

# Petroleum Products Subsidy Act 1997 No 112

[1997-112]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Repeal**

The Act was repealed by Sch 13.3 (a) to the [State Revenue Legislation Amendment Act 2010 No 46](#) with effect from 1.7.2010.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Petroleum Products Subsidy Act 1997 No 112



New South Wales

## Contents

<b>Long title</b> .....	5
<b>Part 1 Preliminary</b> .....	5
1 Name of Act .....	5
2 Commencement .....	5
3 Definitions .....	5
3A Notes .....	6
<b>Part 1A Abolition of subsidies</b> .....	6
3B Definition of “subsidy abolition date” .....	7
3C Abolition of subsidies .....	7
3D Reduction in time limit for claiming subsidy .....	7
3E Cap on payment of claims for June 2009 .....	7
3F Extension of scheme beyond subsidy abolition date .....	7
<b>Part 2 Subsidies</b> .....	8
4 Payment of subsidies .....	8
5 Entitlement to subsidies .....	8
6 Maximum subsidy .....	10
7 Refund of amounts paid in excess of maximum subsidy .....	11
<b>Part 2A Sale and consumption of subsidised petroleum products</b> .....	11
7A Approved notice—meaning .....	11
7B Notice to be given in respect of sales of subsidised petroleum products .....	11
7C Sale of subsidised petroleum products .....	12

7D Consumption of subsidised petroleum products .....	13
7E Consuming subsidised diesel fuel for off-road purposes.....	14
7F Evidentiary provisions .....	15
<b>Part 3 Registration for eligibility for subsidies .....</b>	<b>15</b>
8 Registration .....	15
9 Variation of conditions of registration.....	16
10 Cancellation of registration .....	16
<b>Part 3A Claims for subsidies .....</b>	<b>17</b>
11 Claim for subsidy .....	17
11A Time for making claim for subsidy .....	17
<b>Part 4 (Repealed) .....</b>	<b>18</b>
<b>Part 5 Investigation .....</b>	<b>18</b>
19 Inspection of tanks .....	18
20 Samples of petroleum products.....	18
21 Investigation of registered persons and others .....	18
<b>Part 5A Recovery of amounts wrongfully paid .....</b>	<b>19</b>
<b>Division 1 Recovery of amounts wrongfully paid .....</b>	<b>19</b>
21A Power to require payment in respect of default against this Act.....	19
<b>Division 2 Objections .....</b>	<b>20</b>
21B Objections .....	20
21C Powers of Chief Commissioner on objection.....	20
<b>Division 3 Review by Administrative Decisions Tribunal .....</b>	<b>21</b>
21D Reviews by Administrative Decisions Tribunal.....	21
21E Powers of Administrative Decisions Tribunal on review .....	22
<b>Part 6 Administration .....</b>	<b>22</b>
22 Staff.....	22
23 Delegation .....	22
24 Personal liability of officers.....	22

<b>Part 7 Miscellaneous</b> .....	23
25 Right of review .....	23
26 Applications .....	23
27 False or misleading statements .....	23
28 Obtaining subsidy by deceit .....	24
29 Information given by officers of bodies corporate .....	24
30 Proceedings for offences .....	24
31 Regulations.....	25
31A Transitional provision.....	25
31B Savings, transitional and other provisions.....	26
32 Review of Act.....	26
<b>Schedule 1 Savings, transitional and other provisions</b> .....	26

# 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.

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

**diesel fuel** means fuel consisting primarily of a petroleum or shale product used or capable of use in propelling a diesel engined road vehicle.

**direct retail sale** of petroleum products is defined in section 5.

**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.

**motor spirit** means fuel consisting primarily of gasoline, or another petroleum or shale spirit, having a flash point of less than 23° Celsius when tested in an Abel Pensky closed test apparatus, but does not include aviation gasoline, solvents, special boiling point spirits or liquefied petroleum gas.

