ACT Gazette S190: 10 July 1998]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

### PART I—PRELIMINARY

**1. Short title**

This Act may be cited as the *Subsidies (Liquor and Diesel) Act 1998*.

**2. Commencement**

This Act commences on the day on which it is notified in the *Gazette*.

**3. Interpretation**

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

“beneficiary” means—

- (a) a person who holds a benefits card to which he or she is entitled; or
- (b) a TPI pensioner;

“benefits card” means a card issued by the Commonwealth and known as—

- (a) a Health Care Card; or

(b) a Pensioner Concession Card;

“certificate” means a diesel subsidy certificate issued under section 46;

“certified diesel user” means a person registered in the Diesel Users Register;

“Commissioner” means the Commissioner for Australian Capital Territory Revenue;

“Commonwealth tax laws” means the *Customs Tariff Act 1995*, the *Excise Tariff Act 1921* or any other legislation of the Commonwealth prescribed by the regulations;

“defined business associate”, in relation to a person who is or has been a registered liquor supplier or a registered diesel supplier, means—

(a) in relation to a person that is a body corporate—

(i) a director, servant or agent of the body;

(ii) a person who is substantially concerned in the management of the body; or

(iii) a person who is able to control, or to substantially influence, the body’s activities or internal affairs;

(b) in relation to a person who is a member of a partnership the business of which involves the supply of liquor or diesel (as the case may be)—

(i) any other member of the partnership;

(ii) any other person who is substantially concerned in the management of the business insofar as it concerns the supply of liquor or diesel (as the case may be); or

(iii) any other person who is able to control, or to substantially influence, the partnership’s activities insofar as they concern the supply of liquor or diesel (as the case may be); or

(c) in any other case—

(i) any other person who is substantially concerned in the management of the person’s business insofar as it concerns the supply of liquor or diesel (as the case may be); or

(ii) any other person who is able to control, or to substantially influence, the person’s activities insofar

as they concern the supply of liquor or diesel (as the case may be);

“diesel” means a petroleum or shale product used or capable of use in propelling a diesel-engined motor vehicle or in home heating;

“diesel subsidy” means a subsidy paid under Part III;

“diesel supplier” means a person who undertakes to sell diesel;

“Diesel Users Register” means the register established under section 52;

“identity card”, in relation to a subsidy officer, means an identity card issued under section 57;

“licensed premises” means premises from which the sale of liquor is licensed under the *Liquor Act 1975*;

“licensee” means a person who holds a licence under the *Liquor Act 1975*;

“liquor supplier” means a person who undertakes the sale by wholesale of low-alcohol liquor;

“low-alcohol liquor” means any beverage that contains more than 1.15% by volume of ethyl alcohol and less than a maximum percentage of ethyl alcohol determined for that beverage by the Minister by instrument;

“low-alcohol liquor subsidy” means a subsidy paid under Part II;

“motor vehicle” has the same meaning as in the *Motor Traffic Act 1936*;

“premises” includes any place, vehicle, vessel or aircraft;

“purposes of primary production”, in relation to the use of diesel, does not include the use of the diesel for propelling a diesel-engined motor vehicle on a public road;

“reciprocating jurisdiction” means a jurisdiction, being a State or another Territory, under a law of which a person or authority (not being a Minister of State) is authorised to give to the Commissioner, for the purposes of the administration of this Act, information within the knowledge of the person or authority;

“registered”, in relation to a liquor supplier, diesel supplier or diesel user, means such a supplier or user who is registered under this Act, but does not include such a supplier or user whose registration is suspended;

- “repayment notice”, in relation to the payment of an amount under Division 4 of Part II or Division 3 of Part III, means a notice under section 13 or 33, as the case may be;
- “sale by wholesale”, in relation to low-alcohol liquor, means the sale of such liquor for the purpose of sale or exposure for sale;
- “subsidised”, in relation to a quantity of low-alcohol liquor or diesel obtained by a person, means a quantity in relation to which low-alcohol liquor subsidy or diesel subsidy (as the case may be) is payable, or has been paid, to another person;
- “subsidised price”, in relation to the sale of diesel by a diesel supplier to a certified diesel user, means a reduced price reflecting the passing-on to the user of the benefit of a diesel subsidy that has been or is to be applied for by the supplier, or that has been paid to the supplier;
- “subsidised product” means—
- (a) low-alcohol liquor or diesel; or
  - (b) in relation to an investigation authorised under Part VI—liquor, or petroleum or shale products, in relation to which provision is made for the payment of subsidies under a law of the relevant reciprocating jurisdiction;
- “subsidy law” means—
- (a) this Act; or
  - (b) in relation to an investigation authorised under Part VI—
    - (i) a law of the relevant reciprocating jurisdiction prescribed by the regulations; or
    - (ii) any other law of the relevant reciprocating jurisdiction, being a law that makes provision for the payment of subsidies for liquor, or for petroleum or shale products;
- “subsidy offence” means—
- (a) an offence against this Act; or
  - (b) in relation to an investigation authorised under Part VI—an offence against a subsidy law of the relevant reciprocating jurisdiction;
- “subsidy officer” means—



- (a) a tax officer within the meaning of the *Taxation (Administration) Act 1987*; or
- (b) in relation to an investigation authorised under Part VI—a person authorised under section 77 to conduct the investigation;

“TPI pensioner” means a person to whom a pension under Part II of the *Veterans’ Entitlements Act 1986* of the Commonwealth is being paid and to whom section 24 of that Act applies;

“vary”, in relation to conditions of registration, includes the imposition of a condition or the substitution of a new condition for an existing condition.

- (2) A determination of the Minister for the purposes of the definition of “low-alcohol liquor” in subsection (1) is a disallowable instrument for the purposes of the *Subordinate Laws Act 1989*.

## **PART II—LOW-ALCOHOL LIQUOR SUBSIDY**

### ***Division 1—Eligibility for low-alcohol liquor subsidy***

#### **4. Low-alcohol liquor subsidy—general eligibility**

Subject to this Part, low-alcohol liquor subsidy is payable to a registered liquor supplier in relation to the sale by the supplier of low-alcohol liquor where—

- (a) the liquor is sold by wholesale to a licensee; and
- (b) duty has been paid for that sale under a Commonwealth tax law.

#### **5. Low-alcohol liquor subsidy—determination**

(1) The Minister may, by instrument, determine the rate at which, and the method by which, low-alcohol liquor subsidies are to be calculated for the purposes of this Act.

(2) An instrument under subsection (1) is a disallowable instrument for the purposes of the *Subordinate Laws Act 1989*.

#### **6. Low-alcohol liquor subsidy—sale in contravention of registration conditions**

Low-alcohol liquor subsidy is not payable in relation to the sale by wholesale of low-alcohol liquor by a registered liquor supplier if the liquor is sold in contravention of a condition of the supplier’s registration.

**7. Low-alcohol liquor subsidy—supplier not registered at the time of sale**

Low-alcohol liquor subsidy is not payable in relation to the sale by wholesale of low-alcohol liquor by a registered liquor supplier if the supplier was not registered at the time of the sale, unless, on an application for subsidy under section 9, the Commissioner considers on reasonable grounds that such payment is justified in the circumstances.

**8. Low-alcohol liquor subsidy—previously paid**

Low-alcohol liquor subsidy is not payable in relation to the sale of a quantity of low-alcohol liquor if—

- (a) subsidy in relation to that liquor has previously been paid under this Act; or
- (b) an amount already paid in relation to that liquor by the government of a State or another Territory is in the nature of a payment corresponding to a subsidy under this Act.

*Division 2—Payment of low-alcohol liquor subsidy*

**9. Low-alcohol liquor subsidy—payment**

(1) Before the end of each month, a registered liquor supplier may apply for a subsidy in relation to sales of low-alcohol liquor by the supplier during the previous month, or during a period approved by the Commissioner on application by the supplier.

(2) An application shall be in a form approved by the Commissioner, accompanied by such documents as the Commissioner requires.

(3) On application, the Commissioner shall pay a low-alcohol liquor subsidy to the supplier in relation to the relevant liquor sales to the extent that the Commissioner is satisfied on reasonable grounds that the subsidy is payable under Division 1, subject to subsection (4).

(4) The Commissioner may refuse to pay a low-alcohol liquor subsidy to an applicant if the applicant has, without reasonable excuse, failed to comply with a direction in a notice under section 10 requiring further information or documents.

**10. Low-alcohol liquor subsidy—further information**

(1) The Commissioner may, by written notice to an applicant for a low-alcohol liquor subsidy, direct the applicant to give the Commissioner further specified information or to produce particular documents in connection with the application.

(2) A notice directing further information to be given or documents to be produced may direct the information or documents to be given or produced—

- (a) in a form, and within a period, specified in the notice; or
- (b) personally by the applicant on a date, and at a time, specified in the notice.

(3) The Commissioner may direct further information to be given under this section in connection with an application notwithstanding whether—

- (a) any subsidy has been paid to the applicant pursuant to the application; or
- (b) any later application has been received from the applicant, or any subsidy paid to the applicant pursuant to the later application.

**11. Low-alcohol liquor subsidy—deferral of consideration of application**

The Commissioner may defer the consideration of an application by a liquor supplier for low-alcohol liquor subsidy in relation to the sale of liquor during a particular period if the Commissioner has not yet made a decision in relation to an application by the supplier for such subsidy in relation to the sale of liquor during any earlier period.

