

QUEENSLAND FUEL SUBSIDY SCHEME

PROPOSED CHANGES 2009

Consultation Paper

BACKGROUND

1. The Queensland Government introduced the Queensland Fuel Subsidy Scheme (the scheme) to provide consumers with an 8.354 cents per litre (cpl) saving on eligible fuel purchases (9.189 cpl with GST). Bulk end users (BEUs) have also benefited from an 8.4 cpl subsidy.
2. The subsidy was introduced in 1997 for Constitutional reasons when the Commonwealth Government replaced fuel taxes in other States with a uniform excise. Queensland has never imposed a tax on fuel and, as a result, the Queensland Government offered a subsidy to offset the imposition of the new Commonwealth excise. This ensures that Queensland would not pay more for fuel despite the commonwealth applying a higher excise across Australia from 1997.
3. The scheme is given effect by the *Fuel Subsidy Act 1997* (Qld) (the Act), and administered by the Office of State Revenue (OSR).
4. The scheme started off with the subsidy being paid to wholesalers. Since 2000, OSR pays the subsidy direct to licensed retailers and BEUs for all unsubsidised fuel purchased and sold as subsidised retail fuel or delivered as bulk end user fuel.
5. In August 2007, the Queensland Government established a Commission of Inquiry to consider and report on certain matters associated with the delivery of the scheme. The Commission followed a report by the Commissioner of State Revenue on the findings of a Queensland Treasury Fuel Subsidy Task Force. The Task Force found that, although all retailers investigated had appropriate business systems and processes in place to ensure that the benefit of the subsidy was being passed onto retail consumers, there was evidence of a sustained reduction in the price differential of unleaded petrol between Brisbane and Sydney/Melbourne.
6. The Commission of Inquiry formed the view that, while Queensland motorists benefit from the scheme, the subsidy may not be being fully passed on because the governing provision of the Act is unclear. The Commission also identified that much of the diesel sold in Queensland for commercial purposes is consumed outside of the State, resulting in a large part of the subsidy not reaching its intended target of Queensland motorists.

7. In light of the findings of the Commission of Inquiry, and the Australian Competition and Consumer Commission's (ACCC) Inquiry into the Price of Unleaded Petrol, the Queensland Government has given detailed consideration to ways to improve the delivery of the scheme, and the operation of the Queensland fuel market more generally.
8. In addition, given the issues considered by the Commission of Inquiry, a review has been undertaken of the penalty regime that applies for breaches of the Act and certain changes are being proposed, including the introduction of on-the-spot fines for some offences.
9. This paper outlines proposed changes to the scheme and how they will affect fuel retailers, retail consumers and BEUs.
10. Appendix 1 summarises the proposed changes. Appendix 2 provides a summary of the obligations (existing and proposed) of retailers, consumers and BEUs and the consequences of non-compliance with those obligations.
11. There are no other changes being made to the scheme including no changes to the amount of the subsidy or the types of fuel eligible for the subsidy¹.
12. Written comments on the proposed changes are sought from interested parties by close of business on Tuesday 30 September 2009. Comments should be provided to-

New Fuel Subsidy Scheme
Office of State Revenue
33 Charlotte Street
BRISBANE QLD 4000
Email: newfuelsubsidyscheme@osr.qld.gov.au
Fax: 3227 8769

IMPROVING DELIVERY OF THE QUEENSLAND FUEL SUBSIDY SCHEME – SUMMARY OF CHANGES
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Retail Fuel Sales

13. Under the current arrangements, retailers advertise the subsidised price of fuel. The Commission of Inquiry found that, as a result, retailers have no special regard to passing-on of the subsidy. Rather, retailers regard the subsidy as a reduction in cost and then set their pump price by reference to local competition.

¹ Fuel is defined in the Act to mean motor spirit and diesel of the type ordinarily sold by a retailer or motor spirit or diesel that can be used as a replacement for that fuel and for which there is a Commonwealth fuel standard in force.