**off-road purpose** means any purpose other than an on-road purpose.

**on-road purpose** means the purpose of propelling road vehicles on roads that are open to or used by the public.

**ordinary retail sale** of petroleum products is defined in section 5.

**petroleum products** means motor spirit and diesel fuel.

**premises** does not include the following:

- (a) a motor vehicle (whether or not capable of being driven),
- (b) a train or other vehicle used on a railway,
- (c) a caravan, trailer, tanker or anything else constructed to be drawn by a vehicle or animal.

**registered person** means a person who is registered under section 8 and whose registration is in force.

**subsidised diesel fuel** means any diesel fuel in respect of which a subsidy has been paid or claimed, or in respect of which a registered person is entitled to claim a subsidy.

**subsidised petroleum products** means any petroleum products in respect of which a subsidy has been paid or claimed, or in respect of which a registered person is entitled to claim a subsidy.

**subsidy** means a payment referred to in section 4.

**zone** means a zone prescribed for the purposes of section 4 (1).

**zone consumer** is defined in section 5.

**zone retailer** is defined in section 5.

- (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.

### 3A Notes

Notes included in this Act do not form part of this Act.

## Part 1A Abolition of subsidies

### **3B Definition of “subsidy abolition date”**

In this Part:

***subsidy abolition date*** means 1 July 2009.

### **3C Abolition of subsidies**

- (1) A subsidy is not payable under this Act in respect of petroleum products sold by a registered person if the date on which the petroleum products are sold by the registered person occurs on or after the subsidy abolition date.
- (2) Accordingly, a subsidy may be claimed by or paid to a registered person in respect of petroleum products under this Act only if the petroleum products were sold by the registered person before the subsidy abolition date.

### **3D Reduction in time limit for claiming subsidy**

- (1) A claim for a subsidy under this Act may be made no later than 12 months after the subsidy abolition date.
- (2) A subsidy is not payable in respect of any claim made more than 12 months after the subsidy abolition date.
- (3) This section applies despite section 11A.

### **3E Cap on payment of claims for June 2009**

- (1) The maximum amount that may be paid as a subsidy to a registered person under this Act in respect of petroleum products sold in the month of June 2009 is the greater of the following amounts:
  - (a) 10 per cent of the total amount of subsidies payable under this Act to the registered person in respect of petroleum products sold in the 11 months preceding June 2009,
  - (b) \$10,000.
- (2) This section applies despite anything to the contrary in Part 2.

### **3F Extension of scheme beyond subsidy abolition date**

- (1) The regulations may postpone the subsidy abolition date to a later date specified in the regulations (the ***new subsidy abolition date***).
- (2) The Minister may recommend the making of a regulation postponing the subsidy abolition date only if satisfied that it is desirable to continue the payment of subsidies under this Act because of the continuation, after 1 July 2009, of the payment of subsidies under the scheme provided for by the *Fuel Subsidy Act 1997* of Queensland.

- (3) If the subsidy abolition date is postponed by the regulations, sections 3C and 3D apply, and are taken to have always applied, subject to any modifications specified in the regulations, as if a reference to the subsidy abolition date were a reference to the new subsidy abolition date.
- (4) The regulations under this section may:
  - (a) modify the application of section 3E in respect of the payment of subsidies in June 2009, and
  - (b) provide for a maximum amount that may be paid as a subsidy under this Act in respect of any month occurring after June 2009, and
  - (c) contain other provisions of a savings or transitional nature consequent on the postponement of the subsidy abolition date.
- (5) A regulation postponing the subsidy abolition date may be made before, on or after 1 July 2009.
- (6) A regulation postponing the subsidy abolition date may be made on more than one occasion.

## **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 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) (Repealed)

### **5 Entitlement to subsidies**

- (1) A subsidy is payable under this Act in respect of the following sales of eligible petroleum products:
  - (a) a sale of eligible petroleum products by retail by a zone retailer at premises within a zone, if the petroleum products are delivered to the purchaser at those premises (an **ordinary retail sale** of petroleum products),



(b) a sale of eligible petroleum products by retail to a purchaser who is a zone consumer, if the petroleum products are delivered to premises at which a business or activity is conducted by the zone consumer and those premises are within a zone (a **direct retail sale** of petroleum products).

