



08 9410 1330

Brambles Industrial Services
Western Australia
A division of Brambles Australia Limited ABN 79 000 164 938



Industrial Maintenance Services
Cnr Weston & Morley Streets
Naval Base WA 6165
PO Box 128
Kwinana WA 6167
Telephone (08) 9410 8555
Facsimile (08)9410 1330

The Secretary
Economics Legislation Committee
Department of the Senate
Suite SG.64
Parliament House
Canberra ACT 2600



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Energy Grants (Credits) Scheme Bill 2003 and the Energy Grants (Credits) Scheme (Consequential Amendments) Bill

This submission relates to the scope of the provisions in the Energy Grants (Credits) Scheme Bill 2003 in relation to use in marine transport and rail transport, in particular, the loading and unloading of goods from and to vessels and rail vehicles.

The existing provisions for rebate under the Excise Act and the Customs Act cover fuel for use:

- **In rail transport (otherwise than for the purpose of propelling a road vehicle on a public road) in the course of carrying on an enterprise;**
- **In marine transport (otherwise than for the purpose of propelling a road vehicle on a public road) in the course of carrying on an enterprise;**

There is no legislative reference to the loading or unloading of vessels or rail vehicles although the Australian Taxation Office have issued a "Guide for claimants" which states as ineligible, "moving, handling, storing, loading or unloading goods before or after rail transport". A similar statement is made in relation to marine transport.

The current bill makes explicit provision for loading and unloading operations in relation to both marine and rail transport.

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Under these provisions fuel used to load anything on to a vessel is considered use in marine transport **only if the fuel is used by equipment in or on the vessel**. Similarly in relation to rail transport fuel used to load anything on to a rail vehicle is considered use in rail transport **only if the fuel is used in equipment in or on the rail vehicle**.

Transport is normally considered to mean an act, method or system of conveying goods or people from place to place. This normal understanding of the term includes the loading and unloading of the particular vehicle or vessel as part of the transport operation.

The proposed Bill will introduce an anomalous situation where an activity is eligible or ineligible for an off road credit based on the location of the equipment performing the function as well as the actual function itself.

The following examples demonstrate this:

- A ship's crane loading or unloading cargo eligible
- A wharf crane loading or unloading cargo ineligible
- A mobile crane loading/unloading cargo from a vessel
 - If it operates from the wharf ineligible.
 - If it operates from the deck of the vessel eligible
- A portable suction pump for unloading bulk cargo
 - Pump on deck of vessel or in hold eligible
 - Pump on wharf ineligible
- A forklift loading goods onto a barge
 - Pickup and travel on wharf ineligible
 - Pickup and travel on barge eligible

From the above examples it is clear that the same function will be eligible or ineligible for an off road credit on a locational basis rather than just a functional basis. In certain cases (eg the forklift mentioned above) part of the operation of a piece of equipment involved in a single process of loading or unloading will be eligible and part ineligible.

It is therefore considered that the definition of rail and marine transport should include all loading and unloading operations onto and from vessels and rail vehicles. This will lead to both simplicity of administration and equity in the application of the provisions.

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Recommendation

The Bill be amended to include:

- In the definition of Marine Transport

“Use in any equipment for loading anything onto a vessel, or to enable people to board a vessel for the purpose of being transported by the vessel.” and

“Use in any equipment for unloading anything from a vessel, or to enable people to disembark from a vessel after being transported by the vessel.”

- In the definition of Rail Transport

“Use in any equipment for loading anything onto a rail vehicle, or to enable people to board a rail vehicle for the purpose of being transported by the rail vehicle.” and

“Use in any equipment for unloading anything from a rail vehicle, or to enable people to disembark from a rail vehicle after being transported by the rail vehicle. “



Eddie Croxton
Fuel Rebate/Grant Administration Manager
Brambles Industrial Services

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Summary of Submission Use in Marine Transport and Rail Transport

- The normal understanding of the terms marine and rail transport includes the loading and unloading of goods and people to be carried.

- The proposed definitions only include these activities when the equipment used is in, or on, the vessel or rail vehicle.

- The proposed definition will introduce a locational test as well as functional test to eligibility which will be;
 - unnecessarily complex,
 - difficult to administer and
 - inequitable in the result.

- The inclusion of all loading and unloading operations as eligible activities will solve these issues.