

# NORTHERN TERRITORY OF AUSTRALIA

## FUEL SUBSIDIES ACT

As in force at 8 March 2007

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 8 March 2007

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## FUEL SUBSIDIES ACT

**An Act to licence suppliers of certain fuel and to pay subsidies for certain fuel**

### **Part 1                      Preliminary**

#### **1                      Short title**

This Act may be cited as the *Fuel Subsidies Act*.

#### **2                      Commencement**

- (1) This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.
- (2) Despite subsection (1), the provisions of this Act relating to the application for and grant of fuel supplier's licences and any provisions of this Part that relate to those provisions (including this subsection), apply and have effect to the extent necessary or expedient to enable those licences to be granted before this Act comes into operation.
- (3) Subsection (2) does not limit section 8 of the *Interpretation Act*.

#### **3                      Interpretation**

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

***approved form*** means a form approved by the Commissioner.

***Commissioner*** means the Commissioner of Taxes appointed under section 5 of the *Taxation (Administration) Act* and includes the Deputy Commissioner of Taxes and an Acting Commissioner of Taxes when he or she is performing the functions and exercising the powers of the Commissioner under that Act.

***diesel*** means any petroleum or shale product:

- (a) that is used or is capable of being used to propel a diesel engine; and

- (b) that is prescribed to be diesel for the purposes of this Act.

***fuel subsidy*** means the general subsidy, the ORD subsidy or the special subsidy.

***general subsidy rate*** means:

- (a) 1.1 cents per litre; or  
(b) any other amount that is prescribed.

***licensed supplier*** means a person who holds a valid fuel supplier's licence.

***ORD*** means off-road diesel.

***ORD subsidy rate*** means:

- (a) 2.00 cents per litre; or  
(b) any other amount that is prescribed.

***prescribed fuel*** means fuel that is prescribed for the purposes of this definition.

***record*** means any thing or process:

- (a) on or by which information is recorded or stored; or  
(b) by means of which a meaning can be conveyed in visible or recoverable form,

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

***road vehicle*** means a vehicle designed solely or principally for transporting people or things by road but does not include:

- (a) a vehicle in respect of which a pastoral vehicle permit under section 137B of the *Motor Vehicles Act* is in force; and  
(b) a prescribed vehicle or a vehicle of a prescribed class of vehicles.

***special subsidy rate*** means:

- (a) 7.049 cents per litre indexed in accordance with the Regulations; or  
(b) any other amount that is prescribed.

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

- (2) Diesel is used to propel a road vehicle even though the engine propelling the vehicle also operates equipment on the vehicle that does not propel the vehicle.
- (3) If diesel used to propel a road vehicle is drawn from a tank on the vehicle that also supplies diesel for purposes other than for propelling the vehicle, all diesel drawn from the tank is taken to be used to propel the vehicle.
- (4) All diesel consumed by the engine of a road vehicle is to be taken to be used to propel the vehicle, whether the vehicle is moving or not.

#### **4 Act binds Crown**

This Act binds the Crown in right of the Territory and, in so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

#### **5 Supply at subsidised price**

A quantity of prescribed fuel is supplied at the general subsidised price if it is supplied at a price per litre that is less than the price that would otherwise have been charged for supplying that quantity at the place of supply by an amount that is equal to or greater than the general subsidy rate.

## **Part 2 Suppliers of fuel**

### **6 Suppliers of fuel to be licensed**

- (1) A person must not carry on in the Territory a business of making initial supplies of prescribed fuel to places in the Territory unless the person holds a valid fuel supplier's licence.
- (2) A person must not carry on in a State or another Territory of the Commonwealth a business of supplying prescribed fuel to other persons who take delivery of the fuel at a place in the Territory unless the person holds a valid fuel supplier's licence.
- (3) A person must not carry on in the Territory a business of supplying prescribed fuel to other persons who take delivery of the fuel in a State or another Territory of the Commonwealth unless the person holds a valid fuel supplier's licence.
- (4) A person who contravenes this section commits an offence.