(2) Only a registered person is entitled to claim or be paid a subsidy in respect of a sale of eligible petroleum products.

**Note—**

Section 8 provides for registration of persons to claim subsidies.

(3) A subsidy may be claimed:

(a) by a registered person who sells eligible petroleum products by wholesale to a person who sells them by retail (by means of ordinary retail sale or direct retail sale), or

(b) if the wholesale seller is not a registered person, or is otherwise not entitled to claim a subsidy in respect of the eligible petroleum products, and the person who sells them by retail (by means of ordinary retail sale or direct retail sale) is a registered person, by the retail seller.

(4) A subsidy may be claimed by a registered person only if the petroleum products:

(a) are to be sold by retail by means of an ordinary retail sale, or

(b) are to be sold by retail by means of a direct retail sale and consumed by a zone consumer in the course of a business or activity conducted on premises within a zone.

(5) (Repealed)

(6) The subsidy payable to a registered person is to be calculated by reference to the zone in which the relevant premises are located, the relevant premises being:

(a) in the case of petroleum products to be sold by ordinary retail sale—the premises at which the petroleum products are to be sold by retail by a zone retailer, and

(b) in the case of petroleum products to be sold by direct retail sale—the premises to which the petroleum products are delivered in connection with the sale, being the premises at which the business or activity of the zone consumer is conducted.

(7) A subsidy must not be claimed by or paid to a person in respect of petroleum products sold by the person if:

(a) another person has been paid, or is entitled to claim, a subsidy in respect of the petroleum products (unless the amount of the subsidy has been repaid under section 7), or

- (b) an amount already paid to another person in respect of the petroleum products 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 failed to give to the purchaser of the petroleum products an approved notice (within the meaning of Part 2A) within 30 days after the delivery of the petroleum products (unless section 7B does not apply in respect of the sale).
- (8) This section has effect subject to sections 6 and 7 and the conditions of the registration of a registered person.
- (9) For the purposes of this Act:

**zone consumer** means a person who consumes petroleum products in the ordinary course of a business or activity conducted by the person in New South Wales on premises within a zone.

**zone retailer** means a person who sells petroleum products by retail in the ordinary course of a business or activity conducted by the person in New South Wales, being a business or activity conducted on premises within a zone.

## 6 Maximum subsidy

- (1) The Chief Commissioner may, when issuing a certificate of registration, specify in the certificate the maximum volume for each type of petroleum product, and for each of the different purposes for which subsidised petroleum products may be sold or consumed, on which the relevant subsidy rate prescribed by order of the Treasurer under section 4 (2) (b) will be paid to the person in a financial year.
- (2) The Chief Commissioner may, at any time after the issue of a certificate of registration, by written notice to a registered person, vary the maximum volume specified for the person.
- (3) If the variation increases the maximum subsidy, the variation takes effect from the date specified in the notice, which may be a date before the issue of the notice. If the variation decreases the maximum subsidy, the variation takes effect from the beginning of the next financial year.
- (4) The maximum amount of subsidy that may be paid to a person in any financial year in respect of a particular type of petroleum product is the amount determined by multiplying the rate of subsidy in respect of that type of petroleum product by the maximum volume of the petroleum product on which the subsidy rate will be paid as specified in the certificate of registration issued to the person or as later varied under this section.

## **7 Refund of amounts paid in excess of maximum subsidy**

- (1), (2) (Repealed)
- (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) (Repealed)
- (5) If the whole or any part of an amount payable to the Chief Commissioner under this section is not paid as required, the Chief Commissioner may recover the unpaid amount as a debt to the Chief Commissioner.

## **Part 2A Sale and consumption of subsidised petroleum products**

### **7A Approved notice—meaning**

For the purposes of this Part, an **approved notice**, in relation to a sale of petroleum products, is a notice in the form of an invoice, or in such other form as may be approved by the Chief Commissioner, that shows the following:

- (a) the name and address of the vendor,
- (b) the name and address of the purchaser,
- (c) the price at which the petroleum products were sold,
- (d) the date of the sale,
- (e) the volume (in litres) of the petroleum products sold,
- (f) that a subsidy has been claimed or is to be claimed in respect of the petroleum products and the rate of subsidy claimed or to be claimed.

