

Parliament of the Commonwealth of Australia

AUSTRALIAN SENATE

ECONOMICS LEGISLATION COMMITTEE

**CONSIDERATION OF LEGISLATION
REFERRED TO THE COMMITTEE**

*Diesel and Alternative Fuels Grants Scheme
(Administration and Compliance) Bill 1999*

November 1999

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for inquiry into A New Tax System (Tax Administration) Bill 1999

* *for inquiry into the Taxation Laws Amendment Bill (No. 8) 1999*

+ *for inquiry into the Diesel and Alternative Fuels Grants Scheme (Administration and Compliance) Bill 1999*

** *for inquiry into the Taxation Laws Amendment Bill (No. 9) 1999*

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REPORT

Background to the inquiry

1.1 The Diesel and Alternative Fuels Grants Scheme (Administration and Compliance) Bill 1999 was introduced into the House of Representatives on 23 September 1999. The Bill was referred to this Committee following a report by the Selection of Bills Committee on 20 October 1999 for examination and report by 30 November 1999.¹

1.2 In its report the Selection of Bills Committee requested that the Committee consider the following:

- Definition of journeys which qualify for grants, record keeping requirements, new powers for the Commissioner.

1.3 The committee secretariat contacted a number of interested parties and received four submissions to the inquiry (see Appendix 1). A public hearing on the Bill was conducted in Canberra on 18 November 1999. A list of witnesses who gave evidence at the hearing appears in Appendix 2, and the full transcript of the hearing is available at the internet address of <http://www.aph.gov.au/hansard>.

Background to the Bill

1.4 The purpose of the Bill is to support the operation of the Diesel and Alternative Fuels Grants Scheme (DAFGS) introduced by the Government as part of the new tax system. The *Diesel and Alternative Fuels Grants Scheme Act 1999* received royal assent on 8 July 1999. Its commencement is conditional upon the passing of this Bill.

1.5 During debate on the DAFGS Act, concerns were raised about the ability to set up procedures that would prevent fraudulent claims but at the same time minimise the compliance burden on the transport industry. The Government is committed to putting in place acceptable compliance and administrative procedures, supported by strict enforcement measures, to prevent fraudulent claims from occurring. This Bill puts those mechanisms in place.

1.6 The DAFGS commences on 1 July 2000. The scheme will operate from that date until 30 June 2002. The Energy Grants (Credits) Scheme will replace it from 1 July 2002.

Definition of journeys that qualify for grants

1.7 According to the DAFGS Act, applicants are only entitled to a grant for fuel used in making certain journeys in the course of carrying on a business. Applicants are **not** entitled to a grant for fuel used entirely in the metropolitan area for vehicles under 20 tonnes. The metropolitan areas are defined in section 6 of the Act.

1.8 Applicants who operate vehicles between 4.5 tonnes and 20 tonnes are only eligible for a grant if the vehicle transports passengers and goods on the following journeys:

- a) Between a point outside the metropolitan area and another point outside the metropolitan area;

¹ Selection of Bills Committee Report No. 18 of 1999, dated 20 October 1999.

- b) Between a point outside the metropolitan area and a point inside the metropolitan area; or
- c) Between different metropolitan areas.

1.9 For vehicles over 20 tonnes these restriction do not apply.

1.10 Under new section 10A, The Commissioner may issue a determination in writing as to what will or will not constitute a journey for the purpose of the grant scheme. Before the Commissioner can issue the determination he must consult with (at least) the following organisations:

- The Bus Industry Confederation;
- The Australian Trucking Association Ltd;
- The National Farmers Federation; and
- Any other organisation (if any) as specified in the regulations.

Record Keeping Requirements

1.11 Applicants will have to maintain appropriate records if they are to receive grants. According to the Explanatory Memorandum, the grant for vehicles over 20 tonnes requires little record keeping other than mileage, fuel used and receipts. Vehicles between 4.5 tonnes and 20 tonnes used completely outside the metropolitan areas will have the same requirement. However, the same vehicles used inside and outside the metropolitan areas will require detailed records.

1.12 The Bill does not stipulate what these records might be but it is likely they will include:

- Total kilometres travelled by each vehicle;
- Total litres of fuel used by each vehicle;
- Receipts to verify purchases of fuel;
- Details of journeys including :
 - Distance travelled for business and non-business purposes;
 - Distance travelled on public road;
 - Distance travelled in metropolitan and non-metropolitan areas;
 - Details of the trips undertaken including when and for what purposes and the route taken.

1.13 Applicants will need to maintain some form of logbook including receipts. In addition, they must retain these records for 5 years and provide them to the Tax Commissioner on request.

