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No. 34 2003–04

Energy Grants (Cleaner Fuels) Scheme (Consequential Amendments) Bill 2003

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Amendments) Bill 2003

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

Date Introduced: 11 September 2003

House: House of Representatives

Portfolio: Treasury

Commencement: Sections 1-3 of the Bill, items 4-14 of Schedule 1 and items 4-10 of Schedule commence on Royal Assent. The remainder of the Bill commences at the same time as the Energy Grants (Cleaner Fuels) Scheme Bill 2003. That Bill is expressed to commence on 18 September 2003.

Purpose

To amend various Acts to facilitate the administration of cleaner fuels grants.

Background

The policy background to the Energy Grants (Cleaner Fuels) Scheme (Consequential Amendments) Bill 2003 (the Bill) is discussed in the Digest for the Energy Grants (Cleaner Fuels) Scheme Bill 2003. As currently drafted, if the Bills are not passed by 18 September 2003, they will have retrospective operation.

The *Explanatory Memorandum* comments that the Bill makes:¹

changes to the *Product Grants and Benefits Administration Act 2000* to accommodate the requirement that claimants for a cleaner fuel grant register and claim under the existing provisions of that Act. Some additional amendments to the *Product Grants and Benefits Administration Act 2000* and the amendments to the *Excise Act 1901* and the *Fuel Quality Standards Act 2000* make provision for information gathering and information sharing. These measures will ensure the protection of the revenue and appropriate compliance with the scheme.

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Main Provisions

Schedule 1 – Amendment to the Product Grants and Benefits Administration Act 2000

Item 3 amends existing section 9 of the Act. Existing section 9 contains various requirements if a person wishes to register for entitlement to the various sorts of grants or benefits administered under the Act. **Item 3** adds specific requirements for cleaner fuel grants. Essentially these requirements mirror the definition of ‘a licensed person’ in **item 4** of the Energy Grants (Cleaner Fuels) Scheme Bill 2003 but with the addition that a person who is importing, or proposes to import, a cleaner fuel, meets the item 3 requirement.

Existing section 16A of the Act contains an obligation on the part of recipients of certain grants to notify the Tax Commissioner if they were paid a drawback, refund, rebate or remission of customs or excise duty on relevant fuel. As mentioned in the Digest on the Energy Grants (Cleaner Fuels) Scheme Bill 2003, **item 8** of that Bill provides that the amount of a cleaner fuel grant must be reduced to take into account any reduction in such duty. A refusal or failure to notify the Commissioner is an offence under existing section 8C of the *Taxation Administration Act 1953*. **Items 4-9** make consequential amendments to existing section 16A to incorporate the notification obligation into the cleaner fuel grants scheme.

Existing section 27A of the Act contains an obligation on the part of claimants of certain grants to notify the Tax Commissioner about certain matters that disqualify them from receiving or retaining a grant. Such notification must usually take place within 90 days of the relevant circumstance being known to claimant. **Item 10** inserts new section 27B which places a similar obligation in relation to a disqualifying circumstance for a cleaner fuel grant (see **item 7** of the Energy Grants (Cleaner Fuels) Scheme Bill 2003 for disqualifying circumstances).

Under existing section 45 of the Act, a person who has made a claim for entitlement to a grant may be required by the Tax Commissioner to demonstrate how they have used their record keeping or accounting system to calculate their claim. **Item 11** makes some minor amendments to the language of existing subsection 45(2). However, it also gives the Tax Commissioner the power to require the claimant demonstrate to the method and operation of any manufacturing process that relates to a claim. **Item 12** provides that the Tax Commissioner may also test any manufacturing process such ‘as is reasonably necessary to determine the accuracy of the goods’ description in the claim’: **new subsection 45A(6)**. The *Explanatory Memorandum* does give any reason as to why these additional powers are thought necessary.

Existing section 47 of the Act deals with how the confidentiality of certain information is protected by restricting the circumstances in which it can be disclosed. Protected information includes personal information and information received by public servants and the like in the course of their duties. In general, protected information can be disclosed

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to the Secretary of the relevant Department that has policy responsibilities related to grant schemes. **Items 13 and 14** will allow the Secretary of the Department administering the *Fuel Quality Standards Act 2000* to receive information relevant to cleaner fuel grants.

Schedule 2 – Amendment of other Acts

Excise Act 1901

Under existing section 15 of the Act, applicants for an excise licence regarding goods that had previously been excise-free have a two month ‘grace period’ to comply with *Excise Act 1901* requirements. The period starts from the day an excise change is proposed in the Parliament. **Items 1-3** appear to provide for a possible effective extension of this grace period if the applicant has applied for a licence within the period – it may be extended to a total of 12 months in cases where the Collector² has not decided whether or not to grant the licence by the end of the grace period. The *Explanatory Memorandum* does give any background of why this flexibility has been proposed, nor whether it is connected with the introduction of cleaner fuels grants.

Existing subsection 39D(4) of the Act allows the Collector to, upon application by a licence holder, vary the conditions specified in the licence. **Item 4** amends existing subsection 39D(4) and appears to clarify that the Collector’s power in this regard includes the ability to revoke certain conditions and impose additional conditions.

Item 5 inserts **new section 39DA** to allow the Collector to amend licences on his or her own initiative rather than on application by the holder. The amendment of a licence may include varying or revoking a condition of the licence or imposing an additional condition for the licence. The Collector must be satisfied that the amendment is ‘necessary or desirable for the protection of the revenue or for the purpose of ensuring compliance with the Excise Acts’. A written notice must be given to the licence holder of the amendment. The amendment cannot take effect before 7 days after the notice is served. There does not appear to be any avenue for a licence holder to contest the amendment. The *Explanatory Memorandum* does not give details on how **item 5** is likely to operate or what revenue it might be aimed at protecting.

Existing section 159 of the Act deals with how confidentiality of certain information is protected by restricting the circumstances in which it can be disclosed. **Items 6 and 7**, which insert **new paragraphs 159(3)(c)(ii) and 159(3)(d)(ii)** respectively, will allow disclosure by the Tax Commissioner, Deputy Tax Commissioner or their delegate to a licence holder of relevant licence information for the purpose of determining their eligibility for a clean fuels grant. **Items 8 and 9** are consequential amendments defining the terms licence holder and licence information.

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Fuel Quality Standards Act 2000

Item 10 allows the Secretary [of the Department of the Environment and Heritage]³ to disclose information collected under the *Fuel Quality Standards Act 2000* to the Tax Commissioner for use in relation to cleaner fuel scheme grants.

Endnotes

- 1 P. 11.
- 2 The Collector is either the Tax Commissioner (or their delegate) or someone else who has been authorised to perform a certain function under the *Excise Act 1901*.
- 3 This Department administers the *Fuel Quality Standards Act 2000*.

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