- (5) A person makes an initial supply of prescribed fuel to a place in the Territory if the person:
- (a) for the purposes of the *Customs Act 1901* or the *Excise Act 1901* of the Commonwealth, enters the fuel for home consumption or delivers the fuel for or into home consumption; and
  - (b) either:
    - (i) supplies the fuel to another person who takes delivery of the fuel at a place in the Territory; or
    - (ii) consumes the fuel at a place in the Territory for the person's own purposes.
- (6) The Regulations may exempt a person or a class of persons from the requirement to be licensed under this section.

## **7 Applying for fuel supplier's licence**

- (1) An application for a fuel supplier's licence is to be made to the Commissioner in an approved form.
- (2) The application is to be accompanied by the prescribed fee for the grant of the fuel supplier's licence.

## **8 Grant of fuel supplier's licence**

- (1) If an application is made in accordance with section 7, the Commissioner may grant the applicant a fuel supplier's licence.
- (2) A fuel supplier's licence is valid for the prescribed period unless it is cancelled under section 17 or 18.

## **9 Conditions of fuel supplier's licence**

A fuel supplier's licence is subject to the following conditions:

- (a) the licensed supplier must comply with the fuel supply condition set out in section 10;
- (b) the licensed supplier must comply with the record conditions set out in section 11;
- (c) the licensed supplier must comply with any other conditions that the Commissioner imposes under section 15.

**10 Fuel supply condition**

- (1) A licensed supplier who supplies prescribed fuel to another person who is at a place in the Territory must supply it at the general subsidised price.
- (2) Subsection (1) does not apply if the person to whom the prescribed fuel is supplied is not permitted to apply for the general subsidy for the fuel.

**11 Fuel record conditions**

- (1) A licensed supplier must keep prescribed records:
  - (a) of every supply of prescribed fuel by the licensed supplier to a person at the general subsidised price; and
  - (b) of any use of prescribed fuel by the licensed supplier.
- (2) A licensed supplier must keep those records for 5 years after the date of any claim made under Part 3 for a subsidy for the prescribed fuel supplied or used.
- (3) Subsection (2) applies even though a person ceases to be a licensed supplier.

**12 Commissioner may request information from applicant**

If the Commissioner is not satisfied with the information in an application for a fuel supplier's licence, the Commissioner may request the applicant to provide further information in relation to the application.

**13 Form of fuel supplier's licence**

A fuel supplier's licence is to be in an approved form.

**14 Commissioner may refuse to grant fuel supplier's licence**

- (1) The Commissioner may refuse to grant a fuel supplier's licence to an applicant if the applicant:
  - (a) was granted a fuel supplier's licence that was cancelled under section 18(2) or (3);
  - (b) is related to a person who was granted a fuel supplier's licence that was cancelled; or
  - (c) does not provide further information when requested to do so under section 12.

- (2) An applicant who is refused a fuel supplier's licence may apply to the Minister for a review of the Commissioner's decision and section 42 applies accordingly.
- (3) Persons are related if they are related for the purposes of Division 8A of Part III of the *Taxation (Administration) Act*.

## **15 Commissioner's conditions**

- (1) The Commissioner may impose any conditions on a fuel supplier's licence that the Commissioner thinks fit.
- (2) Subsection (1) does not require the Commissioner to impose the same conditions on all fuel supplier's licences.
- (3) The Commissioner may impose conditions when granting the fuel supplier's licence or at any time after that.
- (4) The Commissioner may at any time amend or cancel the conditions of a fuel supplier's licence.
- (5) If the Commissioner imposes conditions after granting a fuel supplier's licence or amends or cancels conditions, the Commissioner must give the licensed supplier written notice of the decision and the date on which the decision takes effect.
- (6) A licensed supplier who objects to a decision by the Commissioner under this section may apply to the Minister for a review of the Commissioner's decision and section 42 applies accordingly.

## **16 Fuel supplier's licence to be handed in if licensed supplier no longer eligible**

- (1) A licensed supplier must deliver the licence to the Commissioner if the licensed supplier ceases to be a person who could apply for a fuel supplier's licence.
- (2) A person who contravenes subsection (1) commits an offence.