*Division 3—Licensees' records*

**12. Record-keeping by licensees**

A licensee shall keep the following records of sales of low-alcohol liquor by the licensee other than retail sales within the Territory for the period of 5 years after the date of each sale:

- (a) invoices, in chronological order;
- (b) the following details of each sale, in chronological order:
  - (i) the name and address of the person supplied;
  - (ii) the address of the premises from which the liquor was supplied;
  - (iii) the price received;
  - (iv) the amount and type of beverage sold;
  - (v) the date of supply.

Penalty:

- (a) in the case of a natural person—20 penalty units;

- (b) in the case of a body corporate—100 penalty units.

***Division 4—Low-alcohol liquor subsidy repayments***

**13. Low-alcohol liquor subsidy—repayment**

(1) If, in the opinion of the Commissioner based on reasonable grounds, this Division applies to a person, the Commissioner shall, by written notice to the person, require the person to pay to the Commissioner the applicable amount.

(2) A repayment notice shall—

- (a) state the reasons for the issue of the notice;
- (b) inform the person of the requirements for payment under the applicable provision and the consequences of the failure to provide payment; and
- (c) inform the person of the procedures for applying for remission under section 20.

(3) An amount required to be paid under this section is—

- (a) due and payable on the date of the notice; and
- (b) recoverable by the Commissioner on behalf of the Territory in a court of competent jurisdiction as a debt due.

**14. Low-alcohol liquor subsidy—false or misleading information**

If a liquor supplier has been paid an amount of subsidy greater than the amount to which the supplier is entitled as a result of false or misleading information given under section 9 or 10, or included in documents produced under those sections, the supplier shall pay the Commissioner—

- (a) if payment is received within 21 days after the date of the repayment notice—twice the amount of the subsidy, plus interest; or
- (b) if no such payment is received within 21 days after the date of the repayment notice—3 times the amount of the subsidy, plus interest.

**15. Low-alcohol liquor subsidy—contravention of registration conditions**

(1) If a quantity of low-alcohol liquor in respect of which a subsidy has been paid is sold by the supplier to a licensee in contravention of a condition of the supplier's registration, the supplier shall pay the Commissioner—

- (a) if payment is received within 21 days after the date of the repayment notice—the amount of the subsidy, plus interest; or

- (b) if no such payment is received within 21 days after the date of the repayment notice—3 times the amount of the subsidy, plus interest.

(2) This section does not apply in relation to a subsidy if the supplier is liable to pay an amount under section 14 in relation to the subsidy.

**16. Low-alcohol liquor subsidy—failure to provide information**

(1) If a liquor supplier fails to comply with any direction in a notice under section 10 in relation to an application for a subsidy, but has nevertheless been paid a subsidy in accordance with the application, the supplier shall pay the Commissioner—

- (a) if payment is received within 21 days after the date of the repayment notice—the amount of the subsidy, plus interest; or
- (b) if no such payment is received within 21 days after the date of the repayment notice—twice the amount of the subsidy, plus interest.

(2) This section does not apply in relation to a subsidy if the supplier is liable to pay an amount under section 14 or 15 in relation to the subsidy.

**17. Low-alcohol liquor subsidy—other repayments by suppliers**

(1) If a liquor supplier receives an amount of low-alcohol liquor subsidy greater than the amount to which the supplier is entitled, the supplier shall pay the Commissioner—

- (a) if payment is received within 21 days after the date of the repayment notice—the amount of the difference between the amount paid and the amount to which the supplier is entitled; or
- (b) if no such payment is received within 21 days after the date of the repayment notice—twice the amount of that difference, plus interest.

(2) This section does not apply in relation to a subsidy if the supplier is liable to pay an amount under section 14, 15 or 16 in relation to the subsidy.

**18. Low-alcohol liquor subsidy—repayment of subsidies by non-subsidised suppliers**

(1) If, from premises outside the Territory, a person sells a quantity of subsidised liquor, or offers a quantity of subsidised liquor for sale, being liquor that the person knows to be subsidised, the person shall pay the Commissioner—

- (a) if payment is received within 21 days after the date of the repayment notice—the amount of the subsidy, plus interest; or

- (b) if no such payment is received within 21 days after the date of the repayment notice—3 times the amount of the subsidy, plus interest.

(2) This section does not apply in relation to a quantity of liquor if the supplier who received a subsidy in relation to the liquor is liable to pay an amount under section 14, 15 or 16.

**19. Low-alcohol liquor subsidy—interest on repayments**

(1) For the purposes of this Division, the interest payable (if any) in respect of a repayment is an amount calculated—

- (a) on the repayment, or any part of the repayment remaining unpaid;
- (b) at the rate determined from time to time under subsection 99 (1) of the *Taxation (Administration) Act 1987* for the purposes of section 31 of that Act; and
- (c) on a daily basis from the day following the date of the repayment notice under section 13.

(2) Where judgment is entered by a court for an amount equal to a repayment, or for the payment of an amount that includes an amount equal to a repayment—

- (a) the repayment is not to be taken, for the purposes of subsection (1), to have ceased to be due and payable only because judgment is entered; and
- (b) if interest is payable on the judgment debt, that interest is, by force of this paragraph, reduced—
  - (i) if judgment is entered for the payment of an amount equal to the repayment—by the amount of the interest on the judgment debt; or
  - (ii) if judgment is entered for the payment of an amount that includes an amount equal to the repayment—by an amount that bears the same proportion to the amount of the interest as the amount of the repayment bears to the amount of the judgment debt.

(3) In this section—

“repayment” means an amount required to be paid under section 13.

**20. Low-alcohol liquor subsidy—remission of repayments**

(1) On written application by a person required to make a payment under this Division, the Commissioner may, by written notice to the applicant, remit, in part or in whole, a penalty amount payable by the applicant under

this Division in relation to a subsidy, or an amount of interest payable under this Division.

(2) The Commissioner shall only remit an amount if he or she considers on reasonable grounds that there are special circumstances justifying such remission.

(3) In this section—

“penalty amount”, in relation to an amount payable under this Division in relation to a subsidy, means such a portion of that amount as exceeds the amount of the subsidy.

#### ***Division 5—Registration of liquor suppliers***

#### **21. Liquor suppliers—registration**

(1) A person may apply to the Commissioner for registration as a liquor supplier.

(2) An application shall be in a form approved by the Commissioner.

(3) The Commissioner may, by written notice to an applicant, require the applicant to give the Commissioner further specified information or to produce particular documents in connection with the application.

(4) A notice requiring further information to be given or documents to be produced may require the information or documents to be given or produced—

- (a) in a form, and within a period, specified in the notice; or
- (b) personally by the applicant on a date, and at a time, specified in the notice.

(5) The Commissioner shall register the applicant if he or she is satisfied on reasonable grounds that—

- (a) the applicant is not a registered liquor supplier whose registration is suspended;
- (b) the applicant is not a defined business associate of a registered liquor supplier whose registration is suspended;
- (c) the applicant has not, without reasonable excuse, failed to comply with a notice under subsection (3); and
- (d) the applicant supplies low-alcohol liquor, or intends to supply low-alcohol liquor, to licensees.

#### **22. Liquor suppliers—conditions of registration**

The conditions of registration of a liquor supplier are as follows:

- (a) the benefit of low-alcohol liquor subsidies received by the supplier is passed on to the licensees to whom the liquor is sold;
- (b) the supplier keeps records of all low-alcohol liquor sold to licensees for a period of at least 5 years in a form approved by the Commissioner;
- (c) the supplier produces such records for inspection on demand by a subsidy officer;
- (d) the supplier gives the Commissioner written notice specifying any change to the information specified in the supplier's application for registration within 14 days after the change;
- (e) the supplier is not, and does not become, a defined business associate of a registered liquor supplier whose registration is suspended;
- (f) any amount required to be paid to the Commissioner by the supplier under Division 4 is repaid within 21 days after the notice of repayment is given;
- (g) the supplier does not provide false or misleading information to the Commissioner under this Act, or fail to give information or to produce any document to the Commissioner in accordance with a request under this Act;
- (h) any other conditions specified by the Commissioner upon the registration of the supplier, or pursuant to paragraph 23 (1) (a).

**23. Liquor suppliers—variation and suspension of registration**

**(1)** If the Commissioner believes on reasonable grounds that a registered liquor supplier has contravened a condition of registration, the Commissioner may, by written notice to the supplier—

- (a) vary a condition of the supplier's registration; or
- (b) suspend the supplier's registration for a period starting on the date of the notice and ending—
  - (i) on a date specified in the notice, or on the revocation of the suspension, whichever is earlier; or
  - (ii) if the notice of suspension specifies any condition for the revocation of the suspension—on the revocation of the suspension following the satisfaction of any such condition, or on a later date (if any) specified in the notice.



(2) The Commissioner may, by written notice to a liquor supplier whose registration has been suspended, revoke the suspension on application by the supplier or on the Commissioner's own motion if the Commissioner is satisfied on reasonable grounds that—

- (a) if the notice of suspension specified any conditions for the revocation of the suspension—the supplier has satisfied any such condition; or
- (b) in any other case—such revocation is justified in the circumstances.

(3) The revocation of the suspension of a liquor supplier's registration takes effect on the date of the notice of revocation, or on such later date as is specified in that notice.

**24. Liquor suppliers—cancellation of registration (lapse of time)**

(1) If a registered liquor supplier fails to apply for any low-alcohol liquor subsidy during a period of 12 months (and has not been suspended from registration for any period during that time), the Commissioner may give the supplier a written notice requiring the supplier to notify the Commissioner if the supplier does not wish the registration to be cancelled.

(2) A notice by the Commissioner shall contain statements to the effect that—

- (a) the registered liquor supplier has not applied for any low-alcohol liquor subsidy for a specified period of 12 months or more; and
- (b) the supplier may, within 28 days after the date of the notice, prevent the Commissioner from cancelling the supplier's registration by written notice to the Commissioner.

