



Energy Grants (Cleaner Fuels) Scheme Act 2004

Act No. 41 of 2004 as amended

This compilation was prepared on 21 December 2010
taking into account amendments up to Act No. 145 of 2010

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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An Act to provide grants relating to certain fuels, and for related purposes

Part 1—Preliminary

1 Short title [*see* Note 1]

This Act may be cited as the *Energy Grants (Cleaner Fuels) Scheme Act 2004*.

2 Commencement

This Act commences, or is taken to have commenced, on 18 September 2003.

2A Object

The object of this Act is to establish a scheme for the provision of grants such as the following:

- (a) grants to fully offset any excise duty or customs duty payable in relation to the manufacture or importation of biodiesel for which a provisional entitlement arises during the period starting on 18 September 2003 and ending on 30 June 2011;
- (aa) grants to fully offset any excise duty or customs duty payable in relation to the manufacture or importation of renewable diesel for which a provisional entitlement arises during the period starting on 1 July 2006 and ending on 30 June 2011;
- (b) grants to partially offset any excise duty or customs duty payable in relation to the manufacture or importation of biodiesel, CNG, ethanol, LNG, LPG, methanol or renewable diesel for which a provisional entitlement arises during a transition period starting on 1 July 2011 and ending on 30 June 2015;
- (c) grants to encourage the manufacture and importation of low sulphur fuels.

3 Commissioner of Taxation has general administration of this Act

The Commissioner of Taxation has the general administration of this Act.

Note: An effect of this provision is that the *Taxation Administration Act 1953* applies to this Act as a taxation law. This means, for example, that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

4 Definitions

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

Australia does not include the external Territories.

biodiesel means fuel that:

- (a) is manufactured by chemically altering vegetable oils or animal fats (including recycled oils from these sources) to form mono-alkyl esters; and
- (b) complies with the applicable fuel standard for such fuel.

carrying on an enterprise includes doing anything in the course of the commencement or termination of the enterprise.

cleaner fuel means:

- (a) biodiesel, CNG, ethanol, LNG, LPG, methanol or renewable diesel; or
- (b) a fuel (including a fuel blend) prescribed by the regulations that complies with each applicable fuel standard for such fuel.

CNG means compressed natural gas:

- (a) for use as fuel in an internal combustion engine; and
- (b) complying with the applicable fuel standard for such fuel.

consume or finally sell the fuel is defined in subsection 5(4).

end day means:

- (a) for biodiesel, CNG, ethanol, LNG, LPG, methanol or renewable diesel—30 June 2015; or
- (b) for each other cleaner fuel—the day prescribed by the regulations as the end day for that cleaner fuel.

enterprise is defined in section 38 of the *A New Tax System (Australian Business Number) Act 1999*.

enter the fuel, for a quantity of fuel, means:

- (a) to enter the fuel into home consumption within the meaning of Division 4 of Part IV of the *Customs Act 1901*; or
- (b) to deliver the fuel into home consumption in accordance with a permission under section 69 of the *Customs Act 1901*; or
- (c) to enter the fuel for home consumption within the meaning of Part VI of the *Excise Act 1901*; or
- (d) to deliver the fuel for home consumption in accordance with a permission under section 61C of the *Excise Act 1901*.

ethanol means denatured ethanol:

- (a) for use as fuel in an internal combustion engine; and
- (b) complying with the applicable fuel standard for such fuel.

excise duty rate, for a cleaner fuel, means the excise duty rate:

- (a) applicable to the cleaner fuel; and
- (b) set out in the Schedule to the *Excise Tariff Act 1921*.

fuel standard means a fuel standard made under the *Fuel Quality Standards Act 2000*.

licensed person, for a fuel, means:

- (a) a person who is:
 - (i) a licensed manufacturer (as defined in the *Excise Act 1901*); or
 - (ii) a holder of a storage licence (as defined in the *Excise Act 1901*); or
 - (iii) a person specified in a permission given under section 61C of the *Excise Act 1901*; or
 - (iv) a person to whom a permission has been granted under section 69 of the *Customs Act 1901*;
for goods of a kind including the fuel; or
- (b) a manufacturer of goods of a kind including the fuel if:
 - (i) the manufacturer is not a licensed manufacturer (as defined in the *Excise Act 1901*) for the fuel; and
 - (ii) the transition period (under section 15 of the *Excise Act 1901*) for the fuel is yet to end for the manufacturer.

LNG means liquefied natural gas:

- (a) for use as fuel in an internal combustion engine; and
- (b) complying with the applicable fuel standard for such fuel.