## **17 Automatic cancellation**

A fuel supplier's licence is to be taken to be cancelled if:

- (a) the licensed supplier delivers it to the Commissioner;
- (b) the licensed supplier, being an individual, dies; or
- (c) the licensed supplier, being a body corporate, is dissolved.



**18 Fuel supplier's licence may be cancelled**

- (1) The Commissioner may cancel a fuel supplier's licence at any time if the Commissioner has granted the licensed supplier another fuel supplier's licence.
- (2) The Commissioner may cancel a fuel supplier's licence at any time if the Commissioner has reasonable grounds to suspect that the licensed supplier:
  - (a) has not complied with the conditions of the fuel supplier's licence;
  - (b) in purported compliance with the conditions of the fuel supplier's licence, provided false or misleading information; or
  - (c) applied for a fuel subsidy and provided false or misleading information in connection with the application.
- (3) The Commissioner may cancel a fuel supplier's licence if the licensed supplier is found guilty of an offence against this Act.
- (4) If the Commissioner cancels a fuel supplier's licence:
  - (a) the Commissioner must give the licensed supplier written notice of, and reasons for, the decision; and
  - (b) the licensed supplier must return the fuel supplier's licence to the Commissioner within 14 days after receiving the notice.
- (5) A person who contravenes subsection (4)(b) commits an offence.
- (6) A licensed supplier who objects to the cancellation of the fuel supplier's licence by the Commissioner may apply to the Minister for a review of the Commissioner's decision and section 42 applies accordingly.

## **Part 3            Fuel subsidies**

### **Division 1        Payment of fuel subsidies**

#### **19            General subsidy to licensed suppliers**

Subject to this Part, the general subsidy is payable to a licensed supplier:

- (a) for prescribed fuel that the supplier has supplied at the general subsidised price to a person if the supply is of a kind referred to in section 6; and
- (b) for prescribed fuel that the supplier has used in the Territory.

#### **20            ORD subsidy**

- (1) Subject to this Part, the ORD subsidy is payable to a person for diesel:

- (a) supplied to the person in the Territory; and
- (b) used or to be used:
  - (i) in the Territory for any purpose other than for propelling a road vehicle; or
  - (ii) within the limits of the territorial sea of the Commonwealth.

- (2) Subject to this Part, the ORD subsidy is payable to a licensed supplier for diesel used or to be used by the licensed supplier in the Territory or the Territorial sea of the Commonwealth.

#### **21            Special subsidy**

Subject to this Part, the special subsidy is payable to a prescribed person, or a person of a class of prescribed persons, for diesel or prescribed fuel supplied or used or to be supplied or used by the person in accordance with the prescribed conditions.

#### **22            Reduction of fuel subsidies in certain circumstances**

- (1) The Regulations may provide for the reduction of the amount of:
- (a) the general subsidy;
  - (b) the ORD subsidy; or

(c) the special subsidy,

for a quantity of prescribed fuel or diesel in a case where a subsidy is payable for the prescribed fuel or diesel under a law or scheme operating in a State or another Territory of the Commonwealth.

(2) In subsection (1), a reduction includes a reduction to zero.

## **23            Central Holding Authority appropriated**

The money required to pay fuel subsidies is to be paid from the public moneys of the Territory and the Allocation for that purpose is established or increased to the extent necessary.

## **Division 2            Application for fuel subsidy**

### **24            Applying for fuel subsidy**

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

(2) The application must be made:

(a) in respect of a prescribed period and within a prescribed time;  
and

(b) in respect of the minimum prescribed amount, if any.

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

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

(a) refuse to pay the fuel subsidy; or

(b) if the fuel subsidy has been paid, treat the subsidy as having been paid under an incorrect subsidy application and section 31 applies accordingly.

(5) An applicant who objects to a refusal by the Commissioner may apply to the Minister for a review of the Commissioner's decision and section 42 applies accordingly.

