

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

SUBSIDIES (LIQUOR AND DIESEL) BILL 1998

EXPLANATORY MEMORANDUM

Circulated by the Authority of the Chief Minister and Treasurer

Kate Carnell, MLA

SUBSIDIES (LIQUOR & DIESEL) BILL 1998

EXPLANATORY MEMORANDUM

Summary

This Bill provides a legislative framework for the payment of subsidies to ensure that consumers of low alcohol products and pensioners and primary producers using diesel fuel pay lower taxes for these products

The Bill replaces administrative arrangements with respect to subsidies payments in place since August 1997. The Commonwealth, at the request of all States and Territories, increased its rate of excise on all tobacco and petroleum products and its rate of wholesale sale tax on all liquor products to replace State and Territory business licence fees following a High Court decision in August 1997, that held tobacco licence fees under NSW business franchise legislation to be invalid. The payment of subsidies was required to ensure that the full effect of the excise and sales tax increases were not passed on in the form of higher prices to low alcohol consumers or to holders of diesel exemption certificates under the Business Franchise (Tobacco and Petroleum Product) Act 1984.

The Bill provides for

- a) the registration of persons wishing to receive subsidies under the Bill,
- b) the payment of subsidies to registered liquor producers, wholesalers and retailers in respect of low alcohol liquor sales in the ACT,
- c) the payment of subsidies to registered petroleum wholesalers and retailers in respect to diesel fuel to consumers for the purpose of home heating and for agricultural purposes in the ACT,
- d) the issue of exemption certificates to eligible pensioners and primary producers and their inclusion within a register available for inspection, free of charge, by registered petroleum wholesalers and retailers, and
- e) the necessary inspection and enquiry powers for the Commissioner to ensure that subsidies are paid only in respect of sales eligible for ACT subsidies, as intended.

Consequential amendments have been made to the Business Franchise (Tobacco and Petroleum Products) Act 1984 which will continue the licensing of tobacco retailers in the ACT.

Finance/cost implications

The annual subsidy payments under the Bill are estimated at \$1 million. These payments however will not have any significant effect on the ACT's net revenue. This is because the revenue currently collected by the Commonwealth and returned to diesel and liquor producers and suppliers under the ACT's subsidy scheme were not previously collected under the Business Franchise legislation. Therefore subsidy payments generally reflect the increased revenue collected which was not part of the ACT's previous revenue base.

Details of the Subsidies (Liquor and Diesel) Bill 1998

PART 1 - PRELIMINARY

Clause 1

This cites the short title of the Act

Clause 2

This sets out the date of commencement of the Act

Clause 3

This provides the dictionary of terms for the purposes of this Act Further clarification is provided to the following terms

'certified diesel user' distinguishes diesel users from registered diesel suppliers and a person will not be regarded as a 'certified diesel users' unless they are registered in the Diesel Users Register

'defined business associate' is elaborated to encompass not only 'defined influential persons' but also partnerships with less formal business relationships The intention is to prevent such defined business associates from obtaining registration while the registration of the associated company or business partner or associate has been suspended

'identity card' refers to the requirement that officers exercising authority under this Act will have a prescribed identity card for the purposes of this Act

'reciprocating jurisdiction' provides for the exchange of information between the ACT and other jurisdictions in relation to a law dealing with the provision of a subsidy

'subsidised' is defined to assist in the provisions relating to end use Where a person sells subsidised liquor interstate or where diesel is used for a non-registered purpose, there is a requirement that any subsidy paid in relation to that subsidised product, will have to be repaid

'subsidy officer' for the purposes of this Act are those authorised persons delegated by the Commissioner of Revenue to administer or carry out investigations under this Act Since this Act is not a tax law, the authorisation of these officers will be under this Act rather than relying on any authorisation under the Taxation(Administration) Act 1987 However existing officers under the Taxation (Administration) Act 1987, are included in the definition of a subsidy officer

PART II - LOW ALCOHOL SUBSIDY

Division 1 - Eligibility for low-alcohol liquor subsidy

Clause 4

The low alcohol subsidy is payable to a registered ACT supplier in relation to the sale of low alcohol liquor by wholesale by the supplier to a licensee and upon evidence that duty has been paid for that sale under a Commonwealth tax law