(3) Unless the Commissioner receives a notice referred to in paragraph (2) (b) from the registered liquor supplier within 28 days after the date of the Commissioner's notice under subsection (1), the Commissioner may cancel the supplier's registration by written notice to the supplier.

(4) Cancellation of registration under this section takes effect from the date of the notice under subsection (3).

### **PART III—DIESEL SUBSIDY**

#### ***Division 1—Eligibility for diesel subsidy***

**25. Diesel subsidy—general eligibility**

(1) Subject to this Part, diesel subsidy is payable to a registered diesel supplier in relation to the sale of diesel by the supplier where—

- (a) the diesel is sold to a certified diesel user; and
- (b) duty has been paid for that sale under a Commonwealth tax law.

(2) Diesel subsidy is not payable in respect of the sale of a product prepared by a mixture of diesel on which such Commonwealth duty has been paid with any substance on which such duty has not been paid.

**26. Diesel subsidy—determination**

(1) The Minister may, by instrument, determine the rate at which, and the method by which, diesel subsidies are to be calculated for the purposes of this Part.

(2) An instrument under subsection (1) is a disallowable instrument for the purposes of the *Subordinate Laws Act 1989*.

**27. Diesel subsidy—sale in contravention of registration conditions**

Diesel subsidy is not payable in relation to the sale of diesel by a registered diesel supplier if the diesel is sold in contravention of a condition of the supplier's registration.

**28. Diesel subsidy—supplier not registered at the time of sale**

Diesel liquor subsidy is not payable in relation to the sale of diesel by a registered diesel supplier if the supplier was not registered at the time of the sale, unless, on an application for subsidy under section 30, the Commissioner considers on reasonable grounds that such payment is justified in the circumstances.

**29. Diesel subsidy—previously paid**

Diesel subsidy is not payable in relation to the sale of a quantity of diesel if—

- (a) subsidy in relation to that diesel has previously been paid under this Act; or
- (b) an amount already paid in relation to that diesel by the government of a State or another Territory is in the nature of a payment corresponding to a subsidy under this Act.

***Division 2—Payment of diesel subsidy***

**30. Diesel subsidy—payment**

- (1) Before the end of each month, a registered diesel supplier may apply for a subsidy in relation to sales of diesel by the supplier during the previous month, or during a period approved by the Commissioner on application by the supplier.
- (2) An application shall be in a form approved by the Commissioner, accompanied by such documents as the Commissioner requires.
- (3) On application, the Commissioner shall pay diesel subsidy to the supplier in relation to the relevant diesel sales to the extent that the Commissioner is satisfied on reasonable grounds that the subsidy is payable under Division 1, subject to subsection (4).
- (4) The Commissioner may refuse to pay a diesel subsidy to an applicant if the applicant has, without reasonable excuse, failed to comply with a direction in a notice under section 31 requiring further information or documents.

**31. Diesel subsidy—further information**

- (1) The Commissioner may, by written notice to an applicant for a diesel subsidy, direct the applicant to give the Commissioner further specified information or to produce particular documents in connection with the application.
- (2) A notice directing further information to be given or documents to be produced may direct the information or documents to be given or produced—
  - (a) in a form, and within a period, specified in the notice; or
  - (b) personally by the applicant on a date, and at a time, specified in the notice.
- (3) The Commissioner may direct further information to be given under this section in connection with an application notwithstanding whether—
  - (a) any subsidy has been paid to the applicant pursuant to the application; or
  - (b) any later application has been received from the applicant, or any subsidy paid to the applicant pursuant to the later application.

**32. Diesel subsidy—deferral of consideration of application**

The Commissioner may defer the consideration of an application by a diesel supplier for diesel subsidy in relation to the sale of diesel during a

particular period if the Commissioner has not yet made a decision in relation to an application by the supplier for such subsidy in relation to the sale of diesel during any earlier period.

***Division 3—Diesel subsidy repayments***

**33. Diesel subsidy—repayment**

(1) If, in the opinion of the Commissioner based on reasonable grounds, this Division applies to a person, the Commissioner shall, by written notice to the person, require the person to pay to the Commissioner the applicable amount.

(2) A repayment notice shall—

- (a) state the reasons for the issue of the notice;
- (b) inform the person of the requirements for payment under the applicable provision and the consequences of the failure to provide payment; and
- (c) inform the person of the procedures for applying for remission under section 41.

(3) An amount required to be paid under this section is—

- (a) due and payable on the date of the notice; and
- (b) recoverable by the Commissioner on behalf of the Territory in a court of competent jurisdiction as a debt due.

**34. Diesel subsidy—false or misleading information**

If a diesel supplier has been paid an amount of subsidy greater than the amount to which the supplier is entitled as a result of false or misleading information given under section 30 or 31, or included in documents produced under those sections, the supplier shall pay the Commissioner—

- (a) if payment is received within 21 days after the date of the repayment notice—twice the amount of the subsidy, plus interest; or
- (b) if no such payment is received within 21 days after the date of the repayment notice—3 times the amount of the subsidy, plus interest.

**35. Diesel subsidy—contravention of registration conditions**

(1) If a quantity of diesel in respect of which a subsidy has been paid is sold by the supplier in contravention of a condition of the supplier's registration, the supplier shall pay the Commissioner—

- (a) if payment is received within 21 days after the date of the repayment notice—the amount of the subsidy, plus interest; or
  - (b) if no such payment is received within 21 days after the date of the repayment notice—3 times the amount of the subsidy, plus interest.
- (2) This section does not apply in relation to a subsidy if the supplier is liable to pay an amount under section 34 in relation to the subsidy.

**36. Diesel subsidy—failure to provide information**

(1) If a diesel supplier fails to comply with any direction in a notice under section 31 in relation to an application for a subsidy, but has nevertheless been paid a subsidy in accordance with the application, the supplier shall pay the Commissioner—

- (a) if payment is received within 21 days after the date of the repayment notice—the amount of the subsidy, plus interest; or
  - (b) if no such payment is received within 21 days after the date of the repayment notice—twice the amount of the subsidy, plus interest.
- (2) This section does not apply in relation to a subsidy if the supplier is liable to pay an amount under section 34 or 35 in relation to the subsidy.

**37. Diesel subsidy—other repayments by suppliers**

(1) If a diesel supplier receives an amount of subsidy greater than the amount to which the supplier is entitled, the supplier shall pay the Commissioner—

- (a) if payment is received within 21 days after the date of the repayment notice—the amount of the difference between the amount paid and the amount to which the supplier is entitled; or
  - (b) if no such payment is received within 21 days after the date of the repayment notice—twice the amount of that difference, plus interest.
- (2) This section does not apply in relation to a subsidy if the supplier is liable to pay an amount under section 34, 35 or 36 in relation to the subsidy.

**38. Diesel subsidy—repayment of subsidies by certified diesel users**

- (1) This section applies where a certified diesel user—
- (a) uses a quantity of diesel purchased by the user at a subsidised price for a purpose not specified in the Diesel Users Register in relation to the user; or
  - (b) sells or otherwise disposes of a quantity of diesel purchased by the user at a subsidised price.

(2) Where this section applies, the certified diesel user shall pay the Commissioner—

- (a) the amount of the subsidy, plus interest; or
- (b) if no such payment is received within 21 days after the date of the repayment notice—twice the amount of the subsidy, plus interest.

(3) This section does not apply in relation to a quantity of subsidised diesel if an amount is payable under section 34, 35 or 36 in relation to the subsidy.

**39. Diesel subsidy—repayment of subsidies by non-certified diesel users**

(1) If a person other than a certified diesel user uses, sells or otherwise disposes of a quantity of diesel that the person knows to have been previously purchased at a subsidised price, the person shall pay the Commissioner—

- (a) the amount of the subsidy, plus interest; or
- (b) if no such payment is received within 21 days after the date of the repayment notice—twice the amount of the subsidy, plus interest.

(2) This section does not apply in relation to a quantity of subsidised diesel if an amount is payable under section 34, 35, 36 or 38 in relation to the subsidy.

**40. Diesel subsidy—interest on repayments**

(1) For the purposes of this Division, the interest payable (if any) in respect of a repayment is an amount calculated—

- (a) on the repayment, or any part of the repayment remaining unpaid;
- (b) at the rate determined from time to time under subsection 99 (1) of the *Taxation (Administration) Act 1987* for the purposes of section 31 of that Act; and
- (c) on a daily basis from the day following the date of the repayment notice under section 33.

(2) Where judgment is entered by a court for an amount equal to a repayment, or for the payment of an amount that includes an amount equal to a repayment—

- (a) the repayment is not to be taken, for the purposes of subsection (1), to have ceased to be due and payable only because judgment is entered; and

- (b) if interest is payable on the judgment debt, that interest is, by force of this paragraph, reduced—
  - (i) if judgment is entered for the payment of an amount equal to the repayment—by the amount of the interest on the judgment debt; or
  - (ii) if judgment is entered for the payment of an amount that includes an amount equal to the repayment—by an amount that bears the same proportion to the amount of the interest as the amount of the repayment bears to the amount of the judgment debt.

(3) In this section—

“repayment” means an amount required to be paid under section 33.

**41. Diesel subsidy—remission of repayments**

(1) On written application by a person required to make a payment under this Division, the Commissioner may, by written notice to the applicant, remit, in part or in whole, a penalty amount payable by the applicant under this Division in relation to a subsidy, or an amount of interest payable under this Division.

(2) The Commissioner shall only remit an amount if he or she considers on reasonable grounds that there are special circumstances justifying such remission.