### **7B Notice to be given in respect of sales of subsidised petroleum products**

- (1) A registered person who sells any petroleum products in respect of which a subsidy has been paid or claimed, or is intended to be claimed by the registered person, must:
  - (a) give to the purchaser, within 30 days after the delivery of the petroleum products, an approved notice in relation to the sale, and
  - (b) retain a copy of the notice for not less than 5 years after the petroleum products are sold.

- (2) A person who sells petroleum products purchased from a registered person, knowing that they are subsidised petroleum products, must:
  - (a) give to the purchaser, within 30 days after the delivery of the petroleum products, an approved notice in relation to the sale, and
  - (b) retain a copy of the notice for not less than 5 years after the petroleum products are sold.
- (3) A person who fails to comply with subsection (1) or (2) is guilty of an offence.  
Maximum penalty: 100 penalty units.
- (4) This section does not apply:
  - (a) in respect of an ordinary retail sale of petroleum products (including diesel fuel) if the petroleum products are delivered into the running tank of a road vehicle, or
  - (b) in respect of any other sale of diesel fuel, if the quantity sold does not exceed 100 litres (or such other amount as may be prescribed by the regulations), or
  - (c) in any other circumstances prescribed by the regulations.
- (5) For avoidance of doubt, a reference to petroleum products sold by a person includes a reference to petroleum products sold by the person through an agent of the person.

#### **7C Sale of subsidised petroleum products**

- (1) A registered person who sells any petroleum products by retail, being petroleum products in respect of which a subsidy has been paid or claimed, or is intended to be claimed by the registered person, must not:
  - (a) sell them otherwise than by ordinary retail sale or direct retail sale, or
  - (b) deliver them in connection with a sale to premises within a zone if the zone is not the zone by reference to which the subsidy was calculated by the registered person.
- (2) A person who purchases petroleum products from a registered person, knowing that they are subsidised petroleum products, must not:
  - (a) sell them otherwise than by ordinary retail sale or direct retail sale, or
  - (b) deliver them in connection with a sale to premises within a zone if the zone is not the zone by reference to which the subsidy was calculated by the registered person.
- (3) A person who contravenes subsection (1) or (2) is guilty of an offence.  
Maximum penalty: 100 penalty units.

- (4) It is a defence to a prosecution for an offence against this section if the person who sold or purchased the petroleum products pays to the Chief Commissioner, within 60 days after the petroleum products are sold or purchased, an amount determined as follows:
- (a) in a case referred to in subsection (1) (b) or (2) (b)—an amount equal to the difference between:
    - (i) the subsidy paid or payable in respect of the petroleum products to the registered person, and
    - (ii) the subsidy that would have been paid or payable in respect of the petroleum products to the registered person if the subsidy were calculated by reference to the zone in which they were actually delivered in connection with the sale,
  - (b) in any other case—an amount equal to the subsidy paid or payable in respect of the petroleum products to the registered person.
- (5) A person does not commit an offence against subsection (1) (b) or (2) (b) if the subsidy paid or payable in respect of the petroleum products to the registered person is equal to or less than the subsidy that would have been payable in respect of the petroleum products if the subsidy had been calculated by reference to the zone in which they were actually delivered in connection with the sale.
- (6) Proceedings against a person for an offence against this section may not be taken until at least 60 days have elapsed since the petroleum products concerned were allegedly sold by the person.

