

Petroleum Products Subsidy Act 1997 No 112

[1997-112]



New South Wales

Status Information

Currency of version

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
 - [Intergovernmental Agreement Implementation \(GST\) Act 2000 No 44](#), Part 2 of Sch 6 (not commenced — to commence on 9.12.2002)
 - [State Revenue Legislation Amendment Act 2002 No 108](#) (not commenced)

Authorisation

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Petroleum Products Subsidy Act 1997 No 112



New South Wales

An Act to provide for reduction of the price of petroleum products through payment of subsidies.

Part 1 Preliminary

1 Name of Act

This Act is the *Petroleum Products Subsidy Act 1997*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act:

authorised officer means a person who, in accordance with section 68 of the *Taxation Administration Act 1996*, is an authorised officer for the purposes of the taxation laws.

authority means an authority in force under Part 4.

Chief Commissioner means the Chief Commissioner of State Revenue appointed under the *Taxation Administration Act 1996*.

eligible petroleum products means petroleum products on which duty has been paid in accordance with the *Customs Tariff Act 1995*, the *Excise Tariff Act 1921* or other legislation of the Commonwealth prescribed under this Act, but does not include a product prepared by mixture of a product on which such duty has not been paid with a product on which such duty has been paid.

financial year means a year commencing on 1 July.

functions includes powers, authorities and duties.

marine purpose means the purpose of propelling diesel-engined marine vessels on water.

off-road purpose means any purpose (including a marine purpose) other than that of propelling diesel-engined road vehicles on roads.

permit means a permit in force under Part 4.

petroleum products means motor spirit and diesel fuel.

registered means registered under this Act.

subsidy means a payment referred to in section 4.

- (2) A reference in this Act to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Part 2 Subsidies

4 Payment of subsidies

- (1) At times and subject to conditions determined by or under this Act, payments calculated at the prescribed rate are to be made by the Chief Commissioner to registered persons in respect of quantities of eligible petroleum products sold or consumed by them in New South Wales in relation to such zones as may be prescribed.
- (2) Rates at which such payments are to be made may be prescribed:
- (a) by the regulations, or
 - (b) by order of the Treasurer (not inconsistent with the regulations) published in the Gazette.
- (3) A subsidy may, in circumstances and subject to conditions determined by the Chief Commissioner, be claimed by and paid to another person on behalf of the registered person entitled to it.

5 Entitlement to subsidies

- (1) A registered person who:
- (a) sells petroleum products by retail, or
 - (b) purchases petroleum products for consumption, or
 - (c) sells diesel fuel for a marine purpose, or used or intends to use diesel fuel for a marine purpose,

in the course of a business or activity conducted by the person in New South Wales is entitled to a subsidy in respect of the petroleum products or diesel fuel, except as provided by this section.

- (2) A registered person who, in the course of a business or activity conducted by the person, sells petroleum products to a person referred to in subsection (1) is entitled to a subsidy in respect of them, except as provided by this section.
- (3) The holder of an authority who sells diesel fuel to the holder of a permit for off-road use is entitled to a subsidy in respect of it, except as provided by this section.
- (4) A subsidy may not be claimed by or paid to a person in respect of petroleum products if:
 - (a) a subsidy (not being a subsidy the amount of which has been repaid under section 7) has already been paid to another person in respect of them, or
 - (b) an amount already paid to another person in respect of them by the government of another State or Territory is, in the opinion of the Chief Commissioner, in the nature of a payment corresponding to a subsidy under this Act, or
 - (c) the person has been paid, or is entitled to, a rebate under a law of the Commonwealth under which the rebate is required to include the amount of the subsidy in respect of those petroleum products.
- (5) This section has effect subject to sections 6 and 7 and the conditions of registration.
- (6) Claims for subsidies are to be made in the manner and within the time prescribed by the regulations.

6 Maximum subsidy

- (1) The regulations may, in respect of a registered person, determine, or provide for the determination of, an amount that is the maximum amount of subsidy allowed to be paid to the person in any prescribed financial year.
- (2) No subsidy in excess of the amount determined under this section is payable to a person in the relevant financial year.