14. To improve the delivery of the scheme, the Queensland Government is proposing to amend the Act to require licensed retailers to advertise the price of fuel eligible for the subsidy on price boards. This price is taken to be the unsubsidised price (that is, the price at which a retailer would sell fuel if there was no fuel subsidy). Then, at the point of sale, upon production of a subsidy card by a consumer, the retailer must deduct the subsidy from the unsubsidised price of the consumer's purchase of eligible fuel. This "point of sale" model for delivery of the subsidy is similar to existing shopper docket schemes.
15. Retailers will also be required to issue sales receipts showing the unsubsidised price for the fuel, the deduction of any subsidy amount, and the net price for the fuel payable by the consumer at the point of sale.
16. The Queensland Government believes these amendments will improve the delivery of the scheme by transparently delivering the full 8.354 cpl deduction on each subsidised purchase of fuel.
17. Displaying the unsubsidised price of fuel on price boards will increase fuel price transparency for consumers. This will be particularly beneficial for consumers in rural and remote areas given the issue identified by the Commission that retailers in these areas do not always display fuel prices on price boards. It will also enable sharper price comparisons between Queensland and the southern states.

CHANGES TO THE QUEENSLAND FUEL SUBSIDY SCHEME – RETAIL SALES

Details of Changes for Retail Sales

18. Existing conditions for eligibility for the subsidy under the Act must be satisfied unless otherwise stated in this paper, for example, there is no change to the type of fuel eligible for the subsidy.
19. Consumers will be entitled to deduction of the subsidy at point of sale only upon presentation of a card (the subsidy card) for eligible fuel purchases.
20. A retailer's entitlement to claim the subsidy will be conditional upon satisfaction of the following conditions.
 - a) There must be a sale of fuel eligible for the subsidy.
 - b) The consumer has presented a subsidy card for the eligible fuel sale.
 - c) The retailer electronically captures a unique identifier number in relation to each eligible fuel sale from presentation of the subsidy card by the consumer.
 - d) The retailer has deducted the amount of the subsidy (8.354 cpl) (before any discounts or other deductions are taken into account) from the advertised unsubsidised price at the point of sale.

- e) The retailer has issued a fuel sales receipt showing the following:
- i) name and address of the retail site where the sale occurred;
 - ii) date and time of the sale;
 - iii) type and quantity of fuel sold;
 - iv) advertised unsubsidised price of the fuel at the time of the sale;
 - v) amount of the subsidy for the sale;
 - vi) amount payable by the consumer for the sale; and
 - vii) for a sale of private marine fuel, the registration number of the registered recreational vessel.
- f) The retailer must maintain on the retail site a price board advertising the price of fuel eligible for the fuel subsidy. The Act will not specify how a retailer sets this price as that is a business decision for the retailer. However, the board price will be the unsubsidised price (i.e. the price at which a retailer would sell fuel if there was no fuel subsidy).
- g) The retailer must display on its price boards, fuel bowsers and other relevant places the unsubsidised price of fuel.

Example

On the day before the changes to the scheme commence, a retailer advertises the price of ULP as 150 cpl. For eligible sales of fuel made that day, the retailer receives 150cpl from consumers and also claims the subsidy from OSR.

On the next day (when the changes to the scheme have commenced), the retailer does not change its advertised price of ULP and it remains displayed on its price boards at 150 cpl. This is taken to be the unsubsidised price for the fuel. The retailer must deduct the 8.354 cpl subsidy from this price for all eligible fuel sales and charge consumers only 141.646 cpl for that fuel. The retailer also claims the subsidy of 8.354 cpl from OSR..

- h) Where the price of fuel is advertised in more than one place at a retail site, each advertised price must be the unsubsidised price. If more than one price is published for a type of fuel, the unsubsidised price is taken to be the lowest price published at the time.
- i) Display on price boards whether the Queensland fuel subsidy is available at the site (i.e. whether the retailer is licensed under the Act or not)² and the amount of the subsidy.
- j) Upon request, the retailer gives to OSR, electronic data captured in relation to each fuel sale including the unique identifier number from the relevant subsidy card and the information contained in paragraph 20(e).

² A retailer not licensed under the Act is not entitled to the subsidy and consumers should know they will therefore be buying fuel at the advertised unsubsidised price.