## **25            Limits to applying for general subsidy**

- (1) A licensed supplier must not apply for the general subsidy for prescribed fuel for which the supplier or any other person has previously applied for or been paid the general subsidy.
- (2) A licensed supplier must not apply for a general subsidy for prescribed fuel that the supplier has supplied to a person at a place outside Australia.
- (3) A licensed supplier must not apply for a general subsidy for prescribed fuel that is not entered or delivered into home consumption for the purposes of the *Customs Act 1901* and the *Excise Act 1901* of the Commonwealth.
- (4) A licensed supplier must not apply for a general subsidy for prescribed fuel that the supplier has supplied to a person when prohibited from doing so by the Regulations.
- (5) A person who applies for the general subsidy in contravention of this section commits an offence unless the person has complied with section 30(2).

## **26            Limits to applying for ORD subsidy**

- (1) A person must not apply for the ORD subsidy for diesel for which the person or any other person has previously applied for or been paid the ORD subsidy.
- (2) A person must not apply for the ORD subsidy for diesel supplied to the person if the person or any other person is eligible to claim the special subsidy in respect of the diesel.
- (3) A person must not apply for the ORD subsidy for diesel that the person or any other person is able to obtain:
  - (a) a drawback of duty under section 168 of the *Customs Act 1901*; or
  - (b) a drawback of Excise duty under section 79 of the *Excise Act 1901* of the Commonwealth.
- (4) A person must not apply for the ORD subsidy for diesel that the person or any other person is able to obtain:
  - (a) a rebate of duty under regulation 126(1)(s)(i) of the *Customs Regulations* of the Commonwealth; or
  - (b) a rebate of Excise duty under regulation 50(1)(x) of the *Excise Regulations* of the Commonwealth.

- (5) A person must not apply for an ORD subsidy for diesel if the person is prohibited from doing so by the Regulations.
- (6) A person who applies for the ORD subsidy in contravention of this section commits an offence unless the person has complied with section 30(2).

## **27            Limits to applying for special subsidy**

- (1) A person must not apply for the special subsidy for prescribed fuel or diesel for which the person or any other person has previously applied for or been paid the special subsidy.
- (2) A person must not apply for the special subsidy for prescribed fuel or diesel unless it is supplied to the person from a place in the Territory.
- (3) A person who applies for the special subsidy in contravention of this section commits an offence unless the person has complied with section 30(2).

## **28            Keeping of records for ORD subsidy and special subsidy**

- (1) A person who applies for the ORD subsidy or special subsidy must keep records that are required by the Commissioner.
- (2) The records are to contain sufficient detail to enable the Commissioner to determine:
  - (a) the amount of prescribed fuel or diesel that was supplied to the person for use or supply as permitted by this Act; and
  - (b) the manner in which the person used or supplied the prescribed fuel or diesel in respect of which an application for the subsidy is made.
- (3) A person must keep those records for 5 years after the date of any claim made under this Part for a subsidy.
- (4) A person who contravenes this section commits an offence

## **29            Commissioner to pay fuel subsidy**

The Commissioner is to pay the fuel subsidy calculated under the Regulations if he or she receives an application for the fuel subsidy that is made in accordance with this Part.

## **Division 3            General provisions applying to fuel subsidies**

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

- (1) In this section and section 31, a person makes an incorrect subsidy application if the person applies for a fuel subsidy:
  - (a) in contravention of section 25, 26 or 27;
  - (b) for prescribed fuel that has been supplied or used in circumstances involving a breach of a condition of the person's fuel supplier's licence;
  - (c) in circumstances where the general subsidy is not payable for the prescribed fuel;
  - (d) in circumstances where the ORD subsidy is not payable for the diesel;
  - (e) in circumstances where the special subsidy is not payable for the prescribed fuel or diesel;
  - (f) in circumstances where the amount of the fuel subsidy applied for is greater than the amount of the fuel subsidy that ought to have been applied for; or
  - (g) for prescribed fuel or diesel in respect of which the person has not kept proper records as required by this Act.
- (2) If a person makes an incorrect subsidy application, then the person must within 30 days after making the application:
  - (a) notify the Commissioner accordingly; and
  - (b) pay the Commissioner an amount equal to the unjustified benefit that the person has received or will receive.
- (3) The unjustified benefit is the amount by which the fuel subsidy applied for in the incorrect subsidy application is greater than the fuel subsidy to which the person is entitled under this Act.