This would require as part of a claim for a subsidy, documentary proof to the satisfaction of the Commissioner, that a subsidy is paid only in relation to low alcohol liquor on which the appropriate duty has been paid

Clause 5

The determination of the rate at which the subsidy is paid and the method of calculation may be varied by instrument of the Minister. The instrument under this clause is a disallowable instrument for the purposes of the *Subordinate Laws Act 1989*

Clause 6

Where low-alcohol liquor is sold by a registered supplier in contravention of a condition of the supplier's registration, then the low-alcohol subsidy is not payable

Clause 7

Where low alcohol liquor is sold by an unregistered supplier then a low alcohol subsidy is not payable. If however, the Commissioner upon application, is satisfied that the supplier was not suspended at the time of the supply and there are reasonable grounds to justify payment of the low-alcohol subsidy in the given circumstances, then the Commissioner shall approve payment of the subsidy

Clause 8

No low alcohol subsidy is payable in relation to a quantity of low alcohol liquor where a subsidy has already been paid under this Act or where in the opinion of the Commissioner, a corresponding subsidy has already been paid in respect of that liquor by another Territory or State. This is to prevent multiple claims for a subsidy in differing jurisdictions in relation to the same amount of low-alcohol liquor

Division 2 - Application for low-alcohol liquor subsidy

Clause 9

An application for a low alcohol subsidy shall be in a form approved by the Commissioner. The Commissioner may by instrument vary the determined period to which the sale of low alcohol liquor applies and this determination is a disallowable instrument for the purposes of the *Subordinate Laws Act 1989*

Clause 10

The Commissioner may by written notice, direct an applicant for low alcohol subsidy to furnish further specified information in a prescribed manner in relation to an application. Where the Commissioner is satisfied that an applicant has failed to comply with any requirements of a notice, the Commissioner may either refuse the application

or require the supplier to repay any subsidy already paid in accordance with the application

Clause 11

The deferment of an application by a liquor supplier for a low-alcohol subsidy can occur where there is an existing application for a low-alcohol subsidy still under consideration by the Commissioner or where there is an investigation under way in relation to the applicant, and until such time as the existing application or investigation is resolved to the satisfaction of the Commissioner

Division 3 - Licensees' records

Clause 12

A licensee shall keep records including prescribed details of all sales of low alcohol liquor by the licensee other than retail sales. This is for inspection purposes so as to be able to reconcile supplier records with licensee records. There are prescribed penalties for failure to keep these records

Division 4 - Repayment of low-alcohol liquor subsidy

Clauses 13-17

If a registered liquor supplier receives an amount of low alcohol subsidy greater than the amount to which the supplier is entitled, the supplier on receipt of a written notice from the Commissioner to that effect, shall repay to the Commissioner, the amount in accordance with the following criteria

Where the quantity of low alcohol liquor in respect of which a subsidy has been paid is sold in contravention of the supplier's conditions of registration the supplier shall pay -

within 21 days of the date of the notice, the amount of the subsidy plus interest, or after 21 days of the date of the notice, three times the amount of the subsidy plus interest, or

Where a subsidy has been paid as a result of false or misleading information given under section 6 or 7, the supplier shall pay -

within 21 days of the date of notice, the amount of the subsidy plus interest, or after 21 days of the date of the notice, three times the amount of the subsidy plus interest, or

Where a registered liquor supplier fails to comply with any part of a notice under section 7 in relation to a application for a subsidy, the supplier shall pay -

within 21 days of the date of notice, the amount of the subsidy plus interest, or after 21 days of the date of notice, twice the amount of the subsidy plus interest

Clause 10, or

Where there has been an overpayment of a low alcohol subsidy in other circumstances, the supplier shall pay -

within 21 days of the notice, the difference between the amount paid and the amount entitled to, or

after 21 days of the date of notice, twice the amount of the difference

The range of penalties are intended to reflect the seriousness of the circumstances which give rise to a repayment of a subsidy. Where there is an innocent overpayment of a subsidy, there are no penalty or interest attached if the repayment is received within 21 days of a repayment notice.

An amount required to be paid under these sections is recoverable by the Commissioner on behalf of the Territory in a court of competent jurisdiction as a debt due. The recovery of the debt will be on the basis of the due issue of the repayment notice alone.

