

19 March 2003

Dr Kathleen Dermody  
The Secretary  
Economics Legislation Committee  
Department of the Senate  
Suite SG.64  
Parliament House  
CANBERRA ACT 2600

(Via e-mail to [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au))

Dear Dr Dermody

**RE: ENERGY GRANTS (CREDITS) SCHEME BILL 2003 AND THE ENERGY GRANTS (CREDITS) SCHEME (CONSEQUENTIAL AMENDMENTS) BILL 2003**

The Minerals Council of Australia (MCA) makes this submission in response to the call for submission to the Committee's inquiry into the *Energy Grants (Credits) Scheme Bill 2003* and the *Energy Grants (Credits) Scheme (Consequential Amendments) Bill 2003*. These Bills establish the Energy Grants (Credits) Scheme (EG(C)S), which is scheduled to replace the Diesel Fuel Rebate Scheme (DFRS), or off-road scheme, and the Diesel and Alternative Fuels Grants Scheme (DAFGS), or on-road scheme, from 1 July 2003.

The MCA is the peak, national organisation representing the exploration, mining and minerals processing industry in Australia. The membership of the Council accounts for in the order of 85 per cent of Australian minerals production and a slightly higher percentage of Australia's mineral exports.

This submission addresses a number of important matters concerning the current and future scheme(s).

#### **Maintaining existing entitlements**

The minerals industry is very supportive of the current schemes, particularly the DFRS, as it provides for a rebate of overpaid taxes on essential business inputs. The MCA has therefore welcomed the commitment from the Government to maintain equivalent entitlements (to rebate of excise) to those under the DFRS and DAFGS under the EG(C)S. That is, for those purchasing diesel fuel for use in eligible activities that are the same as those activities currently eligible for a rebate under the DFRS or when purchasing fuel for use in activities that are the same as those activities that were eligible for a grant under the DAFGS.

In this context, the MCA notes the provisions of the bills are intended to:

- replicate the existing entitlement provisions in the *Diesel and Alternative Fuels Grants Scheme Act 1999*, the *Customs Act 1901* and the *Excise Act 1901* to create an on-road credit and off-road credit;
- amend the eligibility criteria for the existing schemes to clarify the Government's position on certain activities; and
- address current administrative inconsistencies between the two schemes.

**Maintenance of these entitlements to the mining sector is vital to its continued international competitiveness.** Key Australian export-earning industries, such as the Australian minerals industry, face highly competitive international markets into which they have to sell their product at the prevailing world price. As producers operating in volatile and highly competitive world markets, with little or no ability to pass on any cost increases, minerals companies must look to reduce their costs in every area to retain competitiveness. Diesel and like fuels represent a key business input to production in mining. The MCA has long argued that there should be no taxation of such business inputs.

### **A principled approach to the new scheme**

The Council suggests an appropriate set of principles should be adopted to guide the policy underpinning, and future administration of, the EG(C)S. These principles are as follows:

- there should be no taxes on business inputs;
- existing fuel taxation arrangements and proposed changes should not undermine the overall economic performance of the Australian economy, including the promotion of domestic competition and international competitiveness;
- there should be no cap on future entitlements to the removal of a tax on business inputs;
- the operation of the market should determine any move to adopt alternative sources of energy supply (for example, switching from diesel to natural gas);
- if there are to be any incentives for switching from diesel and like fuels they should be available to all sectors on the same basis;
- any assessment of the environmental and/or social health impacts of fuel use should be conducted on a life cycle or 'whole-of-life' basis; and
- the new scheme should be consistent with World Trade Organisation principles.

### **Concerns with the *Energy Grants (Credits) Scheme Bill 2003* and the *Energy Grants (Credits) Scheme (Consequential Amendments) Bill 2003***

#### *Rate of grant*

The rate of grant will continue to be set by Regulation as currently occurs with both off-road rebate and on-road grants.

The rate of grant will therefore continue to be at the discretion of the Minister of the day and there is still no requirement or obligation for the rate of grant to equal the rate of excise. In addition, the rate of grant to apply from 1 July 2003 has not yet been announced.