#### **7D Consumption of subsidised petroleum products**

- (1) A person who purchases petroleum products, knowing that they are subsidised petroleum products, and who:
- (a) consumes them otherwise than in the course of a business or activity conducted on premises within a zone, or
  - (b) consumes them in the course of a business or activity conducted on premises within a zone, being a zone that is not the zone by reference to which the subsidy payable to a registered person in respect of the petroleum products was calculated by the registered person,
- is guilty of an offence.
- Maximum penalty: 100 penalty units.
- (2) This section does not apply:
- (a) in respect of petroleum products purchased by means of an ordinary retail sale, or

- (b) in any other circumstances prescribed by the regulations.
- (3) It is a defence to a prosecution for an offence against this section if the person who purchased the petroleum products pays to the Chief Commissioner, within 60 days after the petroleum products are consumed, an amount determined as follows:
  - (a) in a case referred to in subsection (1) (b)—an amount equal to the difference between:
    - (i) the subsidy paid or payable in respect of the petroleum products to a registered person, and
    - (ii) the subsidy that would have been paid or payable in respect of the petroleum products to the registered person if the subsidy were calculated by reference to the zone in connection with which they were actually consumed,
  - (b) in any other case—an amount equal to the subsidy paid or payable in respect of the petroleum products to a registered person.
- (4) A person does not commit an offence against subsection (1) (b) if the subsidy paid or payable in respect of the petroleum products to the registered person is equal to or less than the subsidy that would have been paid or payable in respect of the petroleum products if the subsidy had been calculated by reference to the zone in connection with which they were actually consumed.
- (5) Proceedings against a person for an offence against this section may not be taken until at least 60 days have elapsed since the petroleum products concerned were allegedly consumed by the person.

#### **7E Consuming subsidised diesel fuel for off-road purposes**

- (1) A person is guilty of an offence if the person:
  - (a) makes a bulk purchase of diesel fuel, knowing that it is subsidised diesel fuel, and
  - (b) consumes the diesel fuel for off-road purposes.

Maximum penalty: 100 penalty units.

- (1A) For the purposes of this section, a purchase of diesel fuel is a **bulk purchase** of diesel fuel if:
  - (a) more than 100 litres of diesel fuel is purchased in one transaction, and
  - (b) delivery of the fuel is received into a bulk tank.
- (2) It is a defence to a prosecution for an offence against this section if the person who purchased the diesel fuel pays to the Chief Commissioner, within 60 days after the diesel fuel is purchased, an amount equal to the subsidy paid or payable to a

registered person in respect of the diesel fuel.

- (3) Proceedings against a person for an offence against this section may not be taken until at least 60 days have elapsed since the diesel fuel concerned was purchased by the person.
- (4) In proceedings for an offence against this section, if evidence is given that a bulk tank has been used to store both subsidised diesel fuel and unsubsidised diesel fuel at the same time, it is to be presumed that any quantity of fuel taken from the bulk tank was taken in the same order in which it was deposited into the bulk tank. That is, if X amount of subsidised fuel was deposited in the bulk tank and then Y amount of unsubsidised diesel fuel was deposited in the bulk tank, it is to be presumed that any amount taken from the tank was taken firstly from X amount of subsidised fuel (until X amount is exhausted) and then from Y amount of unsubsidised diesel fuel.
- (5) For the purposes of this section, any purchases of diesel fuel made by the same purchaser from the same retailer on the same day are taken to be made in one transaction.
- (6) In this section:

***bulk tank*** means a tank or other container used in connection with the storage or transport of diesel fuel, other than the running tank of a road vehicle.

***unsubsidised diesel fuel*** means diesel fuel that is not subsidised diesel fuel.

## **7F Evidentiary provisions**

- (1) In proceedings for an offence against section 7C or 7D, if it is proved that a person who sold petroleum products gave to the purchaser an approved notice in relation to the sale, the purchaser is taken to have known, from the date the notice was given, that the petroleum products were subsidised petroleum products.
- (2) In proceedings for an offence against section 7E, if it is proved that a person who sold diesel fuel gave to the purchaser an approved notice in relation to the sale, the purchaser is taken to have known, from the date the notice was given, that the diesel fuel was subsidised diesel fuel.

## **Part 3 Registration for eligibility for subsidies**

### **8 Registration**

- (1) The Chief Commissioner may register a person under this Act if the Chief Commissioner is satisfied that the person, in the ordinary course of a business or activity conducted by the person, sells petroleum products:
  - (a) by wholesale to zone retailers, or

(b) by retail on premises within a zone, or

(c) by retail to zone consumers.