Clause 18

Where a person sells or offers to sell a quantity of subsidised liquor from outside the Territory, the person shall pay to the Commissioner -

within 21 days of the date of the notice, the amount of the subsidy plus interest, or after 21 days of the date of the notice, three times the amount of the subsidy plus interest.

This is to cover circumstances where an ACT licensee is also licensed outside the Territory and applying for subsidy in respect of liquor supplied and sold interstate. This clause will also cover eventualities where any number of sequences of on-selling within the Territory.

Clause 19

Where interest is payable under this division, it is simple interest calculated from the date of the repayment notice at the annual rate determined by the Minister. The interest is calculated on the total amount required to be paid.

For example if there is a repayment required as a result of false or misleading information and it is not paid before 21 days then interest is calculated from the date of the repayment notice on the subsidy plus an amount equal to three times the subsidy. Therefore interest would be recalculated in accordance with the number of days elapsing from the date of the repayment notice.

Clause 20

If upon receipt of a written notice requiring repayment of a subsidy together with any penalty or interest, the applicant may apply to the Commissioner for a remission.

Where the Commissioner considers that there are reasonable grounds or special circumstances, the Commissioner may remit, in whole or in part, only the amount of the penalty and/or the amount of interest owing.

No remission is available for the amount of the subsidy.

Division 5 - Registration of liquor suppliers

Clause 21

Registration of liquor suppliers shall be in a form approved by the Commissioner.

Furthermore, the Commissioner may by written notice require an applicant to provide further specified information and that such information is presented in a form approved by the Commissioner. This further information will be required so that the

Commissioner is satisfied that the low-alcohol liquor will be supplied in accordance with this Act and that the applicant is not a defined business associate of a registered liquor supplier whose registration is suspended

Clause 22

The registered supplier of low alcohol under the scheme is required to adhere to prescribed conditions. These include the keeping of specified records in respect of subsidised low alcohol for a period of 5 years, making available those records for inspection on demand by a subsidy officer, not providing false or misleading information in respect of any application or request for information and complying with any other conditions as specified by the Commissioner. As part of the conditions of registration, suspended suppliers cannot operate via their (registered) business associates whether the association is formed before or after registration.

Clause 23

Where the Commissioner is satisfied that the registered liquor supplier has contravened a condition of registration, the Commissioner may either vary the condition of the supplier's registration or suspend the supplier's registration for a period specified under notice. A notice may also require further information before the supplier's registration can be validated.

Clause 24

The registration of liquor suppliers may be cancelled if after 12 months, the supplier fails to apply for any low-alcohol subsidy. This covers instances where suppliers may decide not to trade in low-alcohol liquor, move to a different jurisdiction or cease trading as a liquor supplier. If after the 12 month period, and upon receipt of a notice by the Commissioner notifying the supplier of the impending cancellation of registration, the supplier may within 28 days of the written notice prevent the cancellation. This arrangement allows for an annual administrative review of the records of registered suppliers to ensure the currency of the registered liquor suppliers.

PART III - DIESEL SUBSIDY

Division 1 - Eligibility for diesel subsidies

Clause 25

The diesel subsidy is payable to a registered ACT supplier in relation to the sale of diesel by wholesale by the supplier to certified diesel users and in accordance with the conditions of the supplier's registration. The subsidy is not payable in respect of a product prepared by a mixture of diesel with another substance on which Commonwealth duty has not been paid.

Clause 26

The determination of the rate at which the subsidy is paid and the method of calculation may be varied by instrument of the Minister. The instrument under this clause is a disallowable instrument for the purposes of the *Subordinate Laws Act 1989*.