(3) In this section—

“penalty amount”, in relation to an amount payable under this Division in relation to a subsidy, means such a portion of that amount as exceeds the amount of the subsidy.

***Division 4—Registration of diesel suppliers***

**42. Diesel suppliers—registration**

(1) A person may apply to the Commissioner for registration as a diesel supplier.

(2) An application shall be in a form approved by the Commissioner.

(3) The Commissioner may, by written notice to an applicant, require the applicant to give the Commissioner further specified information or to produce particular documents in connection with the application.

(4) A notice requiring further information to be given or documents to be produced may require the information or documents to be given or produced—

- (a) in a form, and within a period, specified in the notice; or
  - (b) personally by the applicant on a date, and at a time, specified in the notice.
- (5) The Commissioner shall register the applicant if he or she is satisfied on reasonable grounds that—
- (a) the applicant is not a registered diesel supplier whose registration is suspended;
  - (b) the applicant is not a defined business associate of a registered diesel supplier whose registration is suspended;
  - (c) the applicant has not, without reasonable excuse, failed to comply with a notice under subsection (3); and
  - (d) the applicant supplies diesel, or intends to supply diesel, to certified diesel users.

**43. Diesel suppliers—conditions of registration**

The conditions of registration of a diesel supplier are as follows:

- (a) the benefit of diesel subsidies received by the supplier is passed on to the certified diesel users to whom the diesel is sold;
- (b) the first time any person purporting to be a certified diesel user proposes to buy diesel from the supplier, the supplier does not sell diesel to the person at a subsidised price until—
  - (i) the supplier sights the user's certificate; and
  - (ii) the supplier undertakes reasonable efforts to check whether the user is registered on the Diesel Users Register;
- (c) the supplier keeps records of all diesel sold to certified diesel users for a period of at least 5 years in a form approved by the Commissioner;
- (d) the supplier produces such records for inspection on demand by a subsidy officer;
- (e) the supplier is not, and does not become, a defined business associate of a registered diesel supplier whose registration is suspended;
- (f) the supplier gives the Commissioner written notice specifying any change to the information specified in the supplier's application for registration within 14 days after the change;



- (g) any amount required to be paid to the Commissioner by the supplier under Division 3 is repaid within 21 days after the notice of repayment is given;
- (h) the supplier does not provide false or misleading information to the Commissioner under this Act, or fail to give information or to produce any document to the Commissioner in accordance with a request under this Act;
- (i) any other conditions specified by the Commissioner upon the registration of the supplier, or pursuant to paragraph 44 (1) (a).

**44. Diesel suppliers—variation and suspension of registration**

**(1)** If the Commissioner believes on reasonable grounds that a registered diesel supplier has contravened a condition of registration, the Commissioner may, by written notice to the supplier—

- (a) vary a condition of the supplier's registration; or
- (b) suspend the supplier's registration for a period starting on the date of the notice and ending—
  - (i) on a date specified in the notice, or on the revocation of the suspension, whichever is earlier; or
  - (ii) if the notice of suspension specifies any condition for the revocation of the suspension—on the revocation of the suspension following the satisfaction of any such condition, or on a later date (if any) specified in the notice.

**(2)** The Commissioner may, by written notice to a diesel supplier whose registration has been suspended, revoke the suspension on application by the supplier or on the Commissioner's own motion if the Commissioner is satisfied on reasonable grounds that—

- (a) if the notice of suspension specified any conditions for the revocation of the suspension—the supplier has satisfied any such condition; or
- (b) in any other case—such revocation is justified in the circumstances.

**(3)** The revocation of the suspension of a diesel supplier's registration takes effect on the date of the notice of revocation, or on such later date as is specified in that notice.

**45. Diesel suppliers—cancellation of registration (lapse of time)**

- (1) If a registered diesel supplier fails to apply for any subsidy during a period of 12 months (and has not been suspended from registration for any period during that time), the Commissioner may give the supplier a written notice requiring the supplier to notify the Commissioner if the supplier does not wish the registration to be cancelled.
- (2) A notice by the Commissioner shall contain statements to the effect that—
  - (a) the registered diesel supplier has not applied for any diesel subsidy for a specified period of 12 months or more; and
  - (b) the supplier may, within 28 days after the date of the notice, prevent the Commissioner from cancelling the supplier's registration by written notice to the Commissioner to that effect.
- (3) Unless the Commissioner receives a notice referred to in paragraph (2) (b) from the registered diesel supplier within 28 days after the date of the Commissioner's notice under subsection (1), the Commissioner may cancel the supplier's registration by written notice to the supplier.
- (4) Cancellation of registration under this section takes effect from the date of the notice under subsection (3).

***Division 5—Diesel users***

**46. Certified diesel users—registration**

- (1) A person may apply to the Commissioner for registration as a diesel user on the Diesel Users Register.
- (2) An application shall be in a form approved by the Commissioner.
- (3) The Commissioner may, by written notice to an applicant, require the applicant to give the Commissioner further specified information or to produce particular documents in connection with the application.
- (4) A notice requiring further information or documents may require the information to be given or the documents produced—
  - (a) in a form, and within a period, specified in the notice; or
  - (b) personally by the applicant on a date, and at a time, specified in the notice.
- (5) The Commissioner shall register the applicant if he or she is satisfied on reasonable grounds that—
  - (a) the applicant is not a certified diesel user whose registration is suspended;

- (b) the applicant has not, without reasonable excuse, failed to comply with a notice under subsection (3);
  - (c) if the application relates to the use of diesel for residential heating—
    - (i) the applicant is a beneficiary; and
    - (ii) the applicant will only use subsidised diesel for heating his or her residence in the Territory; and
  - (d) if the application relates to the use of diesel for the purposes of primary production—the applicant will only use subsidised diesel for a purpose connected with primary production in the Territory.
- (6) The Commissioner shall specify in the Diesel Users Register the purposes for which diesel purchased at a subsidised price may be used by a certified diesel user, being either or both of the following purposes:
- (a) the heating of the user's residence in the Territory;
  - (b) primary production by the user in the Territory.
- (7) Upon registering a person as a diesel user, the Commissioner shall issue the person with a diesel subsidy certificate specifying—
- (a) the purpose or purposes specified in the Diesel Users Register for which diesel purchased at a subsidised price may be used by the certified diesel user; and
  - (b) the registration number given to the certified diesel user.

**47. Certified diesel users—conditions of registration**

The conditions of registration of a diesel user are as follows:

- (a) subsidised diesel is only used for a purpose specified in the Diesel Users Register;
- (b) the user does not supply subsidised diesel to any other person;
- (c) the user does not give express or implied consent for another person to purchase, or to attempt to purchase, diesel at a subsidised price on the other person's own behalf by production of the certificate or a copy of the certificate, or mention of the user's name or registration number;
- (d) in the case of a user authorised to use diesel purchased by the user at a subsidised price for the purposes of primary production in the Territory—

- (i) the user keeps records of subsidised diesel obtained by the user for a period of at least 5 years in a form approved by the Commissioner; and
- (ii) the user produces such records for inspection on demand by a subsidy officer;
- (e) the user gives the Commissioner written notice specifying any change to the information about the user on the Diesel Users Register within 14 days after the change;
- (f) the user does not provide false or misleading information to the Commissioner under this Act, or fail to give information or to produce any document to the Commissioner in accordance with a request under this Act;
- (g) any other conditions specified by the Commissioner upon the registration of the user, or pursuant to paragraph 48 (1) (a).

**48. Certified diesel users—variation of conditions and suspension of registration**

(1) If the Commissioner believes on reasonable grounds that a certified diesel user has contravened a condition of registration, the Commissioner may, by written notice to the user—

- (a) vary a condition of the user's registration; or
- (b) suspend the user's registration for a period starting on the date of the notice and ending—
  - (i) on a date specified in the notice, or on the revocation of the suspension, whichever is earlier; or
  - (ii) if the notice of suspension specifies any condition for the revocation of the suspension—on the revocation of the suspension following the satisfaction of any such condition, or on a later date (if any) specified in the notice.

(2) The Commissioner may, by written notice to a certified diesel user whose registration has been suspended, revoke the suspension on application by the user or on the Commissioner's own motion if the Commissioner is satisfied on reasonable grounds that—

- (a) if the notice of suspension specified any conditions for the revocation of the suspension—the user has satisfied any such condition; or
- (b) in any other case—such revocation is justified in the circumstances.

**(3)** The variation of a condition of registration, suspension of registration or the revocation of such suspension—

- (a) shall be entered by the Commissioner on the Diesel Users Register on the date of the relevant notice, or on such later date as is specified in the notice; and
- (b) takes effect on such registration.

**49. Certified diesel users—loss of entitlement as beneficiary**

**(1)** This section applies if—

- (a) a certified diesel user is authorised to use diesel purchased by the user at a subsidised price for the purpose of heating his or her residence in the Territory; and
- (b) the certified diesel user ceases to be a beneficiary, or dies.

**(2)** Where this section applies, the certified diesel user's registration as a diesel user is to be taken to be cancelled from the date the user ceases to be a beneficiary, or from the date of death, unless subsection (3) applies.

**(3)** If the certified diesel user is authorised to use diesel purchased by the user at a subsidised price both for the purposes of heating his or her residence in the Territory and for primary production in the Territory, and the user ceases to be a beneficiary, the user's registration is to be taken only to authorise the use of such diesel for primary production in the Territory with effect from the date the user ceases to be a beneficiary.

**(4)** Where this section applies—

- (a) the Diesel Users Register is to be taken to have been varied accordingly as from the date of the diesel user's ceasing to be a beneficiary, or from the date of death;
- (b) the Commissioner shall give the diesel user written notice accordingly (unless the user has died); and
- (c) the Commissioner shall register the necessary cancellation or variation together with an annotation as to the date of effect of such registration.