Section 4A

LPG means liquefied petroleum gas:

- (a) for use as fuel in an internal combustion engine; and
- (b) complying with the applicable fuel standard for such fuel.

manufacture includes fuel blending as described in section 77G of the *Excise Act 1901*.

methanol means methanol:

- (a) for use as fuel in an internal combustion engine; and
- (b) complying with the applicable fuel standard for such fuel.

offset rate is defined in subsection 8(1).

qualifying time, for a person in relation to a quantity of fuel, is defined in subsection 5(1).

renewable diesel has the meaning given by section 4A.

start day means:

- (a) for biodiesel—the day this Act commences, or is taken to have commenced; or
 - (aaa) for renewable diesel—1 July 2006; or
 - (aa) for CNG, ethanol, LNG, LPG or methanol—1 July 2011; or
 - (b) for each other cleaner fuel—the day prescribed by the regulations as the start day for that cleaner fuel.
- (2) An expression used in this Act that is also used in the *Product Grants and Benefits Administration Act 2000* has the same meaning as in that Act, unless the contrary intention appears.

4A Definition of **renewable diesel**

- (1) For the purposes of this Act, **renewable diesel** means liquid fuel that:
- (a) is manufactured by chemically altering vegetable oils or animal fats (including recycled oils from these sources) through a process of hydrogenation (whether or not that process was part of some other process); and
 - (b) complies with the applicable fuel standard for diesel.
- (2) If:
- (a) a quantity of liquid fuel (the **final fuel**) is manufactured; and

- (b) a part of the final fuel was manufactured by chemically altering vegetable oils or animal fats (including recycled oils from these sources) through a process of hydrogenation; and
 - (c) a part of the final fuel is diesel; and
 - (d) the final fuel satisfies the applicable fuel standard for diesel;
- then the amount of the final fuel worked out in accordance with the regulations is taken to be *renewable diesel* for the purposes of this Act.

Part 2—Entitlement to cleaner fuel grants

5 Becoming provisionally entitled to a cleaner fuel grant

- (1) You are provisionally entitled to a cleaner fuel grant for a quantity of fuel if:
- (a) the fuel is:
 - (i) imported into Australia; or
 - (ii) manufactured in Australia;on or after the fuel's start day; and
 - (b) one of the following subparagraphs applies to you:
 - (i) you imported the fuel into Australia;
 - (ii) you manufactured the fuel in Australia;
 - (iii) you bought the fuel from such an importer or manufacturer;
 - (iv) you bought the fuel from a licensed person for the fuel;
 - (v) you arranged for the fuel to be manufactured in Australia on your behalf; and
 - (c) at a particular time (the *qualifying time*):
 - (i) you enter the fuel; or
 - (ii) if someone else has already entered the fuel, you consume or finally sell the fuel; and
 - (d) the qualifying time happens before the end of the fuel's end day; and
 - (e) if you did not import the fuel into Australia, you are a licensed person for the fuel at the qualifying time; and
 - (f) the fuel is a cleaner fuel at the qualifying time; and
 - (g) at or before the qualifying time you did not:
 - (i) sell the fuel to a licensed person for the fuel; or
 - (ii) include the fuel in a fuel blend; and
 - (h) no other provisional entitlement for the fuel arose before the qualifying time; and
- Note: Previous provisional entitlements disqualified under section 7 are taken never to have existed.
- (i) each requirement (if any) prescribed by the regulations is satisfied.

- (2) However, you are not provisionally entitled to a cleaner fuel grant for the quantity of fuel if:
- (a) at the qualifying time, the fuel contained one or more other cleaner fuels; and
 - (b) for each of those other cleaner fuels, a provisional entitlement arose before the qualifying time.

Note: Previous provisional entitlements disqualified under section 7 are taken never to have existed.

- (3) Your provisional entitlement arises at the qualifying time.
- (4) For the purposes of this section, you **consume or finally sell the fuel** if:
- (a) you form an intention that the fuel is to be consumed in carrying on your enterprise, other than:
 - (i) by inclusion in a fuel blend; or
 - (ii) by being sold, or otherwise provided, to another person; or
 - (b) you sell the fuel to a person who is not a licensed person for the fuel at the time of the sale.

6 Becoming entitled to a cleaner fuel grant

- (1) You are entitled to a cleaner fuel grant for a quantity of fuel if:
- (a) you are provisionally entitled to the grant for the fuel; and
 - (b) you make a claim for payment of the grant for the fuel; and
 - (c) at the time you make the claim, you are registered under section 9 of the *Product Grants and Benefits Administration Act 2000* for entitlement to such a grant.

Note: Subsection 15(1) of the *Product Grants and Benefits Administration Act 2000* has an additional requirement for entitlement. That subsection has the effect of requiring your claim to be made for a period that includes the qualifying time.