7 Refund of subsidy

- (1) A person who, in a manner contrary to the conditions of the person's registration, sells any petroleum products in respect of which a subsidy has been paid must pay:
 - (a) to the Chief Commissioner, or
 - (b) to the person to whom the subsidy was paid,an amount equal to the subsidy paid in respect of them.
- (2) An amount equal to the amount payable to any person in accordance with subsection (1) (b) is payable to the Chief Commissioner by that person.

- (3) A person to whom a subsidy was paid in any financial year must pay to the Chief Commissioner an amount equal to three times the amount by which it exceeds the maximum amount determined under section 6 in respect of the person in that year, except as provided by subsection (3A).
- (3A) The Chief Commissioner, having regard to the circumstances of the case, may reduce or remit the amount otherwise payable under subsection (3).
- (4) The amount of any subsidy paid as a result of a misrepresentation made contrary to section 28 is to be repaid to the Chief Commissioner.
- (5) An amount:
- (a) payable to the Chief Commissioner by virtue of this section, or
 - (b) payable in accordance with subsection (1),
- if not paid is recoverable by the Chief Commissioner as a debt in any court of competent jurisdiction.

7A Cessation of certain subsidies

Despite any other provision of this Part, a person is not entitled to a subsidy in relation to the sale or consumption, on or after 1 July 2000, of diesel fuel for off-road purposes.

Part 3 Registration for eligibility for subsidies

8 Registration

- (1) The Chief Commissioner may register a person who the Chief Commissioner is satisfied:
- (a) sells petroleum products by retail, or
 - (b) consumes petroleum products,
- in the ordinary course of a business or activity conducted by the person in New South Wales on or from premises within a zone prescribed for the purposes of section 4 (1).
- (2) The Chief Commissioner may register a person who the Chief Commissioner is satisfied sells petroleum products, in the ordinary course of a business or activity conducted by the person, to persons eligible under subsection (1) for registration.
- (3) The Chief Commissioner may register a person on the Chief Commissioner's own motion or on application made by the person.
- (4) Registration is subject to such conditions as may be imposed by the regulations and to such other conditions as the Chief Commissioner may specify in the certificate of registration.

- (5) Registration takes effect from the starting date specified in the certificate of registration and remains in force (unless sooner cancelled) until the date of expiry specified in the certificate.
- (6) Registration may be renewed from time to time by the Chief Commissioner on application made within the prescribed time before expiry.
- (7) The Chief Commissioner may decline to renew the registration of a person on any of the grounds prescribed by or under section 10. In such a case, notice in writing of the intended refusal is to be served on the registered person.

9 Variation of conditions of registration

- (1) The Chief Commissioner may from time to time, by notice in writing to the registered person, vary or revoke any condition (other than a condition imposed by this Act or the regulations), or add to the conditions, specified in a certificate of registration.
- (2) Any such variation, addition or revocation has effect from the date specified in the notice.

10 Cancellation of registration

- (1) The Chief Commissioner may, by notice in writing served on a registered person, cancel the person's registration:
 - (a) if the person is convicted of an offence against this Act or the regulations, or contravenes or fails to comply with any condition or requirement specified in the certificate of registration or imposed on the registered person under this Act or the regulations, or
 - (b) if the Chief Commissioner is satisfied that the person is no longer eligible, in terms of the criteria prescribed by section 8, for registration, or
 - (c) in the case of a person registered by virtue of being:
 - (i) a retailer of petroleum products, or
 - (ii) a person referred to in section 8 (2),if the Chief Commissioner is satisfied that, in the course of the person's business of selling petroleum products, the benefit of subsidies received by the person is not being passed on to purchasers of the products, or
 - (d) for any cause prescribed by the regulations.
- (2) Cancellation of registration takes effect on the date specified in the notice (at least 7 days after the date of service).

Part 4 Sales of diesel fuel for off-road use

11 (Repealed)

12 Authorities to sell diesel fuel for off-road purposes

- (1) The Chief Commissioner may grant to any person who is registered by virtue of being a vendor of petroleum products an authority to sell diesel fuel for off-road purposes.
- (2) An authority is subject to such conditions as may be imposed by this Act and the regulations and to such other conditions as the Chief Commissioner may specify in the authority.
- (3) The Chief Commissioner may grant an authority on the Chief Commissioner's own motion or on the application of any person.
- (4) It is a condition of an authority that, at or before the time the holder of the authority first delivers diesel fuel for off-road purposes (other than marine purposes) to the holder of a permit, the holder of the authority must sight the permit.