**50. Certified diesel users—cancellation of registration (lapse of time)**

**(1)** If a certified diesel user fails to purchase any diesel at a subsidised price for a period of 12 months (and has not been suspended from registration for any period during that time), the Commissioner may give the user a written notice requiring the user to notify the Commissioner if the user does not wish the registration to be cancelled.

(2) A notice by the Commissioner shall contain statements to the effect that—

- (a) the certified diesel user has not purchased diesel at a subsidised price for a specified period of 12 months or more; and
- (b) the user may, within 28 days after the date of the notice, prevent the Commissioner from cancelling the user's registration by written notice to the Commissioner to that effect.

(3) Unless the Commissioner receives a notice referred to in paragraph (2) (b) from the certified diesel user within 28 days after the date of the Commissioner's notice under subsection (1), the Commissioner may cancel the user's registration by written notice to the user.

(4) Cancellation of registration under this section—

- (a) shall be entered by the Commissioner on the Diesel Users Register on the date of the relevant notice; and
- (b) takes effect on such registration.

**51. Certified diesel users—copy of exemption certificate**

(1) At the request of a certified diesel user the Commissioner shall issue to the user an official copy of the certificate endorsed as such by the Commissioner.

(2) An official copy of a certificate issued under subsection (1) has, for the purposes of this Act, the same force and effect as the original certificate.

**52. Diesel Users Register**

(1) The Commissioner shall establish and maintain a register to be known as the Diesel Users Register for the purposes of this Part.

(2) The Diesel Users Register shall include the following particulars in relation to each certified diesel user:

- (a) name and an address for correspondence;
- (b) date of registration;
- (c) registration number;
- (d) authorised purpose or purposes of registration;
- (e) if the user is authorised to use diesel purchased at a subsidised price for primary production in the Territory—the estimated annual usage of diesel for that purpose;
- (f) any conditions of registration in force under paragraph 47 (g).

(3) If a diesel user's registration is suspended or cancelled, the Commissioner shall give written notice accordingly to each registered diesel supplier.

(4) The Commissioner shall—

- (a) make the Diesel Users Register, or a copy of the Register, available for public inspection at the office of the Commissioner during ordinary office hours; and
- (b) upon application by any person—give the person a copy of a part or the whole of the Register.

(5) The Diesel Users Register may be kept in electronic form.

### **53. Sale of subsidised diesel**

A person shall not sell or otherwise dispose of diesel purchased by that person or any other person at a subsidised price, where the first-mentioned person knows that the diesel was so purchased.

Penalty:

- (a) in the case of a natural person—30 penalty units;
- (b) in the case of a body corporate—150 penalty units.

### **54. Return of exemption certificate**

Within 14 days after the date of a notice to a person of the suspension or cancellation of the person's registration as a diesel user, the person shall not, without reasonable excuse, fail to return to the Commissioner the diesel user's certificate, together with any official copy of the certificate.

Penalty:

- (a) in the case of a natural person—5 penalty units;
- (b) in the case of a body corporate—25 penalty units.

## **PART IV—TRANSPORTATION OF LOW-ALCOHOL LIQUOR AND DIESEL**

### **55. Transportation records**

(1) This section applies if low-alcohol liquor or diesel is, or is to be, transported in the Territory by motor vehicle—

- (a) in a tank having a capacity, or in tanks having a combined capacity, that exceeds a capacity prescribed by the regulations; or
- (b) in a combined volume that exceeds a combined volume prescribed by the regulations.

**(2)** Where this section applies, the person on whose behalf the liquor or diesel is to be transported shall—

- (a) make out a transportation record in respect of the liquor or diesel; and
- (b) give the record to the carrier at or before the commencement of the transportation.

Penalty:

- (a) in the case of a natural person—10 penalty units;
- (b) in the case of a body corporate—50 penalty units.

**(3)** A transportation record shall be in a form approved by the Commissioner, and shall contain the following information:

- (a) the date and address at which the transportation is to commence;
- (b) if low-alcohol liquor is to be transported—the combined volume of the liquor and the type or types of beverage to be transported;
- (c) if diesel is to be transported—the volume of the diesel to be transported;
- (d) the name and address of the person on whose behalf the liquor or diesel is to be transported;
- (e) if the person on whose behalf the liquor or diesel is to be transported is not the owner of the liquor or diesel—the name and address of the owner;
- (f) the name of the person (if any) to whom the carrier is to transport the liquor or diesel;
- (g) the address to which the carrier is to transport the liquor or diesel;
- (h) the name and address of the person (if any) who has agreed to purchase the liquor or diesel.

**(4)** At all times while this section applies in relation to the transportation of low-alcohol liquor or diesel within the Territory, the carrier shall ensure that the transportation record relating to the liquor or diesel is carried in the vehicle.

Penalty:

- (a) in the case of a natural person—5 penalty units;
- (b) in the case of a body corporate—25 penalty units.



## **PART V—ENFORCEMENT**

### *Division 1—Preliminary*

#### **56. Interpretation**

(1) For the purposes of this Part, a thing is connected with a particular subsidy offence if—

- (a) the offence has been committed with respect to it;
- (b) it will afford evidence of the commission of the offence; or
- (c) it was used, or is intended to be used, for the purpose of committing the offence.

(2) A reference in this Part to a subsidy offence is to be read as including a reference to a subsidy offence that there are reasonable grounds for believing has been committed.

(3) Where a subsidy officer enters premises in accordance with this Part, a reference to the occupier of the premises includes a reference to a person the officer has reasonable grounds for believing to be an occupier of the premises.

#### **57. Identity cards**

(1) The Chief Executive shall issue to a subsidy officer an identity card certifying that the officer is authorised to exercise powers under this Part.

(2) Upon ceasing to be a subsidy officer, a person shall not, without reasonable excuse, fail to return his or her identity card to the Chief Executive.

Penalty: 1 penalty unit.

### *Division 2—Inspection and seizure*

#### **58. Entry**

(1) Where a subsidy officer has reasonable grounds for believing that it is necessary to do so for the purposes of this Act, he or she may, using such reasonable force and assistance as is necessary—

- (a) in the case of premises other than residential premises—
  - (i) enter the premises at any reasonable time; or
  - (ii) enter the premises at any time with the consent of the occupier, or pursuant to a warrant issued under section 64 or 65; or

- (b) in the case of residential premises—enter the premises at any time with the consent of the occupier, or pursuant to a warrant issued under section 64 or 65.

(2) A subsidy officer who enters premises pursuant to this section is not entitled to remain on the premises if, on request by the occupier, the subsidy officer does not produce his or her identity card to the occupier.

(3) This section does not apply in relation to the inspection of large motor vehicles under section 62.

### **59. Consent to entry**

(1) Before obtaining the consent of a person for the purposes of section 58, a subsidy officer shall—

- (a) produce his or her identity card; and
- (b) inform that person that he or she may refuse to give consent.

(2) Where a subsidy officer obtains the consent of a person for the purposes of section 58, the officer shall ask the person to sign a written acknowledgment—

- (a) of the fact that the person has been informed that he or she may refuse to give consent;
- (b) of the fact that the person has voluntarily given consent; and
- (c) of the day on which, and the time at which, that consent was given.

(3) Where it is material in any proceedings for a court to be satisfied of the voluntary consent of a person for the purposes of section 58, and an acknowledgment in accordance with subsection (2) of this section and signed by the person is not produced in evidence, the court shall assume, unless the contrary is proved, that the person did not voluntarily give such consent.

### **60. Powers of inspection**

(1) On entry to premises in accordance with this Division, a subsidy officer shall have full and free access to documents relating to any of the following matters:

- (a) the supply of low-alcohol liquor by a registered liquor supplier;
- (b) the receipt of low-alcohol liquor by a licensee or any other person;
- (c) the supply of diesel by a registered diesel supplier;
- (d) the receipt of diesel by a certified diesel user or any other person;
- (e) the payment of duty in relation to the sale of low-alcohol liquor or diesel under a Commonwealth tax law;

- (f) in relation to an investigation under Part VI—the administration of a subsidy law of the relevant reciprocating jurisdiction.
- (2) Without limiting the generality of subsection (1), where a subsidy officer enters premises in accordance with this Division, the officer may, if he or she considers it to be necessary or desirable for the purposes of this Act—
- (a) require the occupier of the premises to display and print out all or part of any information (including documents referred to in subsection (1) and any other documents) stored or kept on the premises by means of a data processing device;
  - (b) take extracts from, and make copies of, any documents on the premises (including documents other than those referred to in subsection (1));
  - (c) inspect any low-alcohol liquor or diesel on the premises;
  - (d) seize any low-alcohol liquor or diesel on the premises that the subsidy officer believes on reasonable grounds to be connected with an offence against this Act;
  - (e) in relation to an investigation authorised under Part VI—
    - (i) inspect any subsidised product relevant to that investigation; or
    - (ii) seize any subsidised product that the subsidy officer believes on reasonable grounds to be connected with an offence against a subsidy law of the relevant reciprocating jurisdiction;
  - (f) subject to section 61, require any person on the premises to give the subsidy officer his or her name and address; or
  - (g) require the occupier of the premises to give the subsidy officer such assistance as is necessary and reasonable to enable the subsidy officer to exercise his or her powers under this section.