Subsidy Card

21. Consumers will only be entitled to the subsidy at point of sale upon presentation of a card (the subsidy card) for eligible fuel purchases.
22. The reasons for having a subsidy card are:
 - a) to assist improving the visibility of the subsidy to consumers; and
 - b) to improve the quality of fuel sales data available to better manage compliance with the scheme.
23. However, where a subsidy card is not presented or, is presented without electronic capture of its unique identifier number,
 - a) the consumer is not entitled to the benefit of the subsidy on the sale; and
 - b) the retailer is not entitled to claim the subsidy amount from OSR.
24. There are two options being considered for a subsidy card, namely, the licence model and the registration model. Under these options, the subsidy card will be available to either-
 - a) holders of a current driver's licence which entitles the holder to drive a vehicle on Queensland roads or to navigate a recreational vessel on Queensland waters (the licence model); or
 - b) registered owners of a motor vehicle or recreational vessel which may lawfully be driven on Queensland roads or navigate Queensland waters (the registration model).
25. If the licence model is adopted, a bar code sticker, from which data can be collected at point of sale and linked electronically to data for that sale, will be automatically issued free of charge to holders of a Queensland driver's licence to attach to their driver's licences. For holders of Queensland marine licences, a subsidy card containing a bar code or magnetic strip will be automatically issued free of charge to the licence holder.
26. When the issue of smartcard licences commences, a unique identifier can be included in the smartcard licence for fuel subsidy purposes and this will eventually replace the use of a bar code sticker or magnetic strip. Existing licences would continue in operation until renewed, so that there would be a dual licence system for five years from commencement of the smartcard licence system. Fuel retailers' systems would therefore need to be able to read both bar code stickers/magnetic strips and the smartcard licence.
27. If the registration model is adopted, a subsidy card will be automatically issued free of charge to registered owners of Queensland vehicles or recreational vessels.

28. Interstate or international licence holders (under the licence model) or owners of vehicles registered interstate (under the registration model) will be eligible for the subsidy but will need to apply for a subsidy card which contains a bar code or magnetic strip from which the relevant data can be obtained by Queensland retailers. An administration fee will apply.
29. Processes will also be established to ensure consumers are not disadvantaged while waiting for the issue of the subsidy card, for example, upon initial issue of the bar code sticker or subsidy card or upon replacement of lost or defective bar codes or cards.

Record Keeping for Retailers

30. There will no longer be any distinction between the record keeping requirements for retailers based on the volume of eligible fuel sales for a month. OSR Information Bulletin 213 is to be withdrawn, and all licensed retailers must comply with the record keeping requirements set out in the Act. Appendix 3 sets out the current record keeping requirements for retailers under the Act.
31. As a result of the new obligations imposed on retailers under the point of sale model, the following additional records will be required to be kept. For each sale of fuel:
- a) the advertised unsubsidised price at the time of the sale;
 - b) the time of the sale;
 - c) the amount of the subsidy for the sale; and
 - d) the amount paid or payable by the consumer.

Fuel Price Monitoring

32. The Queensland Government considers that a robust fuel price monitoring regime is required to ensure that consumers have available independent fuel price information.
33. Under Part VIIA of the Trade Practices Act 1974, the ACCC has the power to monitor prices, costs and profits in any industry or business that it is directed to monitor, and to report on the results of such monitoring. The monitoring may relate to the supply of goods or services in a specified industry, or to the supply of goods or services by specified persons. The price monitoring powers under Part VIIA extend to enabling the ACCC to obtain relevant information or documents, and apply penalties if they are not provided.

³ OSR Information Bulletin 21 sets out the record keeping obligations for a retailer who has eligible fuel sales of less than 250,000 litres per month.

34. In December 2007, the Australian Government directed the ACCC to formally monitor prices, costs and profits relating to the supply of ULP products, and report the findings annually for a period of three years. A new Petrol Commissioner was also announced.
35. The new Petrol Commissioner will oversee a body of work in response to the ACCC Inquiry, including:
- a) undertaking detailed examination, and on-going monitoring, of buy-sell arrangements;
 - b) undertaking an audit, and on-going monitoring, of terminal capacity, use, and leasing and sharing arrangements for importing refined petrol into Australia; and
 - c) focusing on LPG and diesel prices, and whether it is necessary for the ACCC to have any further powers in this area.
36. The Federal Government also recently approved establishment of a National FuelWatch Scheme, requiring retailers to notify consumers of their pump prices 24 hours in advance (so that consumers can identify where to find the cheapest fuel), commencing 15 December 2008.
37. The Queensland Government believes these price monitoring measures have the potential to address concerns about Queensland fuel prices and interstate differentials, by providing greater fuel price transparency and interstate comparability.

CHANGES TO THE QUEENSLAND FUEL SUBSIDY SCHEME – BEUs

38. There will no longer be any distinction between the record keeping requirements based on fuel usage in a year. Practice Direction New Fuel Subsidy Scheme (PD NFSS) 3.14 is to be withdrawn, and all BEUs must comply with the record keeping requirements set out in the Act.