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

- (1) If a person makes an incorrect subsidy application and does not comply with section 30(2), the Commissioner may give the person a notice that sets out:
  - (a) details of the incorrect application; and
  - (b) the penalty to be paid by the person.

- (2) The penalty is to be double:
  - (a) the amount that the person ought to have paid under section 30(2); or
  - (b) if the Commissioner is not able to determine that amount because of insufficient, false or misleading records or information – an amount determined by the Commissioner.
- (3) If the person does not pay the penalty on or before the date for payment specified in the notice:
  - (a) the person commits an offence;
  - (b) in the case of a licensed supplier, the Commissioner may suspend the operation of the supplier's fuel supplier's licence until it is paid; and
  - (c) the Commissioner may retain the amount of the penalty from any other fuel subsidy payable to the person.
- (4) In addition to subsection (3)(c), the Commissioner may suspend paying any future fuel subsidies to the person.
- (5) The date for payment must be at least 14 days after the date on which the notice is given to the person.
- (6) The Commissioner may remit not more than half of the penalty.

## **Part 4                      Investigations**

### **32                      Interpretation**

- (1) In this Part:

***authorised investigation*** has the meaning given in section 33.

***authorised investigator*** means a person appointed under section 34.

***premises*** means:

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

and includes a part of premises.

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**relevant material** means a record or thing relevant to an authorised investigation.

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

- (2) The Commissioner has the functions of an authorised investigator.

### **33 Authorised investigations**

An authorised investigation is an investigation for the purposes of one or more of the following:

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

### **34 Power to appoint authorised investigators**

- (1) The Commissioner may appoint a person to be an authorised investigator.
- (2) The Commissioner must issue an authorised investigator with an identity card that is to include a photograph of the investigator.

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

- (1) For the purposes of an authorised investigation, the Commissioner may require a person:
  - (a) to provide the Commissioner with written answers to specified questions;
  - (b) to produce to the Commissioner specified relevant material or relevant material of a specified class in the person's possession, custody or power.



- (2) A requirement:
  - (a) may be made whether or not the person to whom the requirement is addressed is the subsidy claimant; and
  - (b) is to be made by notice in writing given to the person to whom the requirement is addressed.
- (3) A person required to provide answers to questions by notice under this section must, if the notice requires, verify the answers by statutory declaration.
- (4) A person who does not comply with a requirement of a notice under this section within the time specified in the notice (or any further time the Commissioner, in the exercise of an absolute discretion, allows) commits an offence.

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

- (1) For the purposes of an authorised investigation, the Commissioner may require a person to attend at a specified time and place before an authorised investigator for examination on a subject specified in the notice.
- (2) A requirement:
  - (a) may be made whether or not the person to whom it is addressed is a person who has applied for a fuel subsidy; and
  - (b) is to be made by notice in writing given to the person to whom it is addressed.
- (3) A notice requiring a person to attend for examination may require the person to bring and produce to the authorised investigator conducting the examination any relevant material in the person's possession, custody or control relating to the subject of the examination.
- (4) An authorised investigator conducting an examination may require a person attending for examination:
  - (a) to take an oath or affirmation to answer all questions truthfully and may administer the oath or affirmation;
  - (b) to answer a question relevant to the subject matter of the examination asked by the investigator or, with the consent of the investigator, by another person present at the examination; and

- (c) to produce for examination by the investigator any relevant material in the person's possession at the examination.
- (5) A person who contravenes a requirement under this section commits an offence.
- (6) The Regulations may provide for, or permit a person to determine, the scales of expenses to be allowed to persons required under this section to attend.