13 Permits to purchase diesel fuel for off-road purposes

- (1) The Chief Commissioner may grant a permit to purchase diesel fuel for off-road purposes to any person who the Chief Commissioner is satisfied uses diesel fuel for those purposes and who applies for the permit.
- (2) A permit is subject to such conditions as may be imposed by this Act and the regulations and to such other conditions as the Chief Commissioner may specify in the permit.
- (3) The conditions of a permit may prescribe, among other things, a maximum quantity of diesel fuel for off-road purposes (other than marine purposes) that may be purchased by the holder of the permit during any particular period.

14 Effect of authorities and permits

- (1) The holder of an authority is authorised to sell diesel fuel for off-road purposes to:
 - (a) any other holder of an authority, or
 - (b) the holder of a permit,subject to and in accordance with the regulations and the conditions of the authority.
- (2) The holder of an authority is authorised to sell diesel fuel for marine purposes to any person, subject to and in accordance with the regulations and the conditions of the authority.
- (3) The holder of a permit is authorised to purchase diesel fuel for off-road purposes from

the holder of an authority, subject to and in accordance with the regulations and the conditions of the permit.

- (4) A permit is not required for the purchase of diesel fuel for marine purposes.

15 Duration of authorities and permits

- (1) An authority or permit takes effect from the starting date specified in the authority or permit and remains in force (unless sooner cancelled or surrendered) until the expiry date specified in it.
- (2) An authority or permit may be renewed from time to time by the Chief Commissioner.

16 Variation of conditions of authorities and permits

- (1) The Chief Commissioner may from time to time, by notice in writing to the holder of the authority or permit, vary or revoke any condition, or add to the conditions, specified in an authority or permit.
- (2) Any such variation, addition or revocation has effect from the date specified in the notice.
- (3) This section does not apply to a condition imposed by this Act or the regulations.

17 Cancellation of authorities and permits

- (1) The Chief Commissioner may, by notice in writing to the holder concerned, cancel an authority or permit if the holder of the authority or permit:
- (a) commits an offence under this Act or the regulations, or
 - (b) contravenes or fails to comply with any condition or requirement specified in the authority or permit or imposed on the holder of the authority or permit under this Act or the regulations.
- (2) Cancellation of an authority or permit takes effect on the date specified in the notice (at least 7 days after the date of service).

18 Offences

- (1) The holder of a permit who does not notify the Chief Commissioner in writing of any change in the particulars furnished in the application for the permit within 7 days after the change occurs is guilty of an offence.

Maximum penalty: 50 penalty units.

- (2) The holder of a permit who purchases diesel fuel for off-road purposes (other than marine purposes) where the purchase (along with all other such purchases by the permit holder during the period concerned) exceeds the maximum volume (if any)

specified in the permit for the period concerned is guilty of an offence.

Maximum penalty: 50 penalty units.

- (3) The holder of a permit who allows the permit to be used by any other person for the purpose of purchasing diesel fuel for off-road purposes is guilty of an offence.

Maximum penalty: 50 penalty units.

Part 5 Records and investigation

19 Transportation records for bulk transport of petroleum products

- (1) While any petroleum products are being transported (either with or without any other goods) in New South Wales by road vehicle, being petroleum products stored in a tank having a capacity that exceeds the prescribed capacity, there must be carried in the vehicle at all times a record complying with subsection (2).
- (2) The record must be in writing and contain the following particulars:
- (a) the date the transportation commenced,
 - (b) the type and quantity of petroleum products being transported,
 - (c) the name and address of the person (if any) from whom the petroleum products were purchased,
 - (d) the name and address of the person who owns the petroleum products,
 - (e) the name and address of the person on whose behalf the petroleum products are being transported,
 - (f) the name of the person, if any, to whom the driver is transporting the petroleum products,
 - (g) the address at which the petroleum products were loaded for transportation,
 - (h) the address to which the driver is transporting the petroleum products,
 - (i) the name and address of the person (if any) who has agreed to purchase the petroleum products.
- (3) If the Chief Commissioner approves of a form of record for the purposes of this section, the record must be in the approved form.
- (4) The Chief Commissioner or an authorised officer may at any time require the driver of a road vehicle in New South Wales in which the Chief Commissioner or the authorised officer reasonably suspects petroleum products are being transported to produce the record for inspection.