IMPLEMENTATION

Start date

39. Following this consultation process, it will take time for the necessary legislative amendments, changes to systems and processes for OSR, fuel retailers and BEUs, preparation of QFSS forms and publications, and public education. The Government is aiming for the new scheme to be rolled out on 1 July 2009.

⁴ Practice Direction NFSS 3.1 sets out the record keeping obligations for BEUs using less than 25,000 litres of fuel per year and the record keeping obligations for those using more than 25,000.

Education and Support

40. All licensed retailers and BEUs will receive information directly from OSR about the changes.
41. A public education campaign will also be undertaken to educate the community on the changes, including the requirement to present a subsidy card at point of sale to receive the benefit of the subsidy.
42. OSR will also publish information about the changes on its website including regular updates.

ENHANCED COMPLIANCE PROGRAM

43. A review has been undertaken of the penalty regime that applies for breaches of the Act and certain changes are being made, including the introduction of issuing of on-the-spot fines for particular offences (refer Appendix 2 for further detail).
44. An ongoing compliance program will be implemented by OSR to ensure compliance with the Act.
45. Features of this program include:
 - a) visits to, and audits of, retail sites by OSR officers; and
 - b) initial education and support for retailers and BEUs followed by escalation to any necessary enforcement action including the issue of on-the-spot infringement notices for non-compliance.
46. For consumers, OSR's compliance program will focus on ineligible fuel sales on which the subsidy has been claimed, for example, diesel used for commercial off road purposes.
47. For retailers, OSR's compliance program will focus on:
 - a) maintaining a price board to advertise the price of eligible fuel;
 - b) advertising of the unsubsidised price on price boards and bowsers;
 - c) correct deduction of the subsidy at point of sale for sales of eligible fuel;
 - d) the giving of sales receipts;
 - e) the electronic capture of unique identifier information and linked sales data and the provision to OSR of that data upon request;
 - f) the correctness of subsidy claims to OSR; and
 - g) compliance with record keeping requirements.
48. For BEUs, OSR's compliance program will focus on the correctness of subsidy claims to OSR.

THE CHANGES AT A GLANCE - CONSUMERS
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Current Scheme	New Scheme
No requirement to present card to obtain subsidy	Consumers entitled to subsidy only upon presentation of subsidy card at point of sale. If card is not presented at point of sale, then there is no entitlement to a subsidy at a later time.
Subsidised price is published at retail site	Unsubsidised price is published at retail site
Retailer not obliged by Act to give receipt for sale	Retailer required to give consumer a fuel sale receipt stating advertised unsubsidised price, subsidy benefit and price paid for sale
No provision for on-the-spot infringement notices	On-the-spot infringement notices may be issued for certain offences by the consumer

THE CHANGES AT A GLANCE - RETAILERS
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Current Scheme	New Scheme
No requirement for retailers to have a price board	Licensed retailers must have a price board at each site and display price for eligible fuel
Subsidised price is published at the retail site	Unsubsidised price is published on the price board at each site for each type of subsidised fuel sold
Must not recover from consumers the part of the sale price equal to the subsidy benefit	Licensed retailers must deduct the amount of the subsidy from the advertised unsubsidised price upon presentation of subsidy card by consumer at point of sale – in such circumstances they must not recover from consumers an amount greater than the “subsidised price” for subsidised sales.
Retailer claims the subsidy on subsidised sales up to retail quantity	Retailer’s entitlement to claim subsidy is conditional upon electronic capture of unique identifier number from subsidy card and related sales data and provision of that information electronically to OSR upon request.
No published statement as to availability of subsidy	All licensed retailers must publish a statement at their site as to whether the subsidy is available at that site and the amount of the subsidy.
Retailer not obliged to give consumer a fuel sale receipt for a sale	Retailer required to give the consumer a fuel sale receipt for a sale (whether or not it is a subsidised sale) which states the advertised unsubsidised price, the subsidy (i.e. either 8.354 cpl or zero) for the sale and the price paid by the consumer
Retailers who sell less than 250 000 litres of subsidised fuel per month have limited record keeping obligations (OSR Information Bulletin 21.1)	All retailers will have the same record keeping obligations, including some new requirements
No provision for on-the-spot infringement notices	On-the-spot infringement notices may be issued for certain offences by a retailer

