

NORFOLK



ISLAND

# **FUEL LEVY ACT 1987**

**Act No. 11 of 1987**

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## **Fuel Levy Act 1987**

**Act No. 11 of 1987**

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An Act to impose a levy on certain fuels, and for related purposes

**[Assented to 30 June 1987]**

**BE IT ENACTED** by the Legislative Assembly of Norfolk Island as follows —

### **Short title**

1. This Act may be cited as the *Fuel Levy Act 1987*.

### **Commencement**

2. This Act shall come into operation on a date fixed by the Administrator by notice published in the Gazette.

### **Application**

3. (1) This Act does not apply to the Commonwealth or Administration.
- (2) This Act applies to every Territory authority.

### **Interpretation**

4. (1) In this Act, unless the contrary intention appears —
  - “approved storage facility” means a storage facility in respect of which a certificate of approval issued under section 6 is in force;
  - “books” means a register or record of information and accounts or accounting records however compiled, recorded or stored and includes any other document or writing necessary for compliance with this Act;
  - “conviction” includes a finding that an offence has been committed;
  - “exempt person” means a person in respect of whom an exemption certificate issued under section 7 is in force;



“fuel levy” means the levy imposed by section 8;

“liquid petroleum product” means a substance that is a petroleum product and is in a liquid state at standard temperature and pressure;

“month” means one of the 12 months of a year;

“petroleum” means —

- (a) any naturally occurring hydrocarbon or mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
- (b) any naturally occurring mixture of a hydrocarbon or hydrocarbons and of another substance or other substances, whether in a gaseous, liquid or solid state;

“petroleum product” means —

- (a) any hydrocarbon or mixture of hydrocarbons produced by subjecting petroleum to a process of refining or produced from petroliferous minerals; or
- (b) any mixture of a hydrocarbon or mixture of hydrocarbons so produced with another substance or other substances;

“registered fuel importer” means a person in respect of whom a certificate of registration as a registered fuel importer issued under section 5 is in force;

“return” means a return referred to in section 9 of fuel drawn from an approved storage facility during a month.

(2) In this Act, a reference to fuel is a reference to a liquid petroleum product that is —

- (a) motor spirit;
- (b) automotive distillate; or
- (c) industrial diesel fuel.

(3) In this Act, a reference to fuel does not include a reference to —

- (a) aviation gasoline;
- (b) aviation turbine fuel;
- (c) lighting kerosene;

- (d) power kerosene;
- (e) liquid petroleum gas;
- (f) bitumen;
- (g) naphtha;
- (h) lubricating oil or grease;
- (i) methanol; or
- (j) ethanol.

(4) For the purposes of this Act, a substance is imported into Norfolk Island —

- (a) in the case of a substance carried to Norfolk Island on a ship - at the time the substance is unloaded from the ship for conveyance to the shore; and
- (b) in the case of a substance carried to Norfolk Island on an aircraft - at the time the substance is unloaded from the aircraft.

(5) In this Act, a reference to a petrol pump is a reference to a mechanical, electrical or electronic device for delivering amounts of fuel ascertainable from an inspection of the device directly to a —

- (a) vehicle in respect of which; or
- (b) place at which,

the fuel so delivered is to be consumed.

(6) Where this Act allows or requires a registered fuel importer to perform a function, or prohibits a registered fuel importer from performing or failing to perform a function, in relation to an approved storage facility, the function is allowed, required or prohibited to be performed, as the case may be, by the registered fuel importer to whom the certificate of approval of the storage facility was issued.

### **Registration of fuel importers**

5. (1) A person may apply to the executive member, in a form provided by the executive member, for registration as a fuel importer.

(2) Subject to subsection (3), where the executive member is satisfied that an applicant for registration as a fuel importer imports or proposes to import fuel for the purpose of —

- (a) selling the fuel; or
- (b) providing the fuel as part of a service for which money or

money's worth is, or is to be, paid or given to the applicant, the executive member shall issue to the applicant a certificate of registration as a registered fuel importer.

(3) Where an applicant for registration as a fuel importer has been convicted of an offence against —

- (a) this Act; or
- (b) the *Customs Act 1913* relating to fuel,

the executive member may refuse to issue to the applicant a certificate of registration as a registered fuel importer.

(4) Where a person who is a registered fuel importer is convicted of an offence against —

- (a) this Act; or
- (b) the *Customs Act 1913* relating to fuel,

the executive member may cancel the certificate of registration issued to the person.