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

- (1) For the purposes of an authorised investigation, an authorised investigator:
  - (a) may enter and remain on premises to exercise the powers of investigation in section 39; and
  - (b) may stop and detain a vehicle and give reasonable directions as to the movement of it.
- (2) The authorised investigator may only enter residential premises as follows:
  - (a) the investigator may enter the premises at any reasonable time with the consent of the occupier;
  - (b) the investigator may enter the premises under the authority of a search warrant issued under section 38; or
  - (c) if the investigator believes, on reasonable grounds, that it is urgently necessary to do so in order to prevent the destruction of or interference with relevant material, he or she may enter the premises at any time without the consent of the occupier and without a warrant.
- (3) The authorised investigator must not exercise the power in subsection (2)(c) unless the Commissioner in the particular case has authorised the investigator, orally or in writing, to do so.
- (4) The authorised investigator must, at the reasonable request of a person apparently in charge of the premises or any other person on the premises, display the investigator's identity card.

### **38 Search warrants**

- (1) For the purposes of an authorised investigation, an authorised investigator may apply to a Justice for a search warrant.

- (2) If the Justice is satisfied by evidence on oath that there are reasonable grounds to suspect that there may be relevant material on any premises the Justice may issue a search warrant to an authorised investigator.
- (3) A search warrant authorises an authorised investigator:
  - (a) to enter the premises specified in the warrant at the time or within the period specified in the warrant; and
  - (b) to exercise the powers in section 39.
- (4) A search warrant may be executed by the authorised investigator to whom it is issued or by any other authorised investigator.
- (5) An authorised investigator executing a warrant must, at the reasonable request of a person apparently in charge of the premises or any other person on the premises, display the warrant.

### **39 Powers of authorized investigators while on premises**

- (1) An authorised investigator who enters premises under section 37 or under a warrant issued under section 38 may exercise any one or more of the following powers:
  - (a) search the premises and examine anything on the premises;
  - (b) break into any room or container on the premises in order to search it;
  - (c) operate equipment or facilities on the premises for a purpose relevant to the authorised investigation;
  - (d) take possession of any relevant material and retain it for as long as may be necessary:
    - (i) to examine it to determine its evidentiary value;
    - (ii) to copy it; or
    - (iii) if it is relevant to possible legal proceedings – for the purposes of those proceedings;
  - (e) if any relevant material found on the premises cannot be conveniently removed, secure it against interference;
  - (f) request any person who is on the premises:
    - (i) to state his or her full name, date of birth and address;

- (ii) to answer (orally or in writing) questions asked by the authorised investigator relevant to the authorised investigation;
  - (iii) to produce relevant material;
  - (iv) to operate equipment or facilities on the premises for a purpose relevant to the authorised investigation;
  - (v) to give other assistance the authorised investigator reasonably requires to carry out the authorised investigation.
- (2) An authorised investigator must not exercise the power in subsection (1)(b) unless the Commissioner has in the particular case authorised the investigator, orally or in writing, to do so.
- (3) If an authorised investigator takes anything from the premises, the investigator must issue a receipt, in an approved form, and:
  - (a) if the occupier or a person apparently responsible to the occupier is present, give it to him or her; or
  - (b) otherwise, leave it on the premises in an envelope addressed to the occupier.
- (4) A person who hinders an authorised investigator commits an offence.
- (5) A person hinders an authorised investigator if the person:
  - (a) hinders or obstructs the investigator in the exercise of powers under this section;
  - (b) does not comply with a request of the investigator under this section; or
  - (c) gives the investigator information that the person knows is false or misleading.

#### **40 Use of force**

- (1) An authorised investigator may use reasonable force to exercise the power to enter premises under section 37 or under a warrant issued under section 38 or to exercise the powers in section 39(1)(a) to (e).
- (2) An authorised investigator must not use the power in subsection (1) unless the Commissioner has in the particular case authorised the investigator, orally or in writing, to do so.

- (3) An action or proceedings, whether civil or criminal, does not lie against an authorised investigator arising from his or her use of reasonable force in accordance with subsection (1) if the use was in good faith and for the purposes of this Act.