- (5) The driver of a road vehicle who, on being required by the Chief Commissioner or an authorised officer to produce a record, fails to produce a record or produces a record which the driver knows is false or misleading in a material particular, is guilty of an offence and liable to a penalty not exceeding 100 penalty units.

20 Drivers of vehicles to obey directions

- (1) For the purpose of enabling or assisting the Chief Commissioner or an authorised officer to exercise the powers of the Chief Commissioner or an authorised officer under this Part, a police officer may:
 - (a) request or signal the driver of a vehicle to stop the vehicle, and
 - (b) request the driver to drive it to some convenient place within a reasonable distance to facilitate the exercise of those powers.
- (2) A driver who fails to comply with such a request or signal is guilty of an offence.
Maximum penalty: 10 penalty units.

21 Investigation of registered persons and others

- (1) For the purpose of determining whether any provision or condition made or imposed by or under this Act is being or has been complied with or contravened:
 - (a) the provisions of Divisions 2 and 3 of Part 9 of the *Taxation Administration Act 1996* apply, with any necessary modifications, to the same extent as for the purposes of a taxation law, and
 - (b) any function or prohibition conferred on or imposed in respect of a taxation officer by those provisions is exercisable by or binding on an authorised officer.
- (2) The provisions of Part 3 of the *Revenue Laws (Reciprocal Powers) Act 1987* apply to information disclosed or obtained under this Act as though this Act were a New South Wales revenue law as defined in section 3 (1) of that Act and as though the Chief Commissioner were the New South Wales revenue officer, as so defined, in relation to this Act.
- (3) Without limiting the generality of subsection (2), information disclosed or obtained under this Act may be disclosed to the Chief Executive Officer of the Australian Customs Service or any officer of that service designated by its Chief Executive Officer to be a proper officer for receipt of such information.

Part 6 Administration

22 Staff

- (1) Such staff as may be necessary for the administration of this Act may be appointed under Part 2 of the *Public Sector Management Act 1988*.

- (2) The Chief Commissioner may engage such consultants and contractors as may be necessary or convenient to exercise the Chief Commissioner's functions under this Act or the regulations.

23 Delegation

The Chief Commissioner may delegate to any person any of the functions of the Chief Commissioner under this Act or the regulations (other than the power of delegation conferred by this section).

24 Personal liability of officers

A matter or thing done or omitted by a person exercising any functions of the Chief Commissioner or an authorised officer does not, if the matter or thing was done or omitted in good faith for the purpose of executing this Act or the regulations, subject the person so acting personally to any action, liability, claim or demand.

Part 7 Miscellaneous

25 Right of review

- (1) A person aggrieved by a decision of the Chief Commissioner:
- (a) to refuse the person's application for registration, or for an authority or permit, or
 - (b) to cancel, or to refuse to renew, the person's registration, authority or permit, or
 - (c) with respect to the conditions subject to which his or her registration, authority or permit should be granted, or a variation of those conditions,
- may apply to the Administrative Decisions Tribunal for a review of the Chief Commissioner's decision.
- (2) A registered person or the holder of an authority or permit may apply to the Tribunal for a review of any decision by the Chief Commissioner to vary the conditions attached to the person's registration, authority or permit.
- (3) If this section commences before the commencement of the Act that establishes the Administrative Decisions Tribunal:
- (a) a right of review to the Administrative Decisions Tribunal in respect of a decision of the Chief Commissioner referred to in subsection (1) or (2) is to be construed as a right of appeal to the District Court against the decision, and
 - (b) the District Court may hear and determine any appeal made to it under paragraph (a).

26 Applications

An application for the grant or renewal of registration, or an authority or permit:

- (a) must be in a form approved by the Chief Commissioner, and
- (b) must be accompanied by the prescribed fee (if any), and
- (c) must provide such information as may be required by the form.