(5) A person who is a registered fuel importer may apply in writing to the executive member for cancellation of the certificate of registration issued to the person, and the executive member shall, in accordance with the application, cancel the certificate of registration.

(6) A certificate of registration as a registered fuel importer remains in force until cancelled in accordance with this section.

#### **Approved storage facilities**

6. (1) A person —

- (a) who is a registered fuel importer; or
- (b) who has applied for registration as a fuel importer,

may apply to the executive member, in a form provided by the executive member, for approval of a storage facility specified in the application.

(2) Where the executive member is satisfied that —

- (a) the storage facility is, or is to be, used for the purpose of storing fuel immediately after the importation of the fuel;
- (b) the storage facility is, or is to be, under the control of the applicant; and
- (c) a person other than the applicant does not, or will not, have access to the storage facility for the purpose of drawing fuel from the facility,

the executive member shall issue to the applicant a certificate of approval of the storage facility.

(3) A certificate of approval of a storage facility may be issued subject to conditions determined by the executive member relating to —

- (a) the purposes for which the facility may be used; and
- (b) access to the facility by persons other than the person to whom the certificate has been issued.

(4) Where the executive member is satisfied on reasonable grounds that a storage facility in respect of which a certificate of approval has been issued —

- (a) is not used for the purpose of storing fuel immediately after the importation of the fuel;
- (b) is not under the control of the person to whom the certificate of approval was issued;
- (c) is accessible for the purpose of drawing fuel from the facility to persons other than the person to whom the certificate of approval was issued; or
- (d) is not being conducted in accordance with conditions determined by the executive member under subsection (3),

the executive member may, after giving to the person to whom the certificate of approval was issued a reasonable opportunity of making representations, cancel the certificate of approval of the storage facility.

(5) Where the certificate of registration as a registered fuel importer of a person is cancelled in accordance with section 5, a certificate of approval of a storage facility issued to the person is deemed to have been cancelled.

(6) A person to whom a certificate of approval of a storage facility has been issued may apply in writing to the executive member for cancellation of the certificate of approval, and the executive member shall, in accordance with the application, cancel the certificate of approval.

(7) A certificate of approval of a storage facility issued to a person who has applied for registration as a fuel importer is of no effect until a certificate of registration as a registered fuel importer is issued to the person.

(8) A certificate of approval of a storage facility remains in force until the certificate is cancelled, or deemed to have been cancelled, in

accordance with this section.

### **Exemption certificates**

**7. (1)** A person may apply to the executive member, in a form provided by the executive member, for the issue of an exemption certificate to the person.

**(2)** Where the executive member is satisfied that —

- (a) the applicant uses fuel that is —
  - (i) automotive distillate; or
  - (ii) industrial diesel fuel,

for the purpose of heating water or cooking;

- (b) a fuel referred to in paragraph (a) is delivered directly by a registered fuel importer to a tank or other container under the control of the applicant that —
  - (i) is not intended or designed to be moved from place to place;
  - (ii) is physically connected to a device used for the purpose of heating water or cooking by means of consumption of the fuel; and
  - (iii) is not physically connected to a device used for another purpose; and
- (c) a fuel so delivered will not be —
  - (i) used by the applicant for a purpose other than heating water or cooking; or
  - (ii) provided by the applicant to another person,

the executive member may issue an exemption certificate to the applicant.

**(3)** Where the executive member issues an exemption certificate to a person, the executive member shall, as soon as practicable after the certificate has been issued, deliver a copy of the certificate to each registered fuel importer.

**(4)** An exemption certificate has effect from the time of delivery of the certificate to each registered fuel importer in accordance with subsection (3).

**(5)** An exemption certificate remains in force from the time referred to in subsection (4) until the certificate is cancelled, or deemed to have been cancelled, in accordance with this section and each registered fuel importer has been informed by the executive member in writing of the



cancellation, or deemed cancellation, of the certificate.

(6) Where in the opinion of the executive member an exempt person —

- (a) does not use a fuel referred to in paragraph (2)(a) for the purpose of heating water or cooking;
- (b) does not have a fuel referred to in paragraph (2)(a) delivered by a registered fuel importer directly to a tank or other container referred to in paragraph (2)(b);
- (c) has used a fuel so delivered for a purpose other than heating water or cooking; or
- (d) has provided a fuel so delivered to another person,

the executive member may cancel the exemption certificate issued to the person.