**61. Power to require name and address**

- (1) A subsidy officer may only require a person to give the person's name and address to the officer under section 60 where the officer has reasonable grounds for believing that the person has committed—
- (a) an offence against this Act; or
  - (b) in relation to an investigation under Part VI—an offence against a subsidy law of the relevant reciprocating jurisdiction.
- (2) A subsidy officer shall—

- (a) inform the person of the reasons for the requirement that the person gives the subsidy officer his or name and address; and
  - (b) as soon as practicable after that—record those reasons.
- (3) A person is not required to comply with a requirement to give a subsidy officer his or name and address if, on request by the person, the subsidy officer does not produce his or her identity card to the person.
- (4) Subject to this section, a person shall not, without reasonable excuse, fail to comply with a requirement under section 60 to give a subsidy officer the person's name and address.

Penalty for contravention of subsection (4): 5 penalty units.

## **62. Inspection of large motor vehicles**

- (1) This section applies where a subsidy officer suspects that a subsidised product is, or is to be, transported in the Territory by motor vehicle—
- (a) in a tank having a capacity, or tanks having a combined capacity, that exceeds a capacity prescribed by the regulations; or
  - (b) in a combined volume that exceeds a combined volume prescribed by the regulations.
- (2) Where this section applies, a police officer, at the request of a subsidy officer, may request or signal the driver of the vehicle to stop the vehicle.
- (3) A driver of a motor vehicle shall not, without reasonable excuse, fail to stop the vehicle in compliance with a request or signal under subsection (2).

Penalty: 50 penalty units.

- (4) The subsidy officer may request the driver to drive the vehicle to another place within a reasonable distance, as determined by the subsidy officer, where the subsidised product may be unloaded if the driver of the vehicle, on the request of a subsidy officer—
- (a) does not produce a transportation record; or
  - (b) produces such a transportation record that the subsidy officer believes on reasonable grounds to be false or misleading in a material particular.
- (5) If the driver does not comply with a request under subsection (4), a police officer, at the request of the subsidy officer, may take charge of the motor vehicle for the purpose of driving it, or causing it to be driven, to the other place.
- (6) As soon as practicable after arrival at the other place—

- (a) the subsidy officer shall unload, and may seize, any subsidised product; and
  - (b) if such a product is seized—the subsidy officer shall give the driver a receipt for the product including a statement setting out the provisions of section 63.
- (7) A subsidy officer may exercise any applicable power referred to in section 60 in relation to a vehicle, or in relation to any person travelling in a vehicle, required to stop under this section.
- (8) In this section—
- “transportation record” means a record required to be kept under—
    - (a) section 55; or
    - (b) in relation to an investigation authorised under Part VI—a provision of a subsidy law of the relevant reciprocating jurisdiction that corresponds to section 55.

**63. Seizure of low-alcohol liquor and diesel**

- (1) Where a quantity of a subsidised product is seized under this Division—
- (a) the subsidy officer who seized that quantity shall give a receipt to the occupier of the premises, or the driver of the vehicle, from which it was seized; and
  - (b) the seized quantity shall be kept in the custody of the Commissioner.
- (2) If a prosecution for an offence against a subsidy law in relation to the seized quantity is not instituted within a period of 60 days after the seizure, reasonable steps shall be taken to return the quantity to the occupier or driver within the period of 120 days after its seizure.
- (3) A seized quantity is forfeited to the Territory and may be disposed of as the Minister directs if—
- (a) a person is convicted of an offence referred to in subsection (2); or
  - (b) that quantity is not able to be returned under subsection (2).
- (4) In this section—
- “seized quantity” means a quantity of a subsidised product seized under this Division.

**64. Search warrants**

(1) Where an information on oath is laid before a magistrate alleging that there are reasonable grounds for suspecting that there may be, at any place, a thing of a particular kind connected with a particular subsidy offence, and the information sets out those grounds, the magistrate may issue a search warrant authorising a subsidy officer named in the warrant, with such assistance and by such force as is necessary and reasonable—

- (a) to enter the place;
- (b) to search the place for things of that kind; and
- (c) to exercise any of the powers under section 60 in relation to such a thing.

(2) A magistrate shall not issue a warrant unless—

- (a) the informant or some other person has given to the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(3) A warrant shall—

- (a) state the purpose for which it is issued;
- (b) specify the nature of the offence in relation to which the entry, search and exercise of the powers under section 60 are authorised;
- (c) specify particular hours during which the entry is authorised or state that the entry is authorised at any time of the day or night;
- (d) include a description of the kinds of things in relation to which the powers under section 60 may be exercised; and
- (e) specify a day, not being later than 1 month after the date of issue of the warrant, on which the warrant is to cease to have effect.

**65. Warrants by telephone or other electronic means**

(1) An authorised officer may make an application to a magistrate for a warrant by telephone, telex, facsimile or other electronic means—

- (a) in an urgent case; or
- (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

(2) The magistrate may require communication by voice to the extent that is practicable in the circumstances.

(3) An application under this section shall include all information required to be provided in an application for a warrant under section 64, but the application may, if necessary, be made before the information is sworn.

(4) If an application is made to a magistrate under this section and the magistrate, after considering the information and having received and considered such further information (if any) as the magistrate required, is satisfied that—

- (a) a warrant in the terms of the application should be issued urgently;  
or
- (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant;

the magistrate may complete and sign the same form of warrant that would be issued under section 64.

(5) If the magistrate decides to issue the warrant, the magistrate shall inform the applicant, by telephone, telex, facsimile or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.

(6) The applicant shall then complete a form of warrant in terms substantially corresponding to those given by the magistrate, stating on the form the name of the magistrate and the day on which and the time at which the warrant was signed.

(7) The applicant shall, not later than the day after the day of expiry of the warrant or the day after the day on which the warrant was executed, whichever is the earlier, give or transmit to the issuing officer the form of warrant completed by the applicant and, if the information referred to in subsection (3) was not sworn, that information duly sworn.

(8) The magistrate shall attach to the documents provided under subsection (7) the form of warrant completed by the magistrate.

(9) If—

- (a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorised; and
- (b) the form of warrant signed by the magistrate is not produced in evidence;

the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

***Division 3—Provision of information***

**66. Notice requiring information**

(1) This section applies where the Commissioner believes on reasonable grounds that a person is able to give information or produce a document relating to—

- (a) the supply of low-alcohol liquor or diesel by that person or any other person;
- (b) the payment of low-alcohol liquor subsidy or diesel subsidy by that person or any other person; or
- (c) a requirement that the person, or any other person, pay an amount to the Commissioner under this Act; or
- (d) an investigation authorised under Part VI.

(2) Where this section applies, the Commissioner may, by written notice to the person believed to be able to give such information or to produce such a document, require him or her—

- (a) to give any such information to the Commissioner within the time and in the manner specified in the notice;
- (b) to attend before the Commissioner or another person specified in the notice at a specified time and place (being a time and place that are reasonable in the circumstances) to answer questions in relation to such supply or payment, or for the purposes of such an investigation; or
- (c) to produce any such document in the person's custody or control to the Commissioner or another person specified in the notice, in accordance with the notice.

(3) A person required to attend before the Commissioner or any other person under this section for the purposes of an investigation authorised under Part VI is entitled to payment of an allowance of an amount determined by the Commissioner in respect of his or her expenses.

**67. Copies and extracts of documents**

The Commissioner may cause copies to be made of, or extracts to be taken from, any documents produced to him or her under section 66 or any other provision of this Act.



**68. Evidence under oath or affirmation**

Where a person is required to attend to give further information to the Commissioner under section 66 or any other provision of this Act, the Commissioner or other person before whom he or she is required to attend may require evidence to be given on oath or affirmation, and for that purpose the Commissioner or other person may administer an oath or affirmation.

**69. Self-incrimination**

(1) A person is not excused from giving information, answering a question or producing a document in compliance with a notice or requirement under section 66 or any other provision of this Act on the ground that the giving of the information, the answering of the question or the production of the document might tend to incriminate the person.

(2) Information, an answer or a document obtained pursuant to a notice or requirement under section 66 or any other provision of this Act, or any information, document or thing obtained as a direct or indirect consequence of that information, answer or document, is not admissible in evidence against the person in criminal proceedings other than proceedings for—

- (a) any offence in respect of the false, misleading or incorrect nature of the information, answer or document; or
- (b) an offence under or by virtue of Part VIII of the *Crimes Act 1900* that relates to an alleged offence referred to in paragraph (a).

**70. Requirements to give information**

(1) A person shall not, without reasonable excuse, contravene a requirement under section 66 or any other provision of this Act—

- (a) to give written information or to produce a document to the Commissioner or another person; or
- (b) to attend before the Commissioner or another person.

Penalty:

- (a) in the case of a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) in the case of a body corporate—250 penalty units.

(2) A person attending before the Commissioner or another person under section 66 or any other provision of this Act shall not, without reasonable excuse, contravene any of the following requirements:

- (a) a requirement to answer a question;
- (b) a requirement to produce a document;

(c) a requirement to take an oath or to make an affirmation.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

**71. Orders to comply with requirements**

(1) This section applies where, in relation to the contravention of a requirement under this Act—

- (a) a person is convicted before a court of an offence against section 70; or
- (b) a court makes an order under section 556A of the *Crimes Act 1900* in relation to a person in respect of an offence against section 70 of this Act.

(2) Where this section applies, the court may order the person—

- (a) to comply with the requirement within a specified time or at a specified place; and
- (b) to comply with such other requirements that have or could have been made in relation to the person under this Act as the court considers necessary to ensure compliance with the first-mentioned requirement.

(3) An order may be made—

- (a) in addition to the imposition of a penalty for the offence or the making of an order under section 556A of the *Crimes Act 1900* in respect of the offence; and
- (b) whether or not the time for complying with the relevant requirement or requirements has passed.