New Powers for the Tax Commissioner

1.14 The Bill proposes a wide range of powers for the Tax Commissioner.

1.15 New parts 5, 6 and 7 of the Diesel and Alternative Fuels Grants Scheme Act 1999 give the Commissioner the power to deal with disqualification for fraud, contrived schemes and the application of civil penalties respectively. New part 8 gives the Commissioner the authority to recover scheme debts incorrectly paid under the scheme. The Commissioner also has been given extensive information gathering and access powers. The new powers allow the Commissioner to direct a person to provide information, gain access to premises and to stop and search vehicles. These provisions are provided in new parts 9, 10, 11 and 12 of the DAFGS Act.

1.16 The Government believes these new powers for the Commissioner will provide adequate penalties and safeguards to protect public funds and prevent abuse of the scheme.

ISSUES RAISED IN EVIDENCE

Definition of journeys and metropolitan boundaries

1.17 Representatives of the Australian Trucking Association (ATA) advised the Committee that the definition of a journey was still under consideration by the Tax Office. The legislation states that the Commissioner may issue a determination to define a journey. This determination would take the form of disallowable instrument.

1.18 Mr Apps of the ATA stated that the industry would work within the framework of the legislation. However, the ATA is still engaged in discussion with the ATO and the Government about the definition of a journey and metropolitan boundaries. He said:

We are working with the tax office pretty closely in trying to work out what they might be and what our views are in relation to what is a metropolitan and what is not. I think, in general, our view is that a metropolitan area should not be so expansive that it starts to take in rural and regional communities and that really it should be largely based on where the densely populated areas are. Whether or not that is the extent of the local Government areas within a metropolitan area, that is where we think it should be. We do not think that it should be so expansive that it restricts the uptake of the grant.²

1.19 The ATA also raised concerns about the direction of a journey in to or out of metropolitan areas. The Act defines three types of journeys but excludes the description 'between a point inside a metropolitan area and a point outside a metropolitan area'.

1.20 The ATA requested an amendment to section 10(2) of the Act to include this definition to avoid potential confusion or misinterpretation by the courts over these particular journeys in the future.

1.21 However, the ATO does not agree that the amendment is required. Officers informed the Committee that the direction of the journey does not effect eligibility for the grant. The explanatory memorandum³ to the Diesel and Alternative Fuel Grant Scheme Bill specifically mentions that this journey (ie: the journey cited in paragraph 1.19) is eligible for the grant.

1.22 The ATO advised that the drawing of the metropolitan boundaries is a matter for the Government. They were providing advice but the Government is responsible for the final decision. Metropolitan boundaries, once decided, would be prescribed by regulation.

Exclusion of Trailers from the definition of Gross Vehicle Mass

1.23 The ATA advised the Committee that the new definition of Gross Vehicle Mass now excludes all types of trailers. The intention of the proposed amendment is to stop vehicles close to the 4.5 tonne weight adding a box trailer to gain eligibility. The ATA informed the Committee that the amendment now excludes a vehicle that is registered as a truck and trailer from claiming the grant. This will adversely affect rigid trucks with trailers used in metropolitan areas as the weight of these trucks without the trailer component generally falls below 20 tonnes. Mr Apps indicated that many vehicles would be affected by the change:

2 Evidence p.E3

3 Explanatory Memorandum to the Diesel and Alternative Fuels Grants Scheme Bill 1999, p.7.

There are, for example, many furniture vehicles which—you might have noticed—might have a 16-tonne rigid vehicle on the front, but they, naturally for singular-use purposes, have the trailer attached, which takes them over the 20-tonne GVM. So the vehicles we are talking about are largely not attaching the trailer for the purpose of getting within the GVM; they are already out there working.⁴

1.24 The ATO officials did not address the issue, as the decision about trailers is a policy matter.

1.25 The Committee endorses this exclusion and is of the view that the scheme must not be expanded to city trucks on the basis of allowing them eligibility for the grants. The Committee notes the reason behind this exclusive definition was to encompass long haul vehicles, particularly within the rural and regional areas.

Record Keeping Requirements

1.26 The ATA and the NFF did not raise any major concerns with the record keeping requirements of the legislation. Although the Bill does not stipulate in detail that the records needed by applicants to verify claims for a grant, the ATA felt these would not exceed current requirements.