Clause 27

Where diesel is sold by a registered supplier in contravention of a condition of the supplier's registration, then the diesel subsidy is not payable

Clause 28

Where diesel is sold by an unregistered supplier then a diesel subsidy is not payable. If however, the Commissioner upon application, is satisfied that the supplier was not suspended at the time of the supply and there are reasonable grounds to justify payment of the diesel subsidy in the given circumstances, then the Commissioner shall approve payment of the subsidy

Clause 29

No diesel subsidy is payable in relation to a quantity of diesel where a subsidy has already been paid under this Act or where in the opinion of the Commissioner, a corresponding subsidy has already been paid in respect of that diesel by another Territory or State. This is to prevent multiple claims for a subsidy in differing jurisdictions in relation to the same amount of diesel

Division 2 - Application for diesel subsidy

Clause 30

An application for a diesel subsidy shall be in a form approved by the Commissioner. The Commissioner may by instrument vary the determined period to which the sale of low alcohol liquor applies and this determination is a disallowable instrument for the purposes of the Subordinate Laws Act 1989

Clause 31

The Commissioner may by written notice require an applicant for a diesel subsidy to furnish further specified information in a prescribed manner in relation to an application. Where the Commissioner is satisfied that an applicant has failed to comply with any requirements of a notice, the Commissioner may either refuse the application or require the supplier to repay any subsidy already paid in accordance with the application

Clause 32

The deferment of an application by a diesel supplier for a diesel subsidy can occur where there is an existing application for a diesel subsidy still under consideration by the Commissioner or where there is an investigation under way in relation to the applicant, and until such time as the existing application or investigation is resolved to the satisfaction of the Commissioner

Division 3 - Diesel subsidy repayments

Clauses 33-37

If a registered diesel supplier receives an amount of diesel subsidy greater than the amount to which the supplier is entitled, the supplier on receipt of a written notice from the Commissioner to that effect, shall repay to the Commissioner, the amount in accordance with the following criteria

Where the quantity of diesel in respect of which a subsidy has been paid is sold in contravention of the supplier's conditions of registration the supplier shall pay - within 21 days of the date of the notice, the amount of the subsidy plus interest, or after 21 days of the date of the notice, three times the amount of the subsidy plus interest, or

Where a subsidy has been paid as a result of false or misleading information given under section 6 or 7, the supplier shall pay - within 21 days of the date of notice, the amount of the subsidy plus interest, or after 21 days of the date of the notice, three times the amount of the subsidy plus interest, or

Where a registered diesel supplier fails to comply with any part of a notice under section 7 in relation to a application for a subsidy, the supplier shall pay - within 21 days of the date of notice, the amount of the subsidy plus interest, or after 21 days of the date of notice, twice the amount of the subsidy plus interest
Clause 10, or

Where there has been an overpayment of a diesel subsidy in other circumstances, the supplier shall pay - within 21 days of the notice, the difference between the amount paid and the amount entitled to, or after 21 days of the date of notice, twice the amount of the difference

The range of penalties are intended to reflect the seriousness of the circumstances which give rise to a repayment of a subsidy Where there is an innocent overpayment of a subsidy, there are no penalty or interest attached if the repayment is received within 21 days of a repayment notice

An amount required to be paid under these sections is recoverable by the Commissioner on behalf of the Territory in a court of competent jurisdiction as a debt due The recovery of the debt will be on the basis of the due issue of the repayment notice alone

Clause 38

Where a certified diesel user sells, offers to sell or otherwise uses the subsidised diesel for a purpose not specified in the Diesel Users Register, the certified diesel user shall pay to the Commissioner -

within 21 days of the date of the notice, the amount of the subsidy plus interest, or after 21 days of the date of the notice, two times the amount of the subsidy plus interest

This is to cover circumstances where an ACT licensee is also licensed outside the Territory and applying for subsidy in respect of liquor supplied and sold interstate This clause will also cover eventualities where any number of sequences of on-selling within the Territory

Clause 39

Where a person other than a certified diesel user, in the knowledge that the diesel has been purchased at a subsidised price, sells, offers to sell or otherwise dispose of a quantity of subsidised diesel, the person shall pay to the Commissioner -

within 21 days of the date of the notice, the amount of the subsidy plus interest, or after 21 days of the date of the notice, two times the amount of the subsidy plus interest

This is to cover circumstances where an ACT licensee is also licensed outside the Territory and applying for subsidy in respect of liquor supplied and sold interstate. This clause will also cover eventualities where any number of sequences of on-selling within the Territory.

Clause 40

Where interest is payable under this division, it is simple interest calculated from the date of the repayment notice at the annual rate determined by the Minister. The interest is calculated on the total amount required to be paid.