This is a cause of some uncertainty and concern within the minerals industry. To address this, **the MCA recommends that the rate of grant be set in the Regulations to the rate of excise and that this be formally announced by the Government as soon as possible.**

#### *Compliance and administration*

Compliance and administration of the EG(C)S will be under the *Product Grants and Benefits Administration Act 2000* (the legislation currently used for waste oil stewardship purposes) in lieu of the customs and excise legislation as at present.

One of the proposed consequential amendments to that Act concerns the MCA.

The proposed section 24E requires that any Administrative Appeals Tribunal (AAT) decision as to the entitlement to a grant cannot be varied or amended or ignored by the claimant after expiration of the decision appeal period where the AAT or other court subsequently hands down a more favourable decision in respect of another claimant. That is, the claimant cannot apply the later decision even though it must be seen as the better decision (as it was taken in full knowledge of the earlier AAT decision and yet arrived at a different conclusion). **The MCA recommends the Bill be amended to rectify this anomaly.**

#### **Title of the new scheme**

The MCA is aware that concerns have been raised with the Government over the title of the new scheme. **The MCA shares these concerns.** The title of the DFRS clearly aligns with MCA and Government consideration of this scheme as being a “rebate” of overpaid taxes on business inputs, not a subsidy or grant. However, the title of the new scheme does not use the word “rebate”.

The MCA considers that the actual and potential costs of renaming the off-road scheme are large, while the costs to the Government of maintaining the existing name are minimal. Whilst the MCA acknowledges the title of the Bill cannot be changed, **the MCA recommends that the Government ensure that the new scheme is itself entitled a “rebate” (for example, the off-road part of the scheme could be entitled the Energy (Off-Road Rebate Entitlement) Scheme or similar, and not a grant or credit.** This would be in line with the treatment of the DFRS – the legislation establishing the DFRS is the *Customs Act 1901* and the *Excise Act 1901* and does not use the DFRS name.

#### **Measures for a Better Environment agreement**

##### *Encouragement for the conversion to ‘cleaner’ fuels*

In introducing the EG(C)S Bills to the House of Representatives Mr Peter Slipper MP, Parliamentary Secretary to the Minister for Finance and Administration, stated:

*The Measures for a Better Environment package also noted that the Energy Grants Credits Scheme will provide encouragement for the conversion to cleaner fuels. The government is committed to pursuing options to achieve this and is doing so by examining the issue as part of the consideration of alternative fuels within the Energy Task Force.*

**The MCA regards this as the appropriate way to progress the development of incentives for the conversion to ‘cleaner’ fuels.**

Whilst the MCA supports moves to encourage the use of ‘cleaner’ fuels, and the minerals industry development and use of cleaner fuels, **these developments are best pursued separately from the implementation of the EG(C)S**, which exists to provide for payment of a grant to persons who are entitled to an off-road or on-road credit.

##### *Ultra low sulphur diesel (ULSD)*

The MCA welcomed the announcement by the Treasurer, the Hon Peter Costello MP, on 24 December 2002 that the Government would not impose a 1 cent per litre excise surcharge on “high” sulphur diesel from 1 January 2003 but would instead defer for six months the implementation of this surcharge, with the issue being included in consideration of alternative fuels within the Energy Task Force.

While this announcement identified as a reason for this deferral concerns about the possibility of raising costs to diesel users at a time when the farming sector is facing serious drought conditions, **the MCA notes this issue is of concern to all diesel users.** In particular, the interaction of the excise differential with the EG(C)S is unclear. The MCA is cognisant of the consideration of this issue as part of the *Fuel Taxation Inquiry*, and supports the Inquiry’s recommendations on this matter (including the introduction of a production subsidy) as preferable to the use of an indiscriminate tax on business inputs for all diesel users.

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Therefore, the MCA **recommends that the arrangements for ULSD and the interaction with the EG(C)S be clarified as a matter of urgency. As part of this clarification, the Government should make it clear that the rebate under the EG(C)S will be increased to cover any excise surcharge related to ULSD.**

Should you require any further information or should you wish to discuss any of the issues raised in this submission, please do not hesitate to contact me.

Yours sincerely

**MITCHELL H HOOKE**  
**CHIEF EXECUTIVE**

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