(4) Where an order is not given orally by the court to the person in relation to whom the order is made, the proper officer of the court shall cause a copy of the order to be served on the person.

(5) A person shall not, without reasonable excuse, contravene an order under subsection (2).

Penalty for contravention of subsection (5):

- (a) in the case of a natural person—100 penalty units or imprisonment for 12 months, or both;
- (b) in the case of a body corporate—500 penalty units.

***Division 4—Statements and subsidy records***

**72. False or misleading statements**

(1) A person shall not—

- (a) make a subsidy statement that is false or misleading in a material particular; or
- (b) omit from a subsidy statement any matter or thing without which the statement is misleading in a material particular.

Penalty:

- (a) in the case of a natural person—30 penalty units;
- (b) in the case of a body corporate—150 penalty units.

(2) A person is not guilty of an offence against subsection (1) in relation to a statement if the person adduces evidence that—

- (a) he or she did not know, and could not reasonably be expected to have known, that the statement was false or misleading; or
- (b) where the alleged offence relates to the production of a document by a person—
  - (i) the person could not reasonably be expected to have had any influence over the contents of the document; and
  - (ii) the person gave written or oral notice accordingly to the person to whom the document was produced;

and the evidence is not rebutted by the prosecution.

(3) A person shall not recklessly or knowingly—

- (a) make a subsidy statement that is false or misleading in a material particular; or
- (b) omit from a subsidy statement any matter or thing without which the statement is false or misleading in a material particular.

Penalty:

- (a) in the case of a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) in the case of a body corporate—250 penalty units.

(4) In this section—

“subsidy statement” means a statement made orally, in writing, by means of a data processing device or by any other means to a subsidy officer or another person for a purpose in connection with the operation of a this Act and includes the following statements:

- (a) a statement made in an application or other document made or given, or purported to be made or given, under this Act;

- (b) a statement made in answer to a question asked of a person under this Act;
- (c) a statement made in any information given, or purported to be given, under this Act;
- (d) a statement made pursuant to a condition of registration under this Act;
- (e) a statement made in a document given to a subsidy officer otherwise than pursuant to a requirement under this Act.

### **73. Records offences**

**(1)** A person shall not keep subsidy records that do not correctly record or explain any matter to which they relate.

Penalty:

- (a) in the case of a natural person—30 penalty units;
- (b) in the case of a body corporate—150 penalty units.

**(2)** A person is not guilty of an offence against subsection (1) in relation to any records if the person adduces evidence that he or she did not know, and could not reasonably be expected to have known, that the records did not correctly record or explain the matters to which they relate, and the evidence is not rebutted by the prosecution.

**(3)** A person shall not recklessly or knowingly keep subsidy records that do not correctly record or explain any matter to which they relate.

Penalty:

- (a) in the case of a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) in the case of a body corporate—250 penalty units.

**(4)** A person shall not perform a defined act in relation to a subsidy record or records with the intention of—

- (a) deceiving or misleading the Commissioner or another subsidy officer;
- (b) hindering or obstructing the investigation of an offence against this Act, or a debt under this Act;
- (c) hindering, obstructing or defeating the administration, execution or enforcement of this Act; or
- (d) defeating the purposes of this Act.

Penalty:

- (a) in the case of a natural person—50 penalty units or imprisonment for 6 months, or both;
  - (b) in the case of a body corporate—250 penalty units.
- (5) In this section, a reference to the keeping by a person of subsidy records that do not correctly record and explain the matters to which they relate includes a reference to the making of such a subsidy record by the person.
- (6) In this section—
- “defined act” means—
- (a) keeping subsidy records in such a way that they—
    - (i) do not correctly record and explain the matters to which they relate;
    - (ii) are illegible, indecipherable or incapable of being identified (whether wholly or in part); or
    - (iii) if they are stored or kept by means of a data processing device—cannot be displayed, printed out or otherwise reproduced in legible form;
  - (b) making a subsidy record of a matter in such a way that it does not correctly record the matter;
  - (c) altering, defacing, mutilating, falsifying, damaging, removing, concealing or destroying any subsidy record (whether wholly or in part); or
  - (d) doing or omitting to do any other act or thing to any subsidy record;
- “subsidy record” means accounts or any other record required to be kept under this Act or pursuant to a condition of registration under this Act.

#### ***Division 5—Other offences***

#### **74. Falsifying or concealing identity**

- (1) A person shall not perform a defined act of falsification or concealment with the intention of—
- (a) deceiving or misleading the Commissioner or another subsidy officer;
  - (b) hindering or obstructing an investigation under this Act;

- (c) hindering, obstructing or defeating the administration, execution or enforcement of this Act; or
- (d) defeating the purposes of this Act.

Penalty:

- (a) in the case of a natural person—50 penalty units or imprisonment for 6 months, or both;
  - (b) in the case of a body corporate—250 penalty units.
- (2) In this section—
- “defined act of falsification or concealment”, where such an act is performed by a person, means—
- (a) falsification or concealment of the identity, or the address or location of a place of residence or business, of the person or of another person; or
  - (b) doing or omitting to do any act or thing to facilitate such falsification or concealment.

#### **75. Obstruction**

(1) A person shall not, without reasonable excuse, obstruct or hinder a subsidy officer in the exercise of the officer’s powers under this Act.

Penalty:

- (a) in the case of a natural person—50 penalty units or imprisonment for 6 months, or both;
  - (b) in the case of a body corporate—250 penalty units.
- (2) A person shall not, without reasonable excuse, contravene a reasonable requirement of a subsidy officer who has entered premises pursuant to this Act.

Penalty:

- (a) in the case of a natural person—50 penalty units;
- (b) in the case of a body corporate—250 penalty units.

### **PART VI—RECIPROCAL ENFORCEMENT OF INTERSTATE LAWS**

#### **76. Interpretation**

In this Part—

“interstate officer”, in relation to a reciprocating jurisdiction, means a person or authority, not being a Minister of State, that exercises powers or performs functions under or in relation to a subsidy law of that jurisdiction.

**77. Investigation of referred matters**

If an interstate officer refers a matter relating to the administration of a subsidy law of the relevant reciprocating jurisdiction, in writing, to the Commissioner for investigation, the Commissioner may authorise the conduct of an investigation into the matter by—

- (a) a subsidy officer within the meaning of this Act; or
- (b) an interstate officer of that jurisdiction.

**78. Disclosure of information to reciprocating jurisdictions**

The Commissioner may give information disclosed or obtained under this Act to an interstate officer of a reciprocating jurisdiction for the purposes of the administration of a subsidy law of that jurisdiction.

**PART VII—ADMINISTRATIVE REVIEW**

**79. Decisions subject to administrative review**

This Part applies to the following decisions:

- (a) a decision under section 9 to refuse an application for the payment of a low-alcohol liquor subsidy, or to approve the payment of a lower amount of low-alcohol liquor subsidy than was applied for;
- (b) a decision under section 13 to require the payment of an amount in relation to a payment of low-alcohol liquor subsidy;
- (c) a decision under section 20 to refuse to remit a penalty amount or an amount of interest, or remitting such an amount by less than is applied for;
- (d) a decision under section 21 to refuse to register a person as a liquor supplier;
- (e) a decision under paragraph 22 (h) to register a person as a liquor supplier subject to a condition;
- (f) a decision under paragraph 23 (1) (a) to vary the conditions of a person’s registration as a liquor supplier;
- (g) a decision under paragraph 23 (1) (b) to suspend a person’s registration as a liquor supplier;

- (h) a decision under subsection 23 (2) to refuse to revoke the suspension of a person's registration as a liquor supplier;
- (i) a decision under section 24 to cancel a person's registration as a liquor supplier;
- (j) a decision under section 30 to refuse an application for the payment of a diesel subsidy, or to approve the payment of a lower amount of diesel subsidy than was applied for;
- (k) a decision under section 33 to require the payment of an amount in relation to a payment of diesel subsidy;
- (l) a decision under section 41 to refuse to remit a penalty amount or an amount of interest, or remitting such an amount by less than is applied for;
- (m) a decision under section 42 to refuse to register a person as a diesel supplier;
- (n) a decision under paragraph 43 (i) to register a person as a diesel supplier subject to a condition;
- (o) a decision under paragraph 44 (1) (a) to vary the conditions of a person's registration as a diesel supplier;
- (p) a decision under paragraph 44 (1) (b) to suspend a person's registration as a diesel supplier;
- (q) a decision under subsection 44 (2) to refuse to revoke the suspension of a person's registration as a diesel supplier;
- (r) a decision under section 45 to cancel a person's registration as a diesel supplier;
- (s) a decision under section 46 to refuse to register a person as a diesel user;
- (t) a decision under paragraph 47 (g) to register a person as a diesel user subject to a condition;
- (u) a decision under paragraph 48 (1) (a) to vary the conditions of a person's registration as a diesel user;
- (v) a decision under paragraph 48 (1) (b) to suspend a person's registration as a diesel user;
- (w) a decision under subsection 48 (2) to refuse to revoke the suspension of a person's registration as a diesel user;
- (x) a decision under section 50 to cancel a person's registration as a diesel user.



**80. Notice of decisions**

(1) The Commissioner shall give written notice of a decision to which this Part applies to the following persons:

- (a) in the case of a decision in relation to the payment of a subsidy—the applicant for the subsidy;
- (b) in the case of a decision to require the payment of an amount in relation to the repayment of a subsidy—the person to whom the subsidy was paid;
- (c) in the case of a decision in relation to the remission of an amount—the applicant for remission;
- (d) in the case of a decision to refuse an application for registration—the applicant for the remission or for registration;
- (e) in the case of a decision in relation to the imposition or variation of a condition on a person's registration—the registered person;
- (f) in the case of a decision in relation to the suspension or cancellation of a person's registration—the person whose registration is suspended or cancelled.

