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No. 33 2003–04

Energy Grants (Cleaner Fuels) Scheme Bill 2003

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Energy Grants (Cleaner Fuels) Scheme Bill 2003

Angus Martyn
Law and Bills Digest Group
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Energy Grants (Cleaner Fuels) Scheme Bill 2003

Date Introduced: 11 September 2003

House: House of Representatives

Portfolio: Treasury

Commencement: On 18 September 2003.¹

Purpose

To establish the cleaner fuels grants scheme which provides for grants to importers and manufacturers of cleaner fuels.

Background

From 18 September 2003 biodiesel² is due to become subject to excise and customs duty.³ However, under the Energy Grants (Cleaner Fuels) Scheme Bill 2003 (the Bill), a grant equivalent to the amount of duty will be available to importers and manufacturers, giving an effective zero excise / customs rate. The Bill and the Energy Grants (Cleaner Fuels) Scheme (Consequential Amendments) Bill 2003 set up the machinery for the grants scheme.

The origin of the Bill can be traced back to Government's *Measures for a Better Environment* statement in May 1999. In this statement, the Government undertook to introduce an energy credit scheme that would provide price incentives and funding for conversion from the dirtiest to the most appropriate and cleanest fuels. The scheme's objectives were later refined, as set out in subsection 4(2) of the *Diesel and Alternative Fuels Grants Scheme Act 1999*:⁴

The purpose of the Energy Grants (Credits) Scheme will be to provide active encouragement for the move to the use of cleaner fuels by measures additional to those under this Act, while at the same time maintaining entitlements that are equivalent to those under this Act and the Diesel Fuel Rebate Scheme, including for the use of alternative fuels.

In March 2001, the Prime Minister announced that the Government was establishing an inquiry into the total structure of fuel taxation in Australia.⁵ The Inquiry handed down its recommendations in March 2002. It recommended, among other things, that excise and

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customs duty should apply to all liquid fuels, irrespective of their derivation.⁶ Whilst the Government initially rejected this recommendation, at least partly on the basis of it being 'contrary to the Government's election commitment to maintain excise exemptions for fuel ethanol and biodiesel',⁷ it subsequently reversed this position in the 2003-04 budget. However this reversal was accompanied by decisions regarding offsetting grant programs. In relation to biodiesel, which is the initial focus of the Bill, the Government said:

From 18 September 2003, the Government will apply excise duty to biodiesel at the current rate of the excise duty on diesel fuel - 38.143 cents per litre. Grants will then be provided for production or importation of biodiesel, such that the current effective excise rate of zero for pure biodiesel is continued, with this being extended to the biodiesel component of blends, until 30 June 2008. These grants will be reduced in five even annual instalments from 1 July 2008 to 1 July 2012.⁸

Note that as of the date of this Digest (15 September), neither an Excise Tariff or Customs Tariff proposal had yet been released by the Treasurer. These proposals are necessary in order for the duty foreshadowed by the Government to be collected. Presumably they will be tabled in Parliament before 18 September.

As mentioned, grants in relation to biodiesel apply from 18 September 2003. According to the *Explanatory Memorandum*, grants will also become available under the cleaner fuels grants scheme for ethanol manufacture and importation once existing ethanol subsidy arrangements expire in 2008.⁹ Grants will also be available in relation to the manufacture and importation of low sulphur fuels from 2006 and low sulphur diesel from 2007.¹⁰

The *Explanatory Memorandum* states that the estimated cost of the biodiesel grants will be \$15 million in 2003-2004, \$44 million in 2004-2005, \$76 million in 2005-2006 and \$99 million in 2006-2007. The costs involved in providing the grant in respect of the low sulphur fuels is \$1 million in 2005-2006 and \$41 million in 2006-2007.¹¹ These figures do not take into account the revenue to be raised by the imposition of excise and customs duty.

Main Provisions

New section 3 provides that the Commissioner of Taxation has general administration of the Act.

New section 4 contains definitions for key terms.

Biodiesel is a fuel used in an internal combustion engine that is manufactured by chemically altering vegetable oils or animal fats to form mono-alkyl esters. Biodiesel can be derived from recycled oils, as long as these oils are sourced from vegetable oils or animal fats. Biodiesel must also comply with the relevant fuel standard made under the *Fuel Quality Standards Act 2000*.

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Cleaner fuel means (i) biodiesel or (ii) a fuel or fuel blend prescribed by regulations that also complies with the relevant fuel standard.