(2) (Repealed)

(3) The Chief Commissioner may register a person on the Chief Commissioner's own motion or on application made by the person.

(3A) If the Chief Commissioner registers a person on the Chief Commissioner's own motion, the Chief Commissioner may, by written notice, request the registered person to lodge a completed application for registration within 14 days after service of notice of the request or such longer period as may be specified in the request.

(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.

(8) An application for registration is to be made in a form approved by the Chief Commissioner.

(9) For avoidance of doubt, any entitlement of a registered person to a subsidy under section 5 arises only in respect of petroleum products sold by the person while the registration of the person remains in force.

## **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) if the person fails to lodge a completed application for registration as required by the Chief Commissioner under section 8 (3A), or
  - (c1) if the Chief Commissioner is satisfied that the benefit of subsidies received by the person is not being passed on to purchasers of the petroleum 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 3A Claims for subsidies**

### **11 Claim for subsidy**

- (1) A registered person may make a claim for a subsidy by lodging a claim form with the Chief Commissioner.
- (2) A claim form must be in a form approved by the Chief Commissioner and must include any information required by the approved form.
- (3) A claim form may be lodged with the Chief Commissioner:
  - (a) by delivering it to an office of the Chief Commissioner, or
  - (b) by post, addressed to the Chief Commissioner at an office of the Chief Commissioner, or
  - (c) by a means indicated by the Chief Commissioner as being an available means of service (such as by facsimile transmission or by delivering it, addressed to the Chief Commissioner, to the facilities of a document exchange), or
  - (d) by leaving it with a person who has authority to accept documents on the Chief Commissioner's behalf.

### **11A Time for making claim for subsidy**

A claim for a subsidy must be made within 5 years after the end of the month in which the relevant eligible petroleum product was sold.

## **Part 4**

### **12-18 (Repealed)**

## **Part 5 Investigation**

### **19 Inspection of tanks**

- (1) For the purpose of ascertaining whether records are being kept in accordance with this Act or the regulations, an authorised officer may require a person who sells petroleum products to permit or assist the authorised officer to estimate, by the use of a dip stick or by some other reasonable method proposed by the authorised officer, the volume of any petroleum products stored in a tank from which those products are sold.
- (2) A person who sells petroleum products must not:
  - (a) fail to comply with a requirement under this section, or
  - (b) obstruct or hinder an authorised officer in the exercise of the officer's powers under this section.

Maximum penalty (subsection (2)): 50 penalty units.

### **20 Samples of petroleum products**

- (1) For the purpose of ascertaining whether or not petroleum products are eligible petroleum products, an authorised officer may obtain a sample of any petroleum product that appears to the authorised officer to be intended for sale or to have been sold, whether by purchasing the petroleum product or otherwise.
- (2) This section does not authorise an authorised officer to enter any premises or part of any premises.
- (3) A person must not obstruct or hinder an authorised officer in the exercise of the officer's powers under this section.

Maximum penalty (subsection (3)): 50 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), (3) (Repealed)