(7) An exempt person shall not —

- (a) use a fuel referred to in paragraph (2)(a), and delivered directly to the person by a registered fuel importer, for a purpose other than heating water or cooking; or
- (b) provide a fuel referred to in paragraph (2)(a), and delivered directly to the person by a registered fuel importer, to another person.

Penalty: 50 penalty units.

(8) Where an exempt person is convicted of an offence against subsection (7), the exemption certificate issued to the person is deemed to have been cancelled.

### **Imposition of fuel levy**

8. (1) Subject to subsection (2), fuel levy at the rate of 10 cents is imposed on each litre of fuel drawn from an approved storage facility by a registered fuel importer.

(2) Fuel levy is not imposed in respect of —

- (a) fuel drawn from an approved storage facility by a registered fuel importer for delivery directly to the Commonwealth or Administration; or
- (b) fuel that is —
  - (i) automotive distillate; or
  - (ii) industrial diesel fuel,

drawn from an approved storage facility by a registered fuel importer for delivery directly to an exempt person.

**Collection of fuel levy**

**9.** (1) Fuel levy is payable to the Administration by the registered fuel importer by whom fuel is drawn from an approved storage facility.

(2) A registered fuel importer shall complete a return of fuel drawn from each approved storage facility by the importer during a month.

(3) The return referred to in subsection (2) shall —

- (a) be in a form provided by the executive member;
- (b) specify the number of litres of —
  - (i) motor spirit;
  - (ii) automotive distillate; and
  - (iii) industrial diesel fuel,drawn from each approved storage facility;
- (c) specify the number of litres of —
  - (i) motor spirit;
  - (ii) automotive distillate; and
  - (iii) industrial diesel fuel,drawn from each approved storage facility for delivery to each of —
  - (iv) the Commonwealth; and
  - (v) the Administration;
- (d) specify the number of litres of —
  - (i) automotive distillate; and
  - (ii) industrial diesel fuel,drawn from each approved storage facility for delivery to each exempt person;
- (e) be delivered to the executive member on or before the fifteenth day after the end of the month following the month to which the return relates; and
- (f) be accompanied by payment of fuel levy payable in respect of fuel drawn from each approved storage facility during

the month to which the return relates.

(4) Where a registered fuel importer makes an overpayment of fuel levy, the importer may apply in writing to the executive member for a refund of the amount overpaid and the executive member shall, if he is satisfied the overpayment was made, refund the amount overpaid.

(5) Fuel levy that has not been paid in accordance with this section may be sued for by the Administration in a Court of competent jurisdiction.

#### **Passing on of fuel levy**

10. (1) Subject to subsection (2), a person other than the Commonwealth or Administration is, notwithstanding a contract or agreement made before the commencement of this Act, authorised by this subsection to increase the price for which fuel is sold by the person to another person by 10 cents for each litre of fuel.

(2) Subsection (1) does not apply to fuel in respect of which fuel levy is not payable by a registered fuel importer.

#### **Information for consumers**

11. A person who —

- (a) sells fuel; or
- (b) provides fuel as part of a service for which money or money's worth is, or is to be, paid or given to the person,

by means of a petrol pump shall display on the petrol pump information in a form determined by the executive member relating to —

- (c) the cost of the fuel exclusive of fuel levy; and
- (d) the amount of fuel levy imposed in respect of the fuel.

Penalty: 10 penalty units.

#### **Unauthorised drawing of fuel**

12. A person other than a registered fuel importer shall not draw fuel from an approved storage facility.

Penalty: 50 penalty units.

#### **Storage of imported fuel**

13. Where fuel is imported by a registered fuel importer, the importer shall, immediately after importation of the fuel, deliver or cause to be delivered the whole of the fuel to an approved storage facility.

Penalty: 50 penalty units.

**Offences relating to returns**

**14. (1)** A person shall not deliver to the executive member, with intent to affect the amount of fuel levy payable under this Act, a return that is false or misleading in a material particular.

**(2)** A registered fuel importer shall deliver to the executive member a return in respect of a month within the period referred to in paragraph 9(3)(e), together with fuel levy payable in respect of the month.

Penalty: 50 penalty units.

**Keeping of books**

**15. (1)** A registered fuel importer shall keep sufficient books to enable the importer to calculate accurately the particulars required to be included in a return under section 9.