A *licensed person* is a person who is licensed under the *Excise Act 1901* as a manufacturer or the holder of a storage licence in respect of goods of a kind including the fuel, or a person specified in a permission given under the *Excise Act 1901* or *Customs Act 1901* for goods of a kind including the fuel.

New sections 5-8 set out the circumstances in which someone is entitled to a cleaner fuel grant.

The main conditions that must be satisfied for a 'provisional entitlement' to a grant are set out in **new section 5** and are relatively complex. However, to paraphrase the *Explanatory Memorandum*¹² these conditions essentially mean grant claimants must be either an importer, manufacturer or a licensed person in respect of the fuel. A provisional entitlement to a grant will generally arise only in respect of a cleaner fuel when it is sold into the market in its final form. Provisional entitlement to a grant will therefore arise when fuel is sold by an importer, manufacturer or licensed person to an end user outside the excise system.

New section 6 provides that claimants for grants must be registered under section 9 of the *Product Grants and Benefits Administration Act 2000* for the purposes of entitlement to a cleaner fuel grant. Section 9 of that Act is itself amended by **item 3** in Schedule 1 of the Energy Grants (Cleaner Fuels) Scheme (Consequential Amendments) Bill 2003.

New section 7 sets out the circumstances in which a person meeting the various conditions under **new section 6** may be disqualified from having provisional entitlement. These circumstances include selling the fuel to a licensed person¹³ or including the fuel in a fuel blend, or where the Tax Commissioner makes a determination under subsection 34(1) of the *Product Grants and Benefits Administration Act 2000* that a person has taken a course of action 'for the sole or dominant purpose of enabling a particular act or transaction to be taken into account in determining a grant or benefit'.¹⁴ Regulations may also prescribe further disqualifying circumstances.

The actual amount that a claimant is entitled to is to be worked out in accordance with the regulations: **new subsection 8(1)**. The *Explanatory Memorandum* comments:

Claimants will be required to self-assess¹⁵ their entitlements to a cleaner fuel grant. The regulations will prescribe different amounts of grant for different cleaner fuels and blends of fuels, including that the amount of grant may be nil. The regulations will also prescribe a basic rule for working out the amount of the grant payable and how the grant will be calculated if the regulations set out different amounts in respect of blends.¹⁶

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The amount the grant may be reduced if any 'drawback, refund, rebate or remission' of customs or excise duty applies to the fuel. The *Explanatory Memorandum* implies that the benefit from the drawback etc would go to the claimant in which case there would be no net effect for the claimant. No details are provided how this would work in practice.

New section 9 contains a standard regulation-making power.

Concluding Comments

Whilst this legislation was flagged under 2003-04 budget measures, it is notable it has been introduced only three sitting days before the relevant grant scheme is due to come into effect. The Bill is to have retrospective effect if it is not passed by 18 September 2003.

Endnotes

- 1 The Bill will have retrospective operation if passed after 18 September.
- 2 Biodiesel is manufactured from vegetable oils and animal fats.
- 3 However, as noted later in this Digest, as of 15 September neither an Excise Tariff or Custom Tariff proposal had yet been released by the Treasurer. Thus the imposition of duty from 18 September is still only policy, not a legal fact.
- 4 Note that the Diesel and Alternative Fuels Grants Scheme and the Diesel Fuel Rebate Scheme have been replaced with the Energy Grants (Credits) Scheme. The Energy Grants (Credits) Scheme Bill 2003 was introduced in February 2003 and passed the Senate in late June. It commenced on 1 July 2003.
- 5 See <http://fueltaxinquiry.treasury.gov.au/content/welcome.asp>
- 6 Fuel Taxation Overview Report, Summary of Recommendations, p. 29. See <http://fueltaxinquiry.treasury.gov.au/content/report/downloads/Overview.pdf>
- 7 Hon. Peter Costello, Treasurer, 'Report of the Fuel taxation Inquiry', Press Release No. 27, 14 May 2002. See <http://www.treasurer.gov.au/tsr/content/pressreleases/2002/027>.
- 8 Hon. Peter Costello, Treasurer, 'Fuel Tax Reform for the Future', Press Release No. 31, 13 May 2003. See <http://www.treasurer.gov.au/tsr/content/pressreleases/2003/031.asp>
- 9 P. 3.
- 10 Ibid
- 11 P. 5.
- 12 P. 8.

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- 13 The buyer must be a licensed person for the type of fuel being sold.
- 14 The occurrence of fraud or failure to keep proper records may also lead to disqualification.
- 15 Self-assessment of grant or other entitlements is standard for the various schemes administered under the *Product Grants and Benefits Administration Act 2000*.
- 16 P. 10.

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