For example, if there is a repayment required as a result of false or misleading information and it is not paid before 21 days, then interest is calculated from the date of the repayment notice on the subsidy plus an amount equal to three times the subsidy. Therefore, interest would be recalculated in accordance with the number of days elapsing from the date of the repayment notice.

Clause 41

If, upon receipt of a written notice requiring repayment of a subsidy together with any penalty or interest, the applicant may apply to the Commissioner for a remission. Where the Commissioner considers that there are reasonable grounds or special circumstances, the Commissioner may remit, in whole or in part, only the amount of the penalty and/or the amount of interest owing. No remission is available for the amount of the subsidy.

Division 4 - Registration of diesel suppliers

Clause 42

Registration of diesel suppliers shall be in a form approved by the Commissioner. Furthermore, the Commissioner may by written notice require an applicant to provide further specified information and that such information is presented in a form approved by the Commissioner. This further information will be required so that the Commissioner is satisfied that the diesel will be supplied in accordance with this Act and that the applicant is not a defined business associate of a registered diesel supplier whose registration is suspended.

Clause 43

The registered supplier of diesel under the scheme is required to adhere to prescribed conditions. These include the keeping of specified records in respect of subsidised diesel for a period of 5 years, making available those records for inspection on demand by a subsidy officer, not providing false or misleading information in respect of any application or request for information and complying with any other conditions as specified by the Commissioner.

Clause 44

Where the Commissioner is satisfied that the registered diesel supplier has contravened a condition of registration, the Commissioner may either vary the condition of the supplier's registration or suspend the supplier's registration for a period specified.

under notice. A notice may also require further information before the supplier's registration can be validated.

Clause 45

The registration of a diesel supplier may be cancelled if after 12 months, the supplier fails to apply for any diesel subsidy. This covers instances where suppliers may decide not to trade in low-alcohol liquor, move to a different jurisdiction or cease trading as a diesel supplier. If after the 12 month period, and upon receipt of a notice by the Commissioner notifying the supplier of the impending cancellation of registration, the supplier may within 28 days of the written notice prevent the cancellation. This arrangement allows for an annual administrative review of the records of registered suppliers to ensure the currency of the registered diesel suppliers.

Division 5 - Registration of approved diesel users

Clause 46

On application with the required information, the Commissioner shall issue a diesel subsidy certificate to the applicant. An application for a diesel subsidy certificate shall be in a form approved by the Commissioner together with documentary evidence as to the bona fide credentials of the applicant. The Commissioner may, by written notice require further information in a form, and in a period, specified in the notice. There are only two approved classes of applicants, being either a beneficiary using the diesel fuel only for residential heating, or a primary producer using the diesel fuel for primary production purposes only. For both classes of applicants, the subsidised diesel may only be used in the ACT. The certificate will specify the approved use under which the certificate is issued and the certificate will be endorsed with an identifying number.

Furthermore, the Commissioner shall specify the details from the certificate in the Diesel Users Register. The Commissioner may refuse to issue a certificate if the applicant fails to provide further information about the application in accordance with a written notice.

Clause 47

Under the conditions of registration for certified diesel users, the subsidised diesel may only be used by the certified diesel user and only for the specified purpose as recorded on the diesel user's certificate and in the Diesel Users Register.

Where subsidised diesel is purchased by a primary producer for primary production purposes, the certified diesel user shall keep records of all subsidised diesel to ensure that subsidised diesel has been received and used in accordance with the terms of the diesel subsidy certificate. The intention here is to exclude beneficiaries from having to keep records for home heating purposes.

Clause 48

The diesel subsidy certificate of a certified diesel user may either be suspended, revoked or subject to a variation of conditions where the Commissioner is satisfied that the diesel user has breached a condition of registration.