**(2)** The books referred to in subsection (1) shall be maintained and kept up to date for a period of not less than 3 years after the time to which the particulars recorded in the books relate, or such lesser period as the executive member in a particular case determines.

Penalty: 20 penalty units.

**Warrant to enter, etc**

**16. (1)** Where a magistrate is satisfied on information on oath or affirmation laid before the magistrate that it is necessary for the enforcement of this Act, the magistrate may issue a warrant authorising a member of the Police Force together with such other persons as the magistrate considers necessary to properly examine the books of a registered fuel importer to —

- (a) enter premises occupied by the registered fuel importer in the course of the importer's business; and
- (b) inspect and examine and take extracts from, or make copies of, the books, for the purpose of determining whether this Act is being complied with or of generally enforcing this Act.

**(2)** Where a magistrate is satisfied on information on oath or affirmation laid before the magistrate that there are reasonable grounds for believing that —

- (a) an offence of failing to pay fuel levy in accordance with this Act has been, or is being, committed; and

- (b) there are on premises specified in the information books which are relevant to the imposition of, or failure to pay, fuel levy,

the magistrate may issue a warrant authorising a member of the Police Force together with such other persons as the magistrate considers necessary to —

- (c) enter those premises using such force as is reasonably necessary for the purpose; and
- (d) take possession of and secure against interference books that appear to be books requiring examination.

(3) A person shall not —

- (a) refuse to permit an entry, inspection or seizure under this section to be made; or
- (b) assault or obstruct a person acting in the execution or under the authority of a warrant under subsection (1) or (2) or assisting or aiding in that execution.

Penalty for an offence

against this subsection: 5 penalty units.

#### **Right of entry to approved storage facility**

17. (1) Subject to this section, a person authorised by the executive member by instrument in writing signed by the executive member may enter an approved storage facility.

(2) A person authorised under subsection (1) shall not enter an approved storage facility unless the person has first informed the registered fuel importer by whom the facility is conducted of the person's intention to enter the facility.

(3) A person authorised under subsection (1) shall produce on request a copy of the instrument referred to in that subsection.

(4) A person who enters an approved storage facility in accordance with this section may take reasonable steps to ascertain —

- (a) the amount of fuel stored at the facility; and
- (b) whether section 6, or a condition imposed under that section, is being complied with in relation to the facility.

(5) A person shall not —

- (a) refuse to permit an entry to be made under this section; or

- (b) assault or obstruct a person performing a function under this section.

Penalty for an offence

against this subsection:

5 penalty units.

### **Time for prosecution**

**18.** Notwithstanding any other enactment, a prosecution for an offence against this Act may be commenced at any time within 3 years of the commission of the offence.

### **Evidence**

**19. (1)** In civil or criminal proceedings under this Act, a certificate signed by the executive member certifying that a person —

- (a) was required to deliver a return under section 9;
- (b) did not deliver a return under that section;
- (c) is, or is not, a registered fuel importer and the date, if any, on which a certificate of registration was issued to the person or was cancelled;
- (d) paid, in respect of a specified month, a specified amount of money as fuel levy;
- (e) imported into Norfolk Island during a specified period a specified quantity of fuel; or
- (f) is, or is not, a person to whom a certificate of approval of a storage facility has been issued under section 6,

is evidence in those proceedings of the matters stated in the certificate.

**(2)** A copy of a certificate of approval of a storage facility issued under section 6 is evidence of the matters stated in the certificate for the purposes of civil or criminal proceedings under this Act.

### **Conduct by directors, servants or agents**

**20. (1)** Where it is necessary for the purposes of this Act to establish the state of mind of a body corporate in respect of conduct engaged in, or deemed by subsection (2) to have been engaged in, by the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

**(2)** Conduct engaged in on behalf of a body corporate —

- (a) by a director, servant or agent of the body corporate within

- the scope of his or her actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent,

shall be deemed, for the purposes of this Act, to have been engaged in by the body corporate.

#### **Penalties not to relieve payment of levy**

**21.** The payment of a penalty for an offence against this Act does not affect a requirement to pay fuel levy in accordance with this Act.

#### **Application of revenue**

**22.** The revenues raised by this Act shall be applied by the Administration only for the general purpose of matters specified in Schedule 2 to the *Norfolk Island Act 1979* of the Commonwealth as in force from time to time.

#### **Regulations**

**23.** The Administrator may make Regulations, not inconsistent with this Act, 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.

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