



Fuel Security (Consequential and Transitional Provisions) Act 2021

No. 66, 2021

An Act to deal with consequential and transitional matters arising from the enactment of the *Fuel Security Act 2021*, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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An Act to deal with consequential and transitional matters arising from the enactment of the *Fuel Security Act 2021*, and for related purposes

[Assented to 29 June 2021]

The Parliament of Australia enacts:

1 Short title

This Act is the *Fuel Security (Consequential and Transitional Provisions) Act 2021*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	29 June 2021
2. Schedule 1, Part 1	At the same time as the <i>Fuel Security Act 2021</i> commences. However, the provisions do not commence at all if that Act does not commence.	30 June 2021
3. Schedule 1, Part 2	The later of: (a) immediately after the commencement of the <i>Federal Circuit and Family Court of Australia Act 2021</i> ; and (b) immediately after the commencement of the <i>Fuel Security Act 2021</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
4. Schedule 2	At the same time as the <i>Fuel Security Act 2021</i> commences. However, the provisions do not commence at all if that Act does not commence.	30 June 2021

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Consequential amendments

Part 1—Main consequential amendments

Competition and Consumer Act 2010

1 At the end of subsection 95ZPA(1)

Add “or the *Fuel Security Act 2021*”.

Fuel Quality Standards Act 2000

2 After subparagraph 67A(b)(ii)

Insert:

(iia) the *Fuel Security Act 2021*; or

Petroleum and Other Fuels Reporting Act 2017

3 At the end of section 3

Add:

; (d) to support the implementation of the *Fuel Security Act 2021*.

4 Subsection 5(1)

Insert:

affected: see subsection 13C(2).

5 Subsection 5(1) (at the end of paragraph (a) of the definition of *fuel information*)

Add:

(iii) the holding (within the meaning of section 19 of the *Fuel Security Act 2021*) of stocks of covered products that are MSO products (within the meaning of that Act);
or

6 Subsection 5(1) (at the end of the definition of *holding stock*)

Add:

Note: See also subsection (4).

7 Subsection 5(1) (paragraphs (a), (b) and (c) of the definition of protected information)

After “this Act”, insert “, the *Fuel Security Act 2021*”.

8 At the end of section 5

Add:

- (4) A person is taken to be **holding stock** of a covered product that is an MSO product within the meaning of the *Fuel Security Act 2021* if the person holds stocks of that product within the meaning of section 19 of that Act.

9 Subsection 11(4) (at the end of note 2)

Add “There is also a civil penalty for persons providing false or misleading information in relation to the *Fuel Security Act 2021* (see section 13A of this Act).”.

10 At the end of Part 2

Add:

13A Civil penalty for false or misleading information relating to *Fuel Security Act 2021*

A person must not, in a report under section 11, provide information that:

- (a) relates to:
- (i) whether a regulated entity that is subject to the minimum stockholding obligation under the *Fuel Security Act 2021* is complying with section 7 of that Act; or
 - (ii) whether fuel security services payment is payable to a constitutional corporation under the *Fuel Security Act 2021*; and
- (b) is false or misleading in a material particular, or omits a matter or thing without which the information is misleading in a material particular.

Civil penalty: 300 penalty units.

13B Compliance audits relating to the *Fuel Security Act 2021*

- (1) The rules may make provision in relation to the auditing of compliance with section 11, so far as that section relates to the giving of reports that relate to:
 - (a) MSO activities undertaken in relation to MSO products by regulated entities; or
 - (b) the refining of FSSP fuels.
- (2) Without limiting subsection (1), rules made for the purposes of that subsection may do any of the following:
 - (a) empower the Secretary to require an audit to be conducted;
 - (b) prescribe matters to which an audit may relate or be required by the Secretary to relate;
 - (c) prescribe persons who are authorised to conduct audits;
 - (d) require reports of audits to accompany reports given under section 11 or otherwise be given to the Secretary.
- (3) The following expressions used in subsection (1) have the same meaning as in the *Fuel Security Act 2021*:
 - (a) FSSP fuels;
 - (b) MSO activity;
 - (c) MSO product;
 - (d) regulated entity.

13C Duty to provide reasonable facilities and assistance for audit

- (1) A person affected by an audit required to be conducted under rules made for the purposes of subsection 13B(1) must provide the person conducting the audit (the ***audit team leader***), and any person assisting the audit team leader in the conduct of the audit, with all reasonable facilities and assistance necessary for the effective exercise of the audit team leader's duties in relation to the audit.

Civil penalty: 250 penalty units.

- (2) A person is ***affected*** by an audit if the person is any of the following:
 - (a) the person being audited;

- (b) if the audit relates to compliance with section 11 so far as that section relates to the giving of reports that relate to MSO activities undertaken in relation to MSO products by a regulated entity:
 - (i) the regulated entity; or
 - (ii) if the regulated entity has an Australian controlling corporation—the Australian controlling corporation; or
 - (iii) any entity in possession of stocks of an MSO product that are held (within the meaning of section 19 of the *Fuel Security Act 2021*) by the regulated entity;
 - (c) if the audit relates to compliance with section 11 so far as that section relates to the giving of reports that relate to the refining of FSSP fuels by a constitutional corporation—the constitutional corporation.
- (3) The following expressions used in subsection (2) have the same meaning as in the *Fuel Security Act 2021*:
- (a) FSSP fuels;
 - (b) MSO activity;
 - (c) MSO product;
 - (d) regulated entity.

13D Duty to comply with requirements in relation to report of audit

- (1) A person who is required to give the Secretary a report under section 11 must comply with any rules prescribed for the purposes of subsection 13B(1) requiring a report of an audit to accompany the report under section 11.