## **Part 5A Recovery of amounts wrongfully paid**

### **Division 1 Recovery of amounts wrongfully paid**

#### **21A Power to require payment in respect of default against this Act**

- (1) The Chief Commissioner may, by notice in writing, require a person who defaults against this Act to pay an amount to the Chief Commissioner.
- (2) For the purposes of this section, a person **defaults against this Act** if the person:
  - (a) sells, or delivers in connection with a sale, petroleum products in a manner contrary to this Act or the conditions of the person's registration, or
  - (b) consumes petroleum products in a manner contrary to this Act, or
  - (c) obtains payment of a subsidy in respect of petroleum products by a representation contrary to section 28.
- (3) The amount required to be paid in respect of a default against this Act, excluding any penalty or interest charge, must not exceed the amount of the subsidy paid or payable in respect of the petroleum products concerned.
- (4) If the default relates to the delivery of petroleum products, or the consumption of petroleum products, within a zone that is not the zone by reference to which the subsidy was calculated, the amount required to be paid must not exceed the difference between the amount of subsidy paid or payable in respect of the petroleum products and the amount that would have been paid or payable had the subsidy been calculated by reference to the zone in which the petroleum products were actually delivered or consumed.
- (5) A person may be required to pay an amount under this section:
  - (a) whether or not the person is the person to whom the subsidy is paid or payable or is a registered person, and
  - (b) whether or not any proceedings have been taken, or are pending, against the person in respect of any offence alleged to arise from the person's default against this Act.
- (6) The Chief Commissioner may, by the notice in which a payment is required or a separate notice, require a person to pay a penalty in addition to the amount required to be paid under this section, not exceeding the amount required to be paid, if the Chief Commissioner is satisfied the default against this Act occurred as a result of the

person's dishonesty.

- (7) If a person fails to pay an amount as required under this section, the Chief Commissioner may, by written notice, require the person to pay interest on the amount unpaid.
- (8) In imposing any penalty or interest charge under this section, the Chief Commissioner must, as far as practicable, apply the principles relating to the charging of interest and the imposition of penalties in relation to tax defaults under Part 5 of the *Taxation Administration Act 1996* (as if the person's default against this Act were a tax default under that Act).
- (9) If the whole or any part of an amount payable to the Chief Commissioner under this section is not paid as required, the Chief Commissioner may recover the unpaid amount as a debt to the Chief Commissioner.

## **Division 2 Objections**

### **21B Objections**

- (1) A person who is dissatisfied with a decision of the Chief Commissioner to require the person to pay an amount to the Chief Commissioner under this Part may lodge a written objection with the Chief Commissioner.
- (2) The grounds of objection must be stated fully and in detail in the notice of objection.
- (3) The objection must be lodged within 60 days after the date on which notice of the decision is served on the person.
- (4) If the objector has a reasonable excuse for failing to lodge an objection within the 60-day period, the Chief Commissioner may extend the time for lodging the objection.

### **21C Powers of Chief Commissioner on objection**

- (1) After considering an objection, the Chief Commissioner may:
  - (a) allow the objection in whole or in part or may disallow the objection, and
  - (b) accordingly reverse, vary or confirm the decision to which the objection was made.
- (2) The Chief Commissioner must give the objector written notice of the determination of the objection.
- (3) The Chief Commissioner must, in the notice, give the reasons for disallowing the objection or for allowing the objection in part only.
- (4) The reasons for a determination of an objection must set out the matters referred to in section 49 (3) of the *Administrative Decisions Tribunal Act 1997* in respect of the

determination.

- (5) The notice must also inform the objector of the objector's right to make an application for review under Division 3 in the case of a determination to disallow the objection or to allow the objection in part only.

## **Division 3 Review by Administrative Decisions Tribunal**

### **21D Reviews by Administrative Decisions Tribunal**

- (1) An objector may apply to the Administrative Decisions Tribunal for a review of a decision (***the administrator's decision***) to which an objection was made if:
  - (a) the objector is dissatisfied with the Chief Commissioner's determination of the objection, or
  - (b) 90 days have passed since the objection was lodged with the Chief Commissioner and the Chief Commissioner has not determined the objection.
- (2) The applicant's and respondent's cases on an application for review are not limited to the grounds of the objection.
- (3) The applicant has the onus of proving the applicant's case in an application for review.
- (4) An application for review:
  - (a) following a determination by the Chief Commissioner of an objection—must be made not later than 60 days after the date of issue of the notice of the Chief Commissioner's determination of the objection, or
  - (b) following a failure of the Chief Commissioner to determine an objection within the relevant 90-day period—may be made at any time after the end of that period (but must be made as required by paragraph (a) following a subsequent determination of the objection by the Chief Commissioner).
- (5) The Administrative Decisions Tribunal may extend the time for making an application for review.
- (6) The following provisions of the *Administrative Decisions Tribunal Act 1997* do not apply to an application made under this section:
  - (a) Part 2 of Chapter 5,
  - (b) section 55 (1) (b) and (d).
- (7) For the purposes of section 58 (1) (a) of the *Administrative Decisions Tribunal Act 1997*:
  - (a) the obligation of the Chief Commissioner under that paragraph to lodge a

statement of reasons with the Administrative Decisions Tribunal in respect of an application is limited to providing the Tribunal with a statement of reasons only in respect of the matters arising from the grounds specified in the application, and