If a certified diesel user is convicted of an offence against this Act, fails to keep records in accordance with section 30, or where diesel is purchased for purposes other

than that specified in the certificate, the Commissioner may by written notice to a certified diesel user, change the conditions of registration and duly record the same in the Diesel Users Register

Clause 49

Where a diesel subsidy certificate has been issued on the basis of the applicant's status as a beneficiary, the entitlement to purchase subsidised diesel ceases if the applicant ceases to be a beneficiary or dies

Clause 50

The registration of a certified diesel user may be cancelled if during any 12 month period, the diesel user fails to purchase any subsidised diesel. This covers instances where diesel users may decide to use alternative heating, go overseas for an extended period of time, relocate to a different jurisdiction, or become deceased. If after the 12 month period, and upon receipt of a notice by the Commissioner notifying the diesel user of the impending cancellation of registration, the diesel user may within 28 days of the written notice, prevent the cancellation. This arrangement allows for an annual administrative review of the records of registered diesel users on the Diesel Users Register to ensure the currency of certified diesel users

Clause 51

Where an original diesel subsidy certificate is either lost, destroyed or becomes illegible, a copy of the diesel subsidy certificate may be issued and endorsed by the Commissioner upon request. The copy will have the same force and effect as the original certificate

Clause 52

For the purpose of enabling registered diesel suppliers, effective verification of certified diesel users, a Diesel User Registry is established. The Diesel Users Register will contain the essential details of certified diesel users and the authorised purpose or purposes of registration

The Diesel Users Register will be a public document available for inspection. Where a certified diesel user's registration is suspended or cancelled, then the Commissioner will advise each registered diesel supplier in writing of the same

Clause 53

A certified diesel user is prohibited from selling or otherwise disposing of for consideration, diesel purchased under a diesel subsidy certificate. There are specific penalties for doing so

Clause 54

The return of the exemption certificate is required by the diesel user when the person's registration is suspended or cancelled. If the registration is cancelled as a consequence of the death of the diesel user, then the penalties attached to this section will not apply

PART IV - TRANSPORTATION OF LOW-ALCOHOL LIQUOR AND DIESEL

Clause 55

Where diesel or low-alcohol liquor is transported by motor vehicles in the Territory, it must be accompanied by a transportation record made out by the person on whose behalf the goods are being transported

It does not matter whether the diesel or low-alcohol liquor is carried in tanks, crates or other containers. A transportation record must be completed in accordance with a form approved by the Commissioner and remain with the vehicle and goods during transportation

PART V - ENFORCEMENT

Division 1 - Preliminary

Clause 56

Where a thing is connected with a particular subsidy offence then that is included for the purposes of enforcing the provisions of this Act

Division 2 - Inspection and seizure

Clause 57

Subsidy officers acting under this Act must carry a duly authorised identity card issued under this Act whenever exercising their powers pursuant to this Act. When a person ceases to act as a subsidy officer, the identity card must be surrendered to the Commissioner

Clause 58

In the case of entering commercial premises during normal business hours for the purposes of this Act, no search warrant is required. In all other cases, unless the consent of the occupier is given, a search warrant is required

Clause 59

Before consent to entry can be given the subsidy officer must produce an identity card issued for the purposes of this Act and inform the person that they have a right to refuse consent. Where consent is given, the occupier will be asked to sign a written acknowledgment of that consent which is retained by the subsidy officer as evidence that consent was in fact given

Clause 60

In order to ensure that subsidies are only paid in accordance with this Act, officers acting with authority and on production of an identity card under this Act, are to have full and free access to any documents pursuant to this Act

Access is required to documents relating to the supply of low-alcohol liquor by a registered liquor supplier or the supply of subsidised diesel by a registered diesel supplier to ensure that the benefit of the subsidy is being passed on

Access is required to documents relating to the receipt of low-alcohol liquor by a licensee or any other person, or the receipt of subsidised diesel by a certified diesel user or any other person, to permit the investigation of multiple-subsidy fraud. For example, a licensee receiving already subsidised liquor might then resell it by wholesale to other licensees, and so on, with subsidies being claimed by the first licensee and any subsequent liquor supplier. 'Any other person' is included here to ensure the investigation also covers persons in a chain of on-selling who may not be licensees

Under subsection 2, a subsidy officer for the purpose of this Act, may also inspect any commercial premises without a search warrant subject to the conditions outlined in Clause 58 to inspect documents and goods relating to the supply and receipt of low-alcohol liquor and subsidised diesel. This would also include the inspection of goods and documents held by retailers of a subsidised product

Clause 61

The occupier of the premises where the investigation is being conducted, is required to cooperate by providing all information and assistance as required for the subsidy officers to carry out their duties under the Act. A subsidy officer who enters premises for the purpose of carrying out an investigation under this Act, must carry and show an identification card authorised under this Act