THE CHANGES AT A GLANCE - BEUs

Current Scheme	New Scheme
BEUs who use less than 25,000 litres of fuel per year have more limited record keeping obligations (PD NFSS 3.1)	All BEUs will have the same record keeping obligations and possibly some new requirements
No provision for on-the-spot infringement notices	On-the-spot infringement notices may be issued for certain offences by a BEU

OBLIGATIONS OF CONSUMERS

Existing offences and penalties⁵

Section	Offence	Current Penalty	Proposed penalty	Infringement notice offence	Infringement notice fine
31(1)	Purchaser must notify off-road use of diesel	100	200	✓	20 units first offence 40 units second and subsq offence
32A(2)	Purchaser must keep records on off-road sale and use	100	200	✓	10 units first offence 20 units second and subsq offence

⁵ Penalty unit is \$75.00

OBLIGATIONS OF RETAILERS

Existing offences and penalties⁶

Section	Offence	Current Penalty	Proposed penalty	Infringement notice offence	Infringement notice fine
16(1)	Retailer recovering amount of subsidy from consumer	200	omit		
16(2)	Retailer to give sale record when not, or only part of, sale of retail fuel	100	omit		
16(4)	Retailer must give record that sale from marine site was retail sale	100	omit		
22(1)	Retailer must lodge claim for each month for which provisional subsidy is paid or payable	200	no change	✓	10 units first offence 20 units second and subseq offence
26(1)	Person ceasing (or intending) to operate as retailer must notify commissioner	200	no change		
27(1)	Retailer ceasing (or intending) to operate a retail site must notify commissioner	200	no change		
28(1)	Retailer must give notice of operating new site	100	200		
29(1)	Retailer must keep s 29 records	100	200	✓	10 units first offence 20 units second and subseq offence
30(1)	Retailer must give return for financial year	100	200		
54	Licensee must comply with licence conditions	200	no change	✓	10 units first offence 20 units second and subseq offence

⁶ Penalty unit is \$75.00

New offences and penalties ⁷

Offence	Proposed penalty	Infringe notice offence	Infringement notice fine
Retailer must deduct subsidy from board price upon presentation of subsidy card by consumer	400	✓	20 units first offence 40 units second and subsq offence
Retailer must not claim subsidy when not entitled under s15(1) (as amended to include proposed additional conditions of entitlement)	400	✓	20 units first offence 40 units second and subsq offence
Retailer must comply with any price advertising requirement	400	✓	20 units first offence 40 units second and subsq offence
Retailer must issue sales record in accordance with provision	400	✓	20 units first offence 40 units second and subsq offence
Retailer must not claim subsidy on off-road diesel when advised by consumer	400	✓	20 units first offence 40 units second and subsq offence

⁷ Penalty unit is \$75.00

OBLIGATIONS OF BEUs

Existing offences and penalties⁸

Section	Offence	Current Penalty	Proposed penalty	Infringement notice offence	Infringement notice fine
34H	Person ceasing to use BEU fuel must notify commissioner	200	no change		
34I	BEU ceasing to use a storage site must notify commissioner	200	no change		
34J	BEU must give notice of using new storage site	40	200		
37(1)	BEU must keep s 37 records	100	200	✓	10 units first offence 20 units second and subseq offence
38(2) & (4)	BEU must lodge return for financial year	100	200		
54	Licensee must comply with licence conditions	200	no change	✓	10 units first offence 20 units second and subseq offence

⁸ Penalty unit is \$75.00

CURRENT RECORD KEEPING REQUIREMENTS FOR RETAILERS
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The following records as set out in section 29 of the Act are required to be kept by licensed retailers.

1. The following details for each sale of fuel by the person as a retailer—
 - (a) details of the price charged per litre and the basis for calculating the price;
 - (b) the address of the retail site from, or through, which the fuel was sold;
 - (c) the date of the sale;
 - (d) the type of fuel sold;
 - (e) the quantity sold;
 - (f) if the fuel is retail fuel delivered from a marine site into the running tank of a registered recreational ship—the ship's registration number.

2. The following details for each purchase of fuel by the person as a retailer—
 - (a) the date of the purchase;
 - (b) the type of fuel purchased;
 - (c) the quantity purchased;
 - (d) the seller's name and address;
 - (e) the price paid per litre;
 - (f) the place of delivery.

3. Daily records of the stock of fuel on hand and the time when the stock was determined.