Civil penalty: 250 penalty units.

- (2) A person who is required by any rules prescribed for the purposes of subsection 13B(1) to give a report of an audit to the Secretary must give the report of the audit to the Secretary in accordance with the rules.

Civil penalty: 250 penalty units.

11 Section 14 (paragraph beginning “Fuel information”)

Repeal the paragraph, substitute:

Fuel information is raw data or value added information product that relates to covered activities, or to the quantity, quality or characteristics of covered products, or to the holding (within the meaning of the *Fuel Security Act 2021*) of certain covered products. Fuel information includes metadata describing such data, and contextual information.

12 At the end of section 21

Add:

Note: The powers, functions and duties of entrusted persons are not limited to those conferred or imposed by this Act.

13 At the end of subsection 31(1)

Add “or the *Fuel Security Act 2021*”.

14 After subsection 33(1)

Insert:

Related provisions

(1A) For the purposes of Part 2 of the Regulatory Powers Act, as that Act applies in relation to the information mentioned in subsection (1), each of the following provisions is related to the provision mentioned in subsection (1):

- (a) a civil penalty provision of the *Fuel Security Act 2021*;
- (b) a civil penalty provision of the *Fuel Quality Standards Act 2000*;
- (c) an offence provision of the *Fuel Quality Standards Act 2000*.

15 Subsection 33(2) (heading)

Omit “*Related provisions, authorised*”, substitute “*Authorised*”.

16 Paragraph 33(2)(a)

Repeal the paragraph.

17 After paragraph 39(1)(c)

Insert:

- (ca) rules made for the purposes of subsection 13B(1) (about compliance audits relating to the *Fuel Security Act 2021*); or

Taxation Administration Act 1953

18 Subsection 355-65(8) in Schedule 1 (at the end of the cell at table item 6A, column headed “and the record or disclosure ...”)

Add “or the *Fuel Security Act 2021*”.

19 Application of amendments

Disclosure of information etc.

- (1) The amendment of the *Competition and Consumer Act 2010* made by this Schedule applies in relation to disclosures of information made after the commencement of this Schedule, whether the information was obtained before or after that commencement.
- (2) The amendment of the *Fuel Quality Standards Act 2000* made by this Schedule applies in relation to disclosures of information and authorisations of disclosures of information made after the commencement of this Schedule, whether the information was obtained before or after that commencement.
- (3) The amendment of the *Taxation Administration Act 1953* made by this Schedule applies in relation to records and disclosures of information made after the commencement of this Schedule, whether the information was obtained before or after that commencement.

Definition of holding stock

- (4) The amendments of the definition of **holding stock** in section 5 of the *Petroleum and Other Fuels Reporting Act 2017* made by this Schedule apply on and after 1 July 2022.

Part 2—Consequential amendments relating to the Federal Circuit and Family Court of Australia Act 2021

Fuel Security Act 2021

20 Paragraph 50(5)(b)

Repeal the paragraph, substitute:

- (b) the Federal Circuit and Family Court of Australia (Division 2); or

21 Paragraph 54(4)(b)

Repeal the paragraph, substitute:

- (b) the Federal Circuit and Family Court of Australia (Division 2); or

22 Subparagraph 60(4)(e)(ii)

Repeal the subparagraph, substitute:

- (ii) the Federal Circuit and Family Court of Australia (Division 2);

23 Subparagraph 61(3)(e)(ii)

Repeal the subparagraph, substitute:

- (ii) the Federal Circuit and Family Court of Australia (Division 2);

24 Paragraph 62(3)(b)

Repeal the paragraph, substitute:

- (b) the Federal Circuit and Family Court of Australia (Division 2);

25 Paragraph 69(3)(b)

Repeal the paragraph, substitute:

- (b) the Federal Circuit and Family Court of Australia (Division 2);

26 Paragraph 70(3)(b)

Repeal the paragraph, substitute:

- (b) the Federal Circuit and Family Court of Australia
(Division 2);

Schedule 2—Transitional provisions

1 Definitions

In this Schedule:

Act means the *Fuel Security Act 2021*.

rules means rules made under section 84 of the Act.

2 Minimum stockholding obligation

- (1) For the purposes of the definition of *obligation day* in section 5 of the Act, the rules must not prescribe a day that is before 1 July 2022.
- (2) For the purposes of paragraph 10(1)(b) of the Act, the rules may prescribe a period commencing before the Act commences.
- (3) Section 30 of the Act applies to regulated entities after 30 June 2022.
- (4) Section 21 of the *Petroleum and Other Fuels Reporting Act 2017*, as it applies in relation to entrusted persons exercising powers, or performing functions or duties, as a result of the enactment of the *Fuel Security Act 2021*, applies in relation to making records of, and using and disclosing, information after the commencement of this Schedule:
 - (a) whether the information was obtained before or after that commencement; and
 - (b) whether the information is derived from a record made, or a use or disclosure of information, before or after that commencement.

3 Fuel security services payment

- (1) Applications for fuel security services payment must not be made under section 39 of the Act before rules are made for the purposes of subsection (3) of that section.
- (2) Subitem (1) does not prevent applications being made under section 39 of the Act if rules made for the purposes of subsection (3) of that section are repealed.
- (3) For the purposes of a determination under section 44 of the Act, the Minister may have regard to any consultations undertaken whether before or after the Act commenced.

*[Minister's second reading speech made in—
House of Representatives on 26 May 2021
Senate on 16 June 2021]*

(59/21)

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