- (2) Your entitlement is taken to have arisen at the qualifying time.
- (3) For the purposes of paragraph (1)(c), if you make a claim:
- (a) after, or at the same time as, you apply for registration; but
 - (b) before you are registered;
- the claim is taken to have been made immediately after you are registered.

Section 7

7 Disqualifying circumstances

- (1) You are not provisionally entitled, and are taken never to have been provisionally entitled, to a cleaner fuel grant in respect of a quantity of cleaner fuel if, after the qualifying time:
- (a) you sell the fuel to a licensed person for the fuel; or
 - (b) you include the fuel in a fuel blend; or

Note: This paragraph does not prevent a provisional entitlement later arising for the fuel blend if it is also a cleaner fuel.

- (c) the Commissioner makes a determination under subsection 34(1) of the *Product Grants and Benefits Administration Act 2000* in relation to a scheme involving you and the fuel; or
- (d) regulations made for the purposes of this paragraph apply to you.

Note: Entitlements can also be disqualified under Parts 5 and 6 of the *Product Grants and Benefits Administration Act 2000*.

- (2) This section has effect despite any other provision of this Part.

8 Grant amounts

- (1) If you are entitled to a cleaner fuel grant for a quantity of biodiesel, CNG, ethanol, LNG, LPG, methanol or renewable diesel, the amount of your grant is worked out in accordance with the regulations by reference to the rate (the *offset rate*) set out in the following table.

The offset rate for certain cleaner fuels			
Item	If the fuel is:	And the fuel's qualifying time happens during this period:	The fuel's offset rate is:
1	Biodiesel	The period: (a) starting at the start of biodiesel's start day; and (b) ending at the end of 30 June 2011.	100% of biodiesel's excise duty rate.

The offset rate for certain cleaner fuels			
Item	If the fuel is:	And the fuel's qualifying time happens during this period:	The fuel's offset rate is:
1A	Renewable diesel	The period: (a) starting at the start of renewable diesel's start day; and (b) ending at the end of 30 June 2011.	100% of biodiesel's excise duty rate.
2	Biodiesel, CNG, ethanol, LNG, LPG, methanol or renewable diesel	The period: (a) starting at the start of 1 July 2011; and (b) ending at the end of 30 June 2012.	80% of the fuel's excise duty rate.
3	Biodiesel, CNG, ethanol, LNG, LPG, methanol or renewable diesel	The period: (a) starting at the start of 1 July 2012; and (b) ending at the end of 30 June 2013.	60% of the fuel's excise duty rate.
4	Biodiesel, CNG, ethanol, LNG, LPG, methanol or renewable diesel	The period: (a) starting at the start of 1 July 2013; and (b) ending at the end of 30 June 2014.	40% of the fuel's excise duty rate.
5	Biodiesel, CNG, ethanol, LNG, LPG, methanol or renewable diesel	The period: (a) starting at the start of 1 July 2014; and (b) ending at the end of 30 June 2015.	20% of the fuel's excise duty rate.

(1A) If you are entitled to a cleaner fuel grant for a quantity of fuel not covered by subsection (1), the amount of your grant is worked out in accordance with the regulations.

Section 8

- (2) If any drawback, refund, rebate or remission of customs duty, or excise duty, on the cleaner fuel to which your entitlement relates:
 - (a) was paid or given before the qualifying time; or
 - (b) is paid or given at or after the qualifying time;the amount of your cleaner fuel grant is reduced by the amount of the drawback, refund, rebate or remission.
- (3) Subsections (1) and (1A) have effect subject to subsection (2).

Part 3—Miscellaneous

9 Regulations

The Governor-General may make regulations prescribing 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.

Table of Acts**Notes to the *Energy Grants (Cleaner Fuels) Scheme Act 2004*****Note 1**

The *Energy Grants (Cleaner Fuels) Scheme Act 2004* as shown in this compilation comprises Act No. 41, 2004 amended as indicated in the Tables below.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Energy Grants (Cleaner Fuels) Scheme Act 2004</i>	41, 2004	21 Apr 2004	18 Sept 2003	
<i>Excise Laws Amendment (Fuel Tax Reform and Other Measures) Act 2006</i>	74, 2006	26 June 2006	Schedule 1 (items 4–15): 1 July 2006	—
<i>Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010</i>	145, 2010	16 Dec 2010	Schedule 2 (item 14): 17 Dec 2010	—

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
S. 2A.....	am. No. 74, 2006
Note to s. 3	am. No. 145, 2010
S. 4	am. No. 74, 2006
S. 4A.....	ad. No. 74, 2006
Part 2	
S. 8	am. No. 74, 2006