## **Part 5                      Administrative matters**

### **41                      Commissioner may delegate**

- (1) The Commissioner may delegate to a person any of his or her powers and functions under this Act except:
- (a) this power of delegation;
  - (b) the functions in section 34; or
  - (c) the powers in sections 37(3), 39(2) and 40(2).
- (2) When a power or function that is delegated under this section is exercised or performed by the delegate it is to be taken to have been exercised or performed by the Commissioner.
- (3) A delegation under this section:
- (a) is to be in writing;
  - (b) may be to a named person or to a person from time to time holding, acting in or performing the duties of an office, designation or position; and
  - (c) does not prevent the exercise of a power or the performance of a function by the Commissioner.

### **42                      Ministerial review**

- (1) If within 60 days after a decision of the Commissioner the Minister receives an application under a section that provides for a person to apply to the Minister for a review of the decision, the Minister is to review the decision and may confirm, vary or reverse it.
- (2) If the application is for a review of a decision of the Commissioner made under section 15(6) or 18(6), the Commissioner's decision is suspended from the time the application is received by the Minister until the applicant is given notice of the Minister's decision.
- (3) The decision of the Minister that is suspended under subsection (2) has effect subject to the Minister's decision from when notice of the Minister's decision is given unless the decision is reversed.

- (4) The Commissioner must give effect to the Minister's decision on a review.
- (5) The Commissioner must give the applicant written notice of the Minister's decision.
- (6) The Minister's decision is final and cannot be appealed against other than on the grounds of excess or want of jurisdiction.

### **43 Confidentiality**

- (1) The following persons are subject to the duty of confidentiality in this section:
  - (a) a person who is or was the Commissioner;
  - (b) a person who is or was engaged or employed in the administration or enforcement of this Act;
  - (c) a person:
    - (i) to whom information or records are disclosed under this Act; or
    - (ii) who gains access (properly or improperly) to information or records obtained under this Act.
- (2) A person subject to the duty of confidentiality in this section must not record, disclose, or make use of information or records obtained under this Act except:
  - (a) for a purpose related to the administration or enforcement of this Act;
  - (b) as required or allowed by this Act or another written law that specifically or by necessary implication overrides this duty of confidentiality;
  - (c) as authorised by the person to whose affairs the information or records relate; or
  - (d) for the purpose of legal proceedings, or a report of legal proceedings, arising out of this Act.
- (3) This section does not prevent the disclosure of information or records:
  - (a) to an employee of the Agency responsible for the administration of this Act;

- (b) to an officer of Customs for a purpose connected with the administration or enforcement of the *Customs Act 1901*, the *Customs Tariff Act 1995*, the *Excise Act 1901*, or the *Excise Tariff Act 1921* of the Commonwealth;
  - (c) to an official administering a taxation law of the Commonwealth, a State or another Territory of the Commonwealth for a purpose related to the administration of that law;
  - (d) to an official of the Commonwealth, a State or another Territory of the Commonwealth administering a scheme for the payment of subsidies for fuel;
  - (e) to the Auditor-General for the purposes of performing functions or exercising powers in relation to an audit of the office of the Commissioner imposed or conferred on the Auditor-General by or under the Audit Act or any other Act;
  - (f) in connection with the investigation of an offence to:
    - (i) a member of the Police Force or the Australian Federal Police;
    - (ii) the Director of Public Prosecutions for the Territory or the Commonwealth;
    - (iii) an officer of another law enforcement agency established under the law of the Commonwealth, a State or another Territory of the Commonwealth authorised by the Regulations to receive confidential information under this paragraph;
  - (g) in a statistical or other form that could not reasonably be expected to lead to the identification of any person to whose affairs it relates; or
  - (h) in other circumstances in which its disclosure is permitted by the Regulations.
- (4) If information or records are lawfully disclosed under this section, this section does not prevent the further disclosure of the information or records, or the recording or use of the information or records, for the purpose for which the disclosure was made.
- (5) Nothing in this section prevents the Auditor-General from disclosing or publishing information or records lawfully disclosed under this section if the disclosure or publication does not directly or indirectly divulge information identifying the affairs of a particular person.