- (b) if one of the grounds specified in the application relates to a matter raised in an objection determined by the Chief Commissioner—the Chief Commissioner may rely on reasons previously given to the objector by the Chief Commissioner under section 21C for the determination of the objection in explanation of that part of the administrator’s decision.

## **21E Powers of Administrative Decisions Tribunal on review**

- (1) On a review, the Administrative Decisions Tribunal may:
  - (a) affirm the administrator’s decision, or
  - (b) vary the administrator’s decision, or
  - (c) set aside the administrator’s decision and make a new decision in substitution for the decision set aside.
- (2) Subsection (1) does not limit the generality of Division 3 of Part 3 of Chapter 5 of the [Administrative Decisions Tribunal Act 1997](#) or the powers of the Tribunal under section 88 of that Act.

## **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
  - (b) to cancel, or to refuse to renew, the person's registration, or
  - (c) with respect to the conditions subject to which his or her registration 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 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.
- (3) (Repealed)

### **26 Applications**

An application for the grant or renewal of registration:

- (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 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 connection with a purchase or proposed purchase of petroleum products, falsely represents that the person is a zone consumer or a zone retailer, is guilty of an offence.

Maximum penalty: 100 penalty units.

## **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 21A.

## **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 the Local Court or before the Supreme Court in its summary jurisdiction.

- (2) The maximum monetary penalty that may be imposed by the 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, and registered persons, 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 registration or renewal of registration.

### **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).

### **31B Savings, transitional and other provisions**

Schedule 1 has effect.

### **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.

## **Schedule 1 Savings, transitional and other provisions**

(Section 31B)

### **Part 1 Preliminary**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*State Revenue Legislation Amendment Act 2002*

*State Revenue Legislation Further Amendment Act 2005*

*State Revenue Legislation Further Amendment Act 2009*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an

authority of the State), the rights of that person existing before the date of its publication, or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## Part 2 State Revenue Legislation Amendment Act 2002

### 2 Application of amendments to subsidy entitlements

- (1) The amendments made to Part 2 of this Act by the *State Revenue Legislation Amendment Act 2002* apply in respect of petroleum products sold after the relevant commencement date.
- (2) Accordingly, any entitlement to a subsidy under section 5, as substituted by the *State Revenue Legislation Amendment Act 2002*, arises only in respect of petroleum products sold on or after the relevant commencement date.
- (3) In this clause:

**relevant commencement date** means the date of commencement of Schedule 4.1 [5] to the *State Revenue Legislation Amendment Act 2002*.

### 3 Cancellation of old certificates of registration

- (1) A person registered under section 8 (1) or (2), as in force before the commencement of Schedule 4.1 [10] to the *State Revenue Legislation Amendment Act 2002*, is taken, on that commencement, to be registered under the provisions of section 8, as amended by that Act.
- (2) The Chief Commissioner may issue new certificates of registration to registered persons after the commencement of those amendments to section 8.
- (3) The Chief Commissioner may cancel the registration of a person under section 8 if satisfied the person is no longer eligible for registration under the provisions of that section, as amended by the *State Revenue Legislation Amendment Act 2002*.

## Part 3 State Revenue Legislation Further Amendment Act 2009

### 4 Postponement of staged repeal of regulation

- (1) Any regulation made under this Act that would (but for this clause) be repealed on 1 September 2009 by section 10 of the *Subordinate Legislation Act 1989* continues in force as if the date on which the regulation would have been repealed by section 10 of that Act had been postponed by one year under section 11 of that Act.
- (2) The repeal of the regulation is taken, for the purposes of the *Subordinate Legislation*

*Act 1989*, to have been postponed on one occasion.