



New South Wales

# **Petroleum Products Subsidy Bill 1997**

## **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Appropriation (Refunds and Subsidies) Bill 1997*.

## **Overview of Bill**

The object of this Bill is to regulate the distribution of certain money granted by the Commonwealth to the State by way of financial assistance.

The Bill provides for registration of retailers and commercial consumers of petroleum products, and of wholesalers who sell to retailers and commercial consumers, who are eligible to receive subsidies under certain conditions. Registration of wholesalers or retailers under the proposed Act may be cancelled if the benefit of subsidies is not passed on to subsequent purchasers.

The off-road diesel fuel scheme that existed as a tax-relief measure under the *Business Franchise Licences (Petroleum Products) Act 1987* is substantially continued by the proposed Act in the form of provision for maximum subsidy for diesel fuel sold for off-road consumption.

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## Outline of provisions

### **Part 1 Preliminary**

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be proclaimed.

**Clause 3** defines *petroleum products* and other words and expressions used in the proposed Act.

### **Part 2 Subsidies**

**Clause 4** authorises the payment of subsidies.

**Clause 5** provides that persons registered under the proposed Act (being retailers, commercial consumers and certain wholesalers of petroleum products) are eligible for subsidies.

**Clause 6** provides for a prescribed ceiling in relation to the amount that may be paid to a person in any financial year by way of subsidy under the proposed Act.

**Clause 7** provides that the amount of a subsidy paid under the proposed Act is refundable in certain circumstances, namely, where the petroleum products in respect of which the subsidy was paid are sold or consumed in contravention of conditions of registration, or where an overpayment has been made in contravention of proposed section 6 (in which case a penalty also applies).

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

**Clause 8** authorises the registration (and periodic renewal of registration) of retailers and commercial consumers of petroleum products and of wholesalers who sell to retailers and commercial consumers. Registration is subject to conditions prescribed by the regulations or imposed by the Chief Commissioner of State Revenue, and may be refused on grounds mentioned in the clause.

**Clause 9** provides for variation of the conditions of registration.

**Clause 10** provides that a person's registration may be cancelled if the registered person is convicted of an offence against the proposed Act or the regulations or fails to abide by the conditions of registration, or ceases to be eligible for registration, or if (in the case of vendors) the person fails to pass on the benefit of subsidies to subsequent purchasers of petroleum products sold in the course of the person's business.

#### **Part 4 Sales of diesel fuel for off-road use**

**Clause 11** defines *marine purpose* and *off-road purpose*.

**Clause 12** provides for the issue of authorities to sell diesel fuel for off-road purposes. An authority is subject to conditions prescribed by the regulations or imposed by the Chief Commissioner.

**Clause 13** provides for the issue of permits to buy diesel fuel for off-road purposes. A permit is subject to conditions prescribed by the regulations or imposed by the Chief Commissioner, and provides for the imposition of an upper limit on the amount of fuel the permit-holder can buy in a given time (except when the fuel is bought for marine purposes).

**Clause 14** describes what authorities and permits allow. The holder of an authority is permitted to sell diesel fuel for off-road use to other authority-holders or to permit-holders, or to any person for marine purposes. All parties are subject to the conditions imposed on them by or under the proposed Act.

**Clause 15** states that authorities and permits have effect for the period specified in them and are renewable from time to time.

**Clause 16** provides for variation of the conditions of any authority or permit.

**Clause 17** provides that a person's authority or permit may be cancelled if the person is convicted of an offence against the proposed Act or the regulations or fails to abide by the conditions of the authority or permit.

**Clause 18** creates certain offences in connection with the use of authorities and permits. Holders of permits must notify the Chief Commissioner of any relevant change in their circumstances, must not buy fuel in excess of their permit limit and must not lend their permit to another person. These offences are punishable by fines of up to 50 penalty units. (The current value of a penalty unit is \$110.)



## **Part 5     Records and investigation**

**Clause 19** requires transportation records to be kept in vehicles transporting petroleum products in bulk, indicating the owner, transporter, destination and other particulars concerning the products transported.

**Clause 20** requires drivers of vehicles transporting petroleum products in bulk to yield to police signals to enable inspection.

**Clause 21** confers on the Chief Commissioner and authorised officers the same powers to investigate registered persons and other persons as are available for the purposes of the State's taxation laws. These powers include powers to summon persons to answer questions and produce documents and powers of entry and search (subject, in appropriate cases, to a requirement to obtain a search warrant). Provisions binding officers to secrecy as to information obtained in an investigation also apply. In addition, the *Revenue Laws (Reciprocal Powers) Act 1987* is made to apply, in order to allow collaboration of State and Commonwealth officers for investigative purposes.