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

## **Part 6                      Miscellaneous**

### **44                      Offences**

- (1) A person who gives false or misleading information in, or in relation to, an application for a fuel supplier's licence or a fuel subsidy commits an offence.
- (2) A licensed supplier who contravenes or fails to comply with a condition of the fuel supplier's licence commits an offence.
- (3) A person may be found guilty of an offence against subsection (2) even if the condition contravened is subsequently amended or cancelled.
- (4) Subsection (3) applies despite section 14 of the Criminal Code.

### **45                      Recovery of penalties**

If a person does not pay a penalty under section 31:

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

### **46                      General penalty**

The penalty for an offence against this Act is \$10,000 unless otherwise stated.

### **47                      Act does not apply to fuel supplied or used on or after 1 July 2000**

- (1) This section applies despite the other sections of this Act.
- (2) On 1 July 2000, this Act ceases to apply in respect of prescribed fuel and diesel supplied on or after that date.
- (3) On and after 1 July 2000:
- (a) prescribed fuel is no longer required under this Act to be supplied at the general subsidised price;



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- (b) a general subsidy is no longer payable under this Act in respect of prescribed fuel supplied or used on or after that date;
  - (c) the ORD subsidy is no longer payable under this Act in respect of diesel supplied on or after that date but remains payable in respect of diesel supplied before that date and used on or after that date in accordance with section 20(1)(b);
  - (d) the ORD subsidy is no longer payable under this Act to a licensed supplier in respect of diesel used on or after that date in accordance with section 20(2);
  - (e) the special subsidy is no longer payable under this Act to McArthur River Mining Pty Ltd (**MRM**) in respect of prescribed fuel or diesel supplied to MRM on or after that date but remains payable in respect of prescribed fuel and diesel supplied to MRM before that date and used on or after that date in accordance with regulation 10(1) of the *Fuel Subsidies Regulations*; and
  - (f) the special subsidy is no longer payable under this Act to a person in respect of diesel supplied or used after that date in accordance with regulation 10(2) of the *Fuel Subsidies Regulations*.
- (4) On 1 July 2000, by virtue of this subsection, a fuel supplier's licence is cancelled.
  - (5) The Commissioner must refund to a person whose licence is cancelled under subsection (4) an amount that bears the same proportion to the amount paid under section 7(2) for the grant of the licence as the portion of the period of the licence that, but for the cancellation, would have remained bears to the total period of the licence.

## **48 Regulations**

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing all matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The Regulations may provide that the general subsidy rate, the ORD subsidy rate or the special subsidy rate is the amount determined in accordance a formula specified in the Regulations.

- (3) The Regulations may provide that the general subsidy rate, the ORD subsidy rate or the special subsidy rate is to be paid in respect of prescribed fuel or diesel supplied or used on and from a date specified in, or determined under, the Regulations.

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## ENDNOTES

### 1 KEY

Key to abbreviations

amd = amended  
app = appendix  
bl = by-law  
ch = Chapter  
cl = clause  
div = Division  
exp = expires/expired  
f = forms  
*Gaz* = *Gazette*  
hdg = heading  
ins = inserted  
lt = long title  
nc = not commenced

od = order  
om = omitted  
pt = Part  
r = regulation/rule  
rem = remainder  
renum = renumbered  
rep = repealed  
s = section  
sch = Schedule  
sdiv = Subdivision  
SL = Subordinate Legislation  
sub = substituted

### 2 LIST OF LEGISLATION

***Fuel Subsidies Act 1998 (Act No. 95, 1988)***

Assent date	29 December 1998
Commenced	1 February 1999 ( <i>Gaz</i> S2, 1 February 1999)

***Financial Relations Agreement (Consequential Provisions) Act 2000 (Act No. 32, 2000)***

Assent date	27 June 2000
Commenced	pt 1: 27 June 2001; pts 2 to 4 and 7 to 10: 1 July 2000; pts 5 and 6: 1 July 2001 (s 2)

***Statute Law Revision Act 2007 (Act No. 4, 2007)***

Assent date	8 March 2007
Commenced	8 March 2007

### 3 LIST OF AMENDMENTS

s 23	amd No. 4, 2007, s 7
s 47	sub No. 32, 2000, s 11