1.27 Discussions with the Tax Office are still ongoing in relation to this matter. The ATO advised the Committee:

In respect of this particular scheme, we are working through with industry at the moment to determine what level of record keeping we require, what we believe will provide sufficient evidence of the integrity of the operation of the system while balancing that against the needs of industry and the need for it not to be overregulated and burdened down with too much red tape.⁵

New Powers for the Tax Commissioner

1.28 The Tax Commissioner's new powers did not raise any major concerns with those who made submissions. The ATA informed the Committee that they were satisfied with the arrangements and that the Commissioner's powers as drafted would achieve a sensible balance between the rights of the individual and the rights of the public. Mr Gunning of the ATA stated:

From an industry point of view, we have a strong commitment to making sure that arrangements in these areas generically are administered in the best possible way and that we emerge with the highest levels of integrity we can.⁶

1.29 The ATA expressed satisfaction with the consultation process conducted with the Tax Office and with the ATO's foreshadowed approach to enforcement. Mr Gunning said:

We have been very impressed with the consultation we have had with them and we were impressed by them saying to us, 'If this was, in your view, to get out of hand, and if you thought there were things happening that were not appropriate then we

4 Evidence p.E2

5 Evidence p.E18

6 Evidence p.E8

would be more than willing to talk to you about the issues and take the steps that are needed to rectify the situation.’⁷

Administration of the Grant Scheme

1.30 The ATA informed the Committee that they were unable to comment in any detail about concerns they may have until the scheme was up and running. They were still engaged in discussions with the Tax Office to work out the detail of the administrative requirements of the scheme.

1.31 Some members of the Committee expressed concern that the ATO would have insufficient resources to be able to verify claims with any certainty. Some of the issues raised by the Committee included:

- verification of applications and truck registrations;
- wide spread fraudulent activity in previous schemes;
- monitoring of records; and
- change of ownership of eligible vehicles.

1.32 The ATO officials expressed confidence that they had sufficient resources to administer this scheme. They based this confidence on their extensive experience in monitoring the compliance activities of other schemes. With the use of risk assessment processes, an education program and other mechanisms, they consider they would minimise abuse of the scheme.

Public and Private Roads

1.33 The ATA informed the Committee that the legislation as drafted would only allow an operator to claim the grant for travelling on a public road. They considered this a substantial penalty for remote and regional trucking operators as these operators conduct a large portion of their business on private roads. According to the ATA, this is especially prevalent for livestock transporters in Queensland who would travel up to 100 kilometres on a private road on a big property.

1.34 The association also advised that this would add to the cost of transporting goods if applicants could not claim for fuel used on these roads as part of the whole journey. Moreover, it will make record keeping quite onerous for those involved.

1.35 The Committee is sympathetic to amendments that would remove the anomaly for truck operators in rural areas not able to claim the grant when travelling on private roads.

1.36 The Committee supports the view that the grant ought to extend to truckers – livestock transporters for example – who may be required to travel long distances on private/station roads.

1.37 The Committee notes that the Government and Australian Democrats agree in-principle on this matter. The Committee understands that the Government will consider an appropriate amendment as soon as practical.

Public Transport users may face higher chargers

1.38 The Bus Industry Confederation (BIC) advised the Committee that as result of passing the DAFGS Act 1999, the cost of public transport will rise by approximately three per cent. According to the BIC, 90 per cent of all buses operating in the metropolitan areas are under 20 tonnes and therefore not eligible for the grant. The effect of this policy decision could mean that 20 per cent of all public transport users would incur higher costs and may switch to cars, putting even more pressure on the environment.

1.39 The Committee rejects the notion that public transport costs must necessarily increase under the DAFGS Act.

1.40 The opportunity for bus operators to convert to cheaper natural gas and LPG will lower costs. Further, as the states benefit from the GST revenue - and the states set public transport costs - it is incumbent on the states to pass on this benefit to consumers, as it is in their interests to keep such costs down for social and environmental reasons.

1.41 The Committee does not agree that there is a proven need to increase transport costs as a result of the passage of this Bill.

Conclusion

1.42 The evidence before the Committee indicates that transport industry was largely satisfied with the framework of the administrative and compliance procedures outlined in the legislation.

1.43 The proposed legislation will support the grant scheme and achieve the Government's objectives of providing streamlined administrative and compliance procedures, while maintaining the integrity of the scheme through the support of appropriate powers of enforcement.

Recommendation

1.44 The Committee recommends that the Senate pass the Bill.

Senator the Hon. Brian Gibson
Chairman

LABOR SENATORS' MINORITY REPORT

Labor Senators reserve their position on this legislation.

Senator the Hon Nick Sherry

Senator George Campbell

Appendix 1

List of Submissions

- No. 1** **Mr Brian A Clark**
- No. 2** **National Farmers' Federation**
- No. 3** **Australian Trucking Association**
- No. 4** **Bus Industry Confederation Inc**

Appendix 2

List of Witnesses

Australia Trucking Association

Mr Michael Apps

Mr Robert Gunning

Government Officials – Australian Taxation Office

Mr Patrick Colmer

Mr Mark Jackson

Mr Peter Holt