## **Part 6     Administration**

**Clause 22** provides for employment of staff to serve in the administration of the proposed Act.

**Clause 23** allows delegation of the powers and functions of the Chief Commissioner.

**Clause 24** protects the Chief Commissioner and others from personal liability in respect of things done or omitted by them in good faith for the purposes of executing the proposed Act.

## **Part 7     Miscellaneous**

**Clause 25** provides that persons aggrieved by a decision of the Chief Commissioner not to renew, or to cancel, their authorities, permits, or registration, or to vary the conditions in force in respect of them, may apply to the Administrative Decisions Tribunal for a review of the decision.

**Clause 26** provides for the form in which applications under the proposed Act are to be made and for fees chargeable in connection with applications.

**Clause 27** creates certain offences relating to the furnishing of information in connection with applications under the proposed Act or the purchase of diesel fuel under a permit, or in other specified circumstances.



**Clause 28** creates an offence of obtaining a subsidy by false representation. The offence is punishable by a fine equal to three times the amount of the subsidy payment obtained.

**Clause 29** is an evidentiary provision that states that information furnished by officers of a corporation is admissible against the corporation in certain circumstances.

**Clause 30** provides that proceedings for an offence against the proposed Act or the regulations may be brought before a Local Court or before the Supreme Court in its summary jurisdiction.

**Clause 31** provides for regulations to be made in aid of the proposed Act.

**Clause 32** requires a review of the proposed Act to be undertaken in 5 years' time.



First print



New South Wales

# **Petroleum Products Subsidy Bill 1997**

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New South Wales

# **Petroleum Products Subsidy Bill 1997**

No , 1997

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## **A Bill for**

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

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The Legislature of New South Wales enacts:

## Part 1        Preliminary

### 1    Name of Act

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

### 2    Commencement

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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. 10

**authority** means an authority in force under Part 4.

**Chief Commissioner** means the Chief Commissioner of State Revenue appointed under the *Taxation Administration Act 1996*. 15

**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. 20

**financial year** means a year commencing on 1 July.

**functions** includes powers, authorities and duties.

**permit** means a permit in force under Part 4.

**petroleum products** means motor spirit and diesel fuel. 25

**registered** means registered under this Act.

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

(2)    A reference in this Act to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty. 30

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## Part 2 Subsidies

### 4 Payment of subsidies

- (1) At times and subject to conditions determined by or under this Act, payments calculated at the prescribed rate are to be made by the Chief Commissioner to registered persons in respect of quantities of eligible petroleum products sold or consumed by them in New South Wales. 5
- (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. 10
- (3) A subsidy may, in circumstances and subject to conditions determined by the Chief Commissioner, be claimed by and paid to another person on behalf of the registered person entitled to it.

### 5 Entitlement to subsidies 15

- (1) A registered person who:
- (a) sells petroleum products by retail, or
  - (b) purchases petroleum products for consumption,
- in the course of a business or activity conducted by the person in New South Wales is entitled to a subsidy in respect of them, except as provided by this section. 20
- (2) A registered person who, in the course of a business or activity conducted by the person, sells petroleum products to a person referred to in subsection (1) is entitled to a subsidy in respect of them, except as provided by this section. 25
- (3) The holder of an authority who sells diesel fuel to the holder of a permit for off-road use is entitled to a subsidy in respect of it, except as provided by this section.
- (4) A subsidy may not be claimed by or paid to a person in respect of petroleum products if: 30
- (a) a subsidy (not being a subsidy the amount of which has been repaid under section 7) has already been paid to another person in respect of them, or



- (b) an amount already paid to another person in respect of them by the government of another State or Territory is, in the opinion of the Chief Commissioner, in the nature of a payment corresponding to a subsidy under this Act.

- (5) This section has effect subject to sections 6 and 7 and the conditions of registration. 5
- (6) Claims for subsidies are to be made in the manner and within the time prescribed by the regulations.

#### **6 Maximum subsidy**

- (1) The regulations may, in respect of a registered person, determine, or provide for the determination of, an amount that is the maximum amount of subsidy allowed to be paid to the person in any prescribed financial year. 10
- (2) No subsidy in excess of the amount determined under this section is payable to a person in the relevant financial year. 15

#### **7 Refund of subsidy**

- (1) A person who, in a manner contrary to the conditions of the person's registration, sells any petroleum products in respect of which a subsidy has been paid must pay:
  - (a) to the Chief Commissioner, or 20
  - (b) to the person to whom the subsidy was paid,  
an amount equal to the subsidy paid in respect of them.
- (2) An amount equal to the amount payable to any person in accordance with subsection (1) (b) is payable to the Chief Commissioner by that person. 25
- (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.
- (4) The amount of any subsidy paid as a result of a misrepresentation made contrary to section 28 is to be repaid to the Chief Commissioner. 30