Clause 62

For the purposes of inspecting the transportation record of low-alcohol liquor or diesel being transported in the Territory by large vehicles, a subsidy officer may instruct a police officer to stop such vehicles

If the driver of the vehicle is unable to produce a transportation record required to be kept under clause 55, or produces a record that the subsidy officer believes on reasonable grounds to contain false or misleading information, then the low-alcohol liquor or diesel may be subject to seizure

If liquor or diesel is seized, a receipt will be issued by the subsidy officer to the driver

Clause 63

Where any quantity of low-alcohol liquor or diesel is seized under this Division, a receipt must be issued and the seized goods shall be kept in the custody of the Commissioner

If prosecution for an offence under this Act is not instituted within a period of 60 days, then arrangements must be undertaken to return the seized goods

Where a seized quantity is not able to be returned or, where a person is convicted for an offence in relation to a seized quantity of goods, then the seized quantity may be disposed of as the Minister directs

Clause 64

A search warrant can be obtained from a magistrate where the magistrate is satisfied on the evidence put forward, that there are reasonable grounds for suspecting a thing in connection with a subsidy offence has or may occur. The warrant will be issued to

enable the subsidy officer to enter a place and search the place for things of that kind under prescribed conditions

Clause 65

In urgent circumstances where the normal execution of a warrant is inappropriate, a warrant may be executed by telephone or other electronic means

Division 3 - Provision of information

Clause 66

Where the Commissioner believes on reasonable grounds that any person is able to provide information with respect to the supply low-alcohol liquor or diesel, or the payment of any low-alcohol liquor or diesel subsidy, then that person may be required under notice, to give information

The person may be required to give that information in a form prescribed by the Commissioner or attend before the Commissioner to give that information or produce any such documents as required

Clause 67

Where a person is required under Clause 66 to provide information in respect of the supply of low-alcohol liquor or diesel, or the payment of a subsidy with respect to low-alcohol liquor or diesel, then copies or extracts of documents presented may be made by the Commissioner. This will apply where information is required under any provision of this Act

Clause 68

Where a person is required to provide information to the Commissioner under any provision of this Act, the Commissioner may require such information to be given on oath or affirmation

Clause 69

A defence of self-incrimination cannot be where a person is issued a notice to provide information under Clause 66. Furthermore any information, answer or document produced under this clause cannot be used against the person in respect of any criminal proceedings except for an offence against this Act

Clause 70

A person shall not without 'reasonable excuse' contravene a requirement of this Act or attend before the Commissioner to give information. Where a person is incapable of providing the information required, then that person has not contravened the requirement of the Act

Clause 71

In circumstances where a person refuses to comply with a requirement of this Act, then a Court Order may be sought to compel the person to comply with the requirements of the Act

Where a court makes an order, it may specify the time and place under which the order must be satisfied

Division 4 - Statements and subsidy records

Clause 72

In the course of any application, requirement to give information or investigation in respect of a subsidy payment under this Act, a 'subsidy statement' means a statement in any form and includes any records that are required to be kept under this Act. A person shall not include or omit from a subsidy statement, any information that is false or misleading. The penalties under this clause only apply where it is reasonable for the person to have known that such information is false or misleading or is responsible for the truth or accuracy of the document produced.

Clause 73

Where records are required to be made under this Act, it is an offence for a person to keep information in a manner that does not correctly record or explain the matters to which they relate and where a person could have reasonably expected to have known as such.

In the case where a person recklessly or knowingly keeps or makes a subsidy record in a manner that does not correctly record or explain the matters to which they relate or performs an defined act with the intention of deceiving the Commissioner, hindering the investigation of an offence under this Act, or defeating the purposes of this Act, is guilty of an offence.

Division 5 - Other offences

Clause 74

Any person performing a 'defined act' under Clause 73 of this Act, done with the intent to conceal or falsify the identity of persons or addresses pursuant to a requirement of this Act, is guilty of an offence.

Clause 75

It is an offence for a person to obstruct a subsidy officer or an other officer authorised under this Act in the exercise of the officer's powers under this Act. Other officers authorised would include officers from other jurisdiction carrying out investigations in relation to subsidy claims where there are arrangements for inter-jurisdictional cooperation as specified under Part VI below.