27 False or misleading statements

(1) A person who:

- (a) in connection with an application for a subsidy or for registration, or for an authority or permit, or in connection with any other application under this Act or the regulations, makes a statement, or
- (b) gives an answer, whether orally or in writing, to a question put to the person for any of the purposes of this Act or the regulations by the Chief Commissioner or an authorised officer,

that the person knows is false or misleading in a material particular is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.

(2) A person who:

- (a) in furnishing any information, or
- (b) in giving any notification, or
- (c) in keeping any record,

pursuant to this Act or the regulations, makes any statement or representation that the person knows is false or misleading in a material particular is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.

(3) Any person who, in or in connection with a purchase or proposed purchase of diesel fuel by the person:

- (a) falsely represents that the person is the holder of a permit, or
- (b) falsely represents that the diesel fuel is to be used for off-road purposes, or
- (c) falsely represents that the purchase or proposed purchase is authorised by the permit,

is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.

28 Obtaining subsidy by deceit

- (1) A person who, by any false representation, obtains payment of a subsidy to which the person is not entitled is guilty of an offence and liable to a maximum penalty equal to 3 times the amount of the subsidy paid.
- (2) A penalty imposed under this section is in addition to any liability under section 7 (4).

29 Information given by officers of bodies corporate

- (1) Information given by an officer (within the meaning of the *Corporations Act 2001* of the Commonwealth) of a body corporate with respect to any dealings by the body corporate with petroleum products:
 - (a) is admissible in evidence against the body corporate, and
 - (b) is binding on the body corporate unless it is established that the information was given in relation to a matter in respect of which the officer had no authority to bind the body corporate.
- (2) Subsection (1) is in addition to, and does not affect, any enactment or rule of law by which bodies corporate may be bound by their officers.

30 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations may be taken and dealt with before a Local Court constituted by a Magistrate sitting alone or before the Supreme Court in its summary jurisdiction.
- (2) The maximum monetary penalty that may be imposed by a Local Court in respect of an offence against this Act or the regulations is:
 - (a) 100 penalty units, or
 - (b) the maximum penalty provided by or under this Act for the offence concerned, whichever is less.

31 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to:
 - (a) prescribing the conditions under which subsidies are to be paid under this Act, and

- (b) prescribing the rate per unit of volume (or other quantity) at which subsidies are payable in respect of:
 - (i) eligible petroleum products, or
 - (ii) any class or description of eligible petroleum products, or
 - (iii) eligible petroleum products, or any class or description of eligible petroleum products, sold in any prescribed part of the State or in any prescribed circumstances, and
- (c) the maintenance, preservation and production of invoices and records by persons selling or purchasing petroleum products, registered persons and the holders of authorities and permits, and the form and content of any such invoices or records, and
- (d) verification, by statutory declaration of the claimant or otherwise, of the particulars of any claim for a subsidy, and
- (e) prescribing fees payable on application for:
 - (i) registration or renewal of registration, or
 - (ii) the issue or renewal of authorities and permits.

31A Transitional provision

- (1) This section applies for the period commencing on the date of commencement of section 5 and ending on 1 January 1999 or such later date as may be specified by the Governor by order published in the Gazette on or before 1 January 1999.

Editorial note—

Specified date: 30.6.2000. See Gazette No 176 of 18.12.1998, p 9805.

- (2) During the period for which this section applies, a registered person, being a registered wholesaler, who, in the course of a business or activity conducted by the registered person, sells petroleum products to an unregistered consumer where:
 - (a) the petroleum products are delivered by the registered person to and unloaded at the premises of the consumer in a zone prescribed for the purposes of section 4 (1), and
 - (b) the registered wholesaler makes out an invoice or delivery docket in respect of the sale that includes the name of the consumer and the address to which the petroleum products were delivered and at which they were unloaded, and
 - (c) the price charged in respect of the sale includes the rate of the subsidy prescribed for that zone,

is entitled to a subsidy in respect of the petroleum products at the rate of the subsidy prescribed for that zone, except as provided by section 5 (4) and subject to section 5 (5) and (6).

32 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.