(5) An amount:

- (a) payable to the Chief Commissioner by virtue of this section, or
- (b) payable in accordance with subsection (1),

if not paid is recoverable by the Chief Commissioner as a debt in any court of competent jurisdiction. 5





- (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: 5
- (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 10
  - (b) if the Chief Commissioner is satisfied that the person is no longer eligible, in terms of the criteria prescribed by section 8, for registration, or
  - (c) in the case of a person registered by virtue of being:
    - (i) a retailer of petroleum products, or 15
    - (ii) a person referred to in section 8 (2),  
if the Chief Commissioner is satisfied that, in the course of the person's business of selling petroleum products, the benefit of subsidies received by the person is not being passed on to purchasers of the products, or 20
  - (d) for any cause prescribed by the regulations.
- (2) Cancellation of registration takes effect on the date specified in the notice (at least 7 days after the date of service).

## **Part 4      Sales of diesel fuel for off-road use**

### **11    Definitions**

In this Part:

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

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

### **12    Authorities to sell diesel fuel for off-road purposes**

- (1) The Chief Commissioner may grant to any person who is registered by virtue of being a vendor of petroleum products an authority to sell diesel fuel for off-road purposes. 10
- (2) An authority is subject to such conditions as may be imposed by this Act and the regulations and to such other conditions as the Chief Commissioner may specify in the authority. 15
- (3) The Chief Commissioner may grant an authority on the Chief Commissioner's own motion or on the application of any person.
- (4) It is a condition of an authority that, at or before the time the holder of the authority first delivers diesel fuel for off-road purposes (other than marine purposes) to the holder of a permit, the holder of the authority must sight the permit. 20

### **13    Permits to purchase diesel fuel for off-road purposes**

- (1) The Chief Commissioner may grant a permit to purchase diesel fuel for off-road purposes to any person who the Chief Commissioner is satisfied uses diesel fuel for those purposes and who applies for the permit. 25
- (2) A permit is subject to such conditions as may be imposed by this Act and the regulations and to such other conditions as the Chief Commissioner may specify in the permit.

- (3) The conditions of a permit may prescribe, among other things, a maximum quantity of diesel fuel for off-road purposes (other than marine purposes) that may be purchased by the holder of the permit during any particular period.

#### **14 Effect of authorities and permits**

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- (1) The holder of an authority is authorised to sell diesel fuel for off-road purposes to:
- (a) any other holder of an authority, or
  - (b) the holder of a permit,

subject to and in accordance with the regulations and the conditions of the authority.

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- (2) The holder of an authority is authorised to sell diesel fuel for marine purposes to any person, subject to and in accordance with the regulations and the conditions of the authority.

- (3) The holder of a permit is authorised to purchase diesel fuel for off-road purposes from the holder of an authority, subject to and in accordance with the regulations and the conditions of the permit.

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

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#### **15 Duration of authorities and permits**

- (1) An authority or permit takes effect from the starting date specified in the authority or permit and remains in force (unless sooner cancelled or surrendered) until the expiry date specified in it.

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- (2) An authority or permit may be renewed from time to time by the Chief Commissioner.

#### **16 Variation of conditions of authorities and permits**

- (1) The Chief Commissioner may from time to time, by notice in writing to the holder of the authority or permit, vary or revoke any condition, or add to the conditions, specified in an authority or permit.

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- (2) Any such variation, addition or revocation has effect from the date specified in the notice.
- (3) This section does not apply to a condition imposed by this Act or the regulations.

**17 Cancellation of authorities and permits** 5

- (1) The Chief Commissioner may, by notice in writing to the holder concerned, cancel an authority or permit if the holder of the authority or permit:
  - (a) commits an offence under this Act or the regulations, or
  - (b) contravenes or fails to comply with any condition or requirement specified in the authority or permit or imposed on the holder of the authority or permit under this Act or the regulations. 10
- (2) Cancellation of an authority or permit takes effect on the date specified in the notice (at least 7 days after the date of service). 15

**18 Offences**

- (1) The holder of a permit who does not notify the Chief Commissioner in writing of any change in the particulars furnished in the application for the permit within 7 days after the change occurs is guilty of an offence. 20  
Maximum penalty: 50 penalty units.
- (2) The holder of a permit who purchases diesel fuel for off-road purposes (other than marine purposes) where the purchase (along with all other such purchases by the permit holder during the period concerned) exceeds the maximum volume (if any) specified in the permit for the period concerned is guilty of an offence. 25  
Maximum penalty: 50 penalty units.
- (3) The holder of a permit who allows the permit to be used by any other person for the purpose of purchasing diesel fuel for off-road purposes is guilty of an offence. 30  
Maximum penalty: 50 penalty units.