PART VI - CO-OPERATION WITH INTERSTATE AUTHORITIES

Clause 76

The term 'interstate officer' is defined and deployed to clarify the effect of clauses 77 and 78 which specifically refer to 'interstate officers' as distinct from local subsidy officers

Clause 77

An authorised officer of a reciprocating jurisdiction carrying out an investigation into the administration of a subsidy law of that jurisdiction, may apply in writing to the Commissioner, for authority to carry out that investigation in the ACT

Where this authority is granted, the Commissioner may by notice in writing require any person to provide information, answer questions or produce documents relating to the matter under investigation. These powers are in addition to any other powers under this Act but enable the reimbursement of costs by persons required to attend before the Commissioner on a case by case basis

Clause 78

Information obtained under the Act in relation to a subsidy application or investigation may be given to an authorised officer of a reciprocating jurisdiction for the purposes of administering a subsidy law of that jurisdiction

PART VII - ADMINISTRATIVE REVIEW

Clause 79

This sets out the decisions under the Act which are subject to both internal and external review

Since decisions requiring repayment are not substantially reviewable by the Courts in an action for debt, they are open to administrative review

Internal review is provided where a person other than the Commissioner is to make the initial decision

Clause 80

When a decision is made under this Part, the Commissioner shall provide written notice of the decision to the applicant or the person whose registration is under consideration. When such a decision is made by a delegate of the Commissioner, the notice shall include further information to enable the applicant to lodge an objection in the prescribed manner and within the prescribed time period

However, where the decision is made personally by the Commissioner and that decision is appealable to the Administrative Appeals Tribunal, the notice of the decision shall include further information to enable the applicant to lodge an objection in the prescribed manner and within the prescribed time period

Clause 81

Upon receipt of a written notice of a decision under Clause 80, a person lodge an objection to that decision within 60 days of the date of the notice, or such further time as the Commissioner allows

The objection must be in writing setting out reasons for the objection

When an objection is received, the Commissioner may after consideration of the objection either uphold the objection and substitute a new decision for the original (in whole or in part), or dismiss the objection

Any person involved in the original decision shall not take part in the consideration of an objection to the original decision

Clause 82

Where an objection is not lodged within time, the person making the objection may apply in writing and give reasons as to why the Commissioner should process the objection as if it was lodged on time

Clause 83

Most decisions under this Act are appealable to the Administrative Appeals Tribunal
Decisions that are not appealable to the Administrative Appeals Tribunal are specifically defined

Clause 84

Where a repayment of subsidy has been required under the Act and is considered excessive by the person being required to pay it, the burden of proof to establish that the repayment is excessive, lies on that person

Clause 85

Where a decision is under review or appeal, the effect of the original decision remains unaffected
Thus an action to recover an amount payable as a consequence of the original decision can proceed whilst the decision is under review or appeal

Clause 86

Where an objection, review or appeal reduces the amount payable under this Act, any amount already paid in excess of that amount is to be refunded

Clause 87

Following a decision of the Administrative Appeals Tribunal, where no appeal to a court is instituted within 30 days of the decision of the Tribunal, that decision is to be taken as final

Within 60 days of a decision of the Administrative Appeals Tribunal, the Commissioner shall take action to enforce the payment of the subsidy or, repay an amount to the applicant

PART VIII - MISCELLANEOUS

Clause 88

Any person engaging in conduct on behalf of a body corporate and within the scope of that person's delegated authority, and knowing that such conduct is an offence against

this Act, will be personally liable as is the body corporate. However such persons are not liable to be punished by imprisonment for that offence.

Clause 89

Where it can be shown that a corporation commits an offence against this Act, any person 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. However, the onus is on such persons to show that they did not knowingly participate in any way that contributed to the offence.

Clause 90

The transitional provisions outlined in the Schedule enable existing holders of exemptions certificates under the Business Franchise (Tobacco and Petroleum Products) Act 1984 to be automatically registered under the Subsidies (Liquor and Diesel) Act 1998.

It also allows existing diesel suppliers to be automatically registered under the Subsidies (Liquor and Diesel) Act 1998 for the purposes of claiming a subsidy in respect of diesel already supplied at a subsidised price to certified diesel users.

Clause 91

Regulations may be made under this Act.