(2) Where a decision to which this Act applies is made by a delegate of the Commissioner, the notice of the decision shall include—

- (a) a statement of the reasons for the decision;
- (b) a statement to the effect that the recipient of the notice may object to the decision under section 81; and
- (c) a statement of the requirements for making such an objection.

(3) Where a decision to which this Act applies is made by the Commissioner personally (rather than by a delegate of the Commissioner), the notice of the decision under subsection (1) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*, except in the case of the following decisions:

- (a) a decision to register a person as a liquor supplier, a diesel supplier or a diesel user subject to a condition;
- (b) a decision to vary the conditions of a person's registration as a liquor supplier, a diesel supplier or a diesel user;
- (c) a decision to cancel the registration of a liquor supplier, a diesel supplier or a diesel user.

## **81. Objections**

(1) If a decision to which this Part applies is made by a delegate of the Commissioner, the person to whom notice of the decision is given under section 80 may object to the decision by written notice to the Commissioner.

(2) An objection to a decision shall be made within 60 days after the notice of the decision is given, subject to section 82.

(3) An objection shall be in writing setting out the grounds of objection.

(4) Upon an objection being made in accordance with this section, the Commissioner, or a delegate of the Commissioner other than the delegate who made the original decision, shall, by written notice to the objector—

- (a) allow the objection; or
- (b) disallow the objection.

(5) A notice under subsection (4) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*, except in the case of the following decisions:

- (a) a decision to register a person as a liquor supplier, a diesel supplier or a diesel user subject to a condition;
- (b) a decision to vary the conditions of a person's registration as a liquor supplier, a diesel supplier or a diesel user;
- (c) a decision to cancel the registration of a liquor supplier, a diesel supplier or a diesel user.

(6) Where a decision is made to allow an objection, the Commissioner shall take any action, including the payment of a subsidy or the repayment of an amount to the objector, that is necessary to give effect to that decision.

## **82. Late objections**

(1) If the period within which an objection to a decision may be made under section 81 has ended, the person entitled to object to the decision may give the Commissioner—

- (a) a written objection to the decision setting out the grounds of objection; and
- (b) a written application to have the objection treated as being duly made under section 81, stating fully and in detail the circumstances concerning, and the reasons for, the person's failure to make the objection within the period of 60 days after notice of the decision was given.

(2) On application under subsection (1), the Commissioner, or a delegate of the Commissioner other than the person who made the decision objected to, may—

- (a) treat the objection as having been duly made; or
- (b) refuse to consider the objection.

(3) The Commissioner shall give written notice of a decision under subsection (2) to the applicant.

(4) Notice of a decision under paragraph (2) (b) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

### **83. AAT review**

(1) Subject to subsection (2), application may be made to the Administrative Appeals Tribunal for a review of—

- (a) a decision to which this Act applies made by the Commissioner personally (rather than by a delegate of the Commissioner);
- (b) a decision under paragraph 81 (4) (b) disallowing an objection;
- (c) a decision under paragraph 82 (2) (b) to refuse to consider a late objection.

(2) Paragraphs (1) (a) and (b) do not apply in relation to the following decisions:

- (a) a decision to register a person as a liquor supplier, a diesel supplier or a diesel user subject to a condition;
- (b) a decision to vary the conditions of a person's registration as a liquor supplier, a diesel supplier or a diesel user;
- (c) a decision to cancel the registration of a liquor supplier, a diesel supplier or a diesel user.

### **84. Burden of proof—amounts payable**

For the purposes of this Part, the burden of establishing on the balance of probabilities that an excessive amount has been required to be paid under section 13 or 33 lies on the person challenging that requirement.

### **85. Effect of decisions pending review**

The fact that consideration of an objection, review or appeal in relation to a decision to which this Part applies is pending—

- (a) does not in the meantime interfere with or affect the decision to which the objection, review or appeal relates; and

- (b) does not affect any action to recover an amount payable under section 13 or 33.

**86. Reduction of amounts payable**

If, as a result of a decision on an objection, review or appeal for the purposes of this Part, an amount previously required to be paid to the Commissioner is reduced, or is not required to be paid, the amount by which it is reduced or the whole amount (as the case may be) shall be taken, for the purposes of this Act, never to have been payable.

**87. Effect of AAT decisions**

(1) Within 60 days after a decision by the Administrative Appeals Tribunal on an application made under this Part becomes final, the Commissioner shall take any action, including the payment of a subsidy or the repayment of an amount to the applicant, that is necessary to give effect to the decision.

(2) If no appeal to a court from—

- (a) the decision of the Administrative Appeals Tribunal; or
- (b) a decision of the Supreme Court or the Federal Court in an appeal to that court in relation to the decision of the Tribunal;

is instituted within 30 days after the day on which the decision (or the later or latest of those decisions) is made, the decision of the Tribunal shall be taken, for the purposes of subsection (1), to have become final at the end of that period.

**PART VIII—MISCELLANEOUS**

**88. Conduct of directors, servants and agents**

(1) Where, for the purposes of this Act, it is necessary to establish the state of mind of a body corporate or a natural person in relation to particular conduct, it is sufficient to show—

- (a) that a director, servant or agent of the body, or a servant or agent of the person, had that state of mind; and
- (b) that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

(2) A reference in subsection (1) to the state of mind of a body or person shall be read as including a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the body or person; and

(b) the body's or person's reasons for the intention, opinion, belief or purpose.

(3) Any conduct engaged in on behalf of a body corporate or a natural person by a director, servant or agent of the body, or a servant or agent of the person, within the scope of his or her actual or apparent authority is to be taken, for the purposes of this Act, to have been engaged in also by the body or person.

(4) Where—

(a) a natural person is convicted of an offence against this Act; and

(b) the person would not have been convicted of the offence if subsections (1) and (3) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(5) A reference in this section to a director of a body corporate is to be read as including a reference to a member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory.

(6) A reference in this section to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct.

## **89. Offences by corporations**

(1) If a corporation does or omits to do any act or thing of which the doing or omission constitutes an offence against this Act, a person (by whatever name called and whether or not the person is an officer of the corporation) who is concerned in, or takes part in, the management of the corporation shall be taken to have committed the offence and is punishable accordingly.

(2) A person shall not be taken, pursuant to subsection (1), to have committed an offence against this Act if the person adduces evidence that the person—

(a) did not aid, abet, counsel or procure the corporation's act or omission; and

(b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or a party to, the act or omission;

and that evidence is not rebutted by the prosecution.

(3) For the purposes of subsection (1), an officer of a corporation shall be presumed to be concerned in, and to take part in, the management of the corporation unless the officer adduces evidence to the contrary and that evidence is not rebutted by the prosecution.

**(4)** In this section—

“officer”, in relation to a corporation, means—

- (a) a director of the corporation;
- (b) a secretary of the corporation;
- (c) a receiver and manager of property of the corporation;
- (d) an official manager or deputy official manager of the corporation;
- (e) a liquidator of the corporation appointed in a voluntary winding up of the corporation; or
- (f) a trustee or other person administering a compromise or arrangement made between the corporation and another person or other persons.

**90. Transitional provisions—diesel subsidies**

The provisions of the Schedule have effect in relation to—

- (a) the holders of exemption certificates issued under the *Business Franchise (Tobacco and Petroleum Products) Act 1987* before the day on which this Act commences; and
- (b) sales of diesel before the day on which this Act commences in relation to which diesel subsidy is applied for.

**91. Regulations**

The Executive may make regulations for the purposes of this Act.

## SCHEDULE

Section 90

### TRANSITIONAL—DIESEL SUBSIDIES

#### 1. Interpretation

In this Schedule—

“Business Franchise Act” means the *Business Franchise (Tobacco and Petroleum Products) Act 1984*;

“diesel fuel exemption certificate” means an exemption certificate issued under the Business Franchise Act.

#### 2. Diesel fuel exemption certificates

(1) The holder of a diesel fuel exemption certificate before the day on which this Act commences relating to the use of diesel fuel for residential heating or primary production, or both, is to be taken, on and after that day, to be registered as a diesel user under this Act in relation to that use or those uses (as the case may be) with a registration number corresponding to the identification number endorsed on the certificate.

(2) A diesel fuel exemption certificate, and any duplicate copy of such a certificate, in force immediately before the day on which this Act commences is to be taken to be a diesel subsidy certificate, or an official copy of such a certificate (as the case may be), for the purposes of this Act.

(3) An application for a diesel fuel exemption certificate that had been made under the Business Franchise Act immediately before the day on which this Act commences, but in respect of which no decision had yet been made, is to be taken, on and after that day, to be an application for registration as a diesel user made under this Act.

#### 3. Sales of diesel prior to the commencement of this Act

For the purposes of any application of this Act in relation to a sale of diesel made before the day on which this Act commences—

- (a) a reference in this Act to the sale of diesel to a certified diesel user is to be taken to be a reference to the sale of diesel to the holder of a diesel fuel exemption certificate; and
- (b) a reference in this Act to the passing-on of the benefit of a diesel subsidy from a diesel supplier to a certified diesel user is to be taken to be a reference to the sale of the diesel to a person who was at the time of the sale the holder of a diesel fuel exemption certificate at a price that was reduced by virtue of the person’s being the holder of such a certificate.

*Subsidies (Liquor and Diesel) Act 1998 No. 19, 1998*

**NOTE**

**Penalty units**

See section 33AA of the *Interpretation Act 1967*.

*[Presentation speech made in Assembly on 28 May 1998]*

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