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## Part 5      Records and investigation

### 19    Transportation records for bulk transport of petroleum products

- (1) While any petroleum products are being transported (either with or without any other goods) in New South Wales by road vehicle, being petroleum products stored in a tank having a capacity that exceeds the prescribed capacity, there must be carried in the vehicle at all times a record complying with subsection (2). 5
- (2) The record must be in writing and contain the following particulars:
- (a) the date the transportation commenced, 10
  - (b) the type and quantity of petroleum products being transported,
  - (c) the name and address of the person (if any) from whom the petroleum products were purchased,
  - (d) the name and address of the person who owns the petroleum products, 15
  - (e) the name and address of the person on whose behalf the petroleum products are being transported,
  - (f) the name of the person, if any, to whom the driver is transporting the petroleum products, 20
  - (g) the address at which the petroleum products were loaded for transportation,
  - (h) the address to which the driver is transporting the petroleum products,
  - (i) the name and address of the person (if any) who has agreed to purchase the petroleum products. 25
- (3) If the Chief Commissioner approves of a form of record for the purposes of this section, the record must be in the approved form.
- (4) The Chief Commissioner or an authorised officer may at any time require the driver of a road vehicle in New South Wales in which the Chief Commissioner or the authorised officer reasonably suspects petroleum products are being transported to produce the record for inspection. 30



- (3) Without limiting the generality of subsection (2), information disclosed or obtained under this Act may be disclosed to the Chief Executive Officer of the Australian Customs Service or any officer of that service designated by its Chief Executive Officer to be a proper officer for receipt of such information.

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## **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*. 5
- (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**

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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**

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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. 20



## **Part 7      Miscellaneous**

### **25    Right of review**

- (1) A person aggrieved by a decision of the Chief Commissioner:
- (a) to refuse the person's application for registration, or for an authority or permit, or 5
  - (b) to cancel, or to refuse to renew, the person's registration, authority or permit, or
  - (c) with respect to the conditions subject to which his or her registration, authority or permit should be granted, or a variation of those conditions, 10
- may apply to the Administrative Decisions Tribunal for a review of the Chief Commissioner's decision.
- (2) A registered person or the holder of an authority or permit may apply to the Tribunal for a review of any decision by the Chief Commissioner to vary the conditions attached to the person's registration, authority or permit. 15

### **26    Applications**

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

- (a) must be in a form approved by the Chief Commissioner, and 20
- (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**

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- (1) A person who:
- (a) in connection with an application for a subsidy or for registration, or for an authority or permit, or in connection with any other application under this Act or the regulations, makes a statement, or 30

- (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. 5

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

- (2) A person who:

- (a) in furnishing any information, or 10  
(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. 15

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

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

- (a) falsely represents that the person is the holder of a permit, 20  
or  
(b) falsely represents that the diesel fuel is to be used for off-road purposes, or  
(c) falsely represents that the purchase or proposed purchase is 25  
authorised by the permit,

is guilty of an offence.

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

**28 Obtaining subsidy by deceit**

- (1) A person who, by any false representation, obtains payment of a subsidy to which the person is not entitled is guilty of an offence and liable to a maximum penalty equal to 3 times the amount of the subsidy paid. 5
- (2) A penalty imposed under this section is in addition to any liability under section 7 (4).

**29 Information given by officers of bodies corporate**

- (1) Information given by an officer (within the meaning of the *Corporations Law*) of a body corporate with respect to any dealings by the body corporate with petroleum products: 10
- (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. 15
- (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**

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- (1) Proceedings for an offence against this Act or the regulations may be taken and dealt with before a Local Court constituted by a Magistrate sitting alone or before the Supreme Court in its summary jurisdiction.
- (2) The maximum monetary penalty that may be imposed by a Local Court in respect of an offence against this Act or the regulations is: 25
- (a) 100 penalty units, or
- (b) the maximum penalty provided by or under this Act for the offence concerned, 30
- 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. 5
- (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: 10
    - (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 15
  - (c) the maintenance, preservation and production of invoices and records by persons selling or purchasing petroleum products, registered persons and the holders of authorities and permits, and the form and content of any such invoices or records, and 20
  - (d) verification, by statutory declaration of the claimant or otherwise, of the particulars of any claim for a subsidy, and 25
  - (e) prescribing fees payable on application for:
    - (i) registration or renewal of registration, or
    - (ii) the issue or renewal of authorities and permits.

### **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. 30



- (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.

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