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Analysis of the bills

Background

1.1 On 12 May 2011 the Selection Committee referred the following bills to the committee for inquiry and report:

- Taxation of Alternative Fuels Legislation Amendment Bill 2011;
- Excise Tariff Amendment (Taxation of Alternative Fuels) Bill 2011;
- Customs Tariff Amendment (Taxation of Alternative Fuels) Bill 2011; and
- Energy Grants (Cleaner Fuels) Scheme Amendment Bill 2011.

Purpose and overview of the bills

1.2 The Bills impose excise duty or excise equivalent customs duty, on gaseous transport fuels that are currently untaxed. These are liquefied petroleum gas (LPG), liquefied natural gas (LNG) and compressed natural gas (CNG). The legislation ensures that the rate of excise applied to the three gaseous fuels is based on the energy content of those fuels, discounted by 50 per cent. The new taxation regime will be applied incrementally from 1 December 2011 over a five-year period, so as to give industry and consumers time to adjust.

1.3 The expected revenue over the forward estimates period is $518 million which is detailed in Table 1.1.

Table 1.1 Financial Impact

Year	2011-12	2012-13	2013-14	2014-15
Revenue	$16.5m	$102m	$166m	$234m

Source *Explanatory Memorandum, Page 4.*

1.4 It is expected that the reform package will:

- increase consistency in the transport fuel taxation regime to ensure that competition between untaxed transport fuels and currently taxed fuels does not harm economic efficiency and create distortions;
- provide certainty to industry; and
- phase in the changes while supporting the alternative fuels industry (in recognition of the potential environmental, fuel security and regional development benefits).

1.5 The reforms will apply generally from 1 December 2011.

Policy history

1.6 Fuel tax policy has been in flux for the better part of a decade, to the criticism of some elements of the industry which claim that the resulting uncertainty hinders investment. In the 2003-04 Budget the then Government announced its intention to tax all fuels (including biodiesel, ethanol, methanol and the gaseous fuels) on an energy content basis, but with a 50 per cent discount for alternative fuels. The timing for the proposal was revised in the following budget. All fuels were to be taxed on an energy content basis consisting of high, medium and low bands, while alternative fuels were to receive a 50 per cent reduction on their energy content fuel tax rates. The Assistant Treasurer the Hon Bill Shorten, MP, in his second reading speech, stated:

> In May 2003 the then Treasurer, Peter Costello, announced the alternative fuels tax arrangements as long-term, important reforms—saying Australia must have a more consistent and sustainable fuel tax regime.
>
> In December 2003 the then Prime Minster, John Howard, said the reforms will result in a more consistent and neutral tax regime for fuels used in vehicles. The then Deputy Prime Minister, John

> Anderson, at the time emphasised the importance of investment certainty.[1]

1.7 In 2003 the then Treasurer, the Hon Peter Costello, MP, introduced fuel tax reforms noting that 'an efficient and competitive energy sector is a key priority for the Government's strategic policy agenda.'[2] Mr Costello stated:

> …today I am announcing important long term reforms to the excise treatment of fuels. The reforms establish a broad sustainable taxation framework for fuels, by addressing a number of anomalies in the current fuel tax system and providing increased long term certainty for investors, while meeting Government commitments and providing time for industry to adjust.[3]

1.8 In May 2010, the government committed to implementing the alternative fuels taxation policy previously announced by the previous Government but with revised phasing in arrangements for the taxation of ethanol. In September 2010, the Government announced that the changes to the taxation of domestic ethanol would be phased in over a 10 year period.

1.9 A number of changes were required to implement the government's policy including:

- bringing gaseous fuels and methanol into the fuel tax regime;
- levying fuel tax on an energy content basis; and
- reducing the excise rates on alternative fuels by 50 per cent.

Drivers for reform

1.10 Alternative fuels have the potential to reduce environmental harm as they have the capability to reduce Australia's carbon footprint. They are an alternative to conventional fuels which ensures that there is a wider and more diverse range of energy sources; and the alternative fuel industries create jobs, particularly in rural and regional areas in Australia.

1.11 Accordingly, to ensure the domestic industry has time to adjust to the new arrangements, the Government announced on 13 May 2010 a new staged

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1 The Hon Bill Shorten, MP, Assistant Treasurer and Minister for Financial Services and Superannuation, *House of Representatives Hansard*, 12 May, 2011, p. 16.

2 The Hon Peter Costello, MP, Treasurer, 'Fuel Tax Reform for the Future,' *Media Release*, 13 May 2003.

3 The Hon Peter Costello, MP, Treasurer, 'Fuel Tax Reform for the Future,' *Media Release*, 13 May 2003.

phasing in of the regime for domestic ethanol. The Government announced on 7 September 2010 that the phasing in arrangements for domestic ethanol were to be extended further to provide a more gradual transition path.

1.12 Therefore, domestic ethanol producers will receive targeted assistance over a ten year period to manage the phase in of the new arrangements. Imported ethanol will experience a phase down in excise-equivalent customs duty over a five year transition period.

Treasury consultation

1.13 In October 2010 Treasury released a discussion paper, entitled, *Implementation of alternative fuels taxation policy*. Consultation on this paper was conducted between 15 October 2010 and 12 November 2010. Meetings were held in Perth, Melbourne, Brisbane, Sydney, and Canberra with separate sessions for biodiesel, ethanol and methanol; and the gaseous fuels, liquefied petroleum gas (LPG), liquefied natural gas (LNG) and compressed natural gas (CNG).

1.14 The draft legislation was made available for public consultation in early 2011, prior to its introduction into Parliament on 12 May 2011.

Types of alternative fuels and their tax treatment

1.15 Taxes are currently applied to some locally produced fuels and an equivalent rate of customs duty is applied to relevant imported fuels. Such fuels include petrol, diesel, fuel oil, biodiesel, fuel ethanol and several others. Fuel tax is primarily levied on the producer or importer at a general rate of 38.143 cents per litre.

1.16 The bills phase in the new taxation arrangements in relation to liquefied petroleum gas (LPG), liquefied natural gas (LNG) and compressed natural gas (CNG). In addition, the bills also clarify the tax treatment of renewable fuels including ethanol, methanol and biodiesel. The following discussion provides background information on some of the key biofuels and their tax treatment under the new legislation. Table 1.2 compares how relevant alternative fuels are currently taxed against how they will be taxed under the proposed legislation.

Table 1.2 Comparison of key features of new and current law

New law	***Current law***
LPG	
LPG for transport use is subject to fuel tax at the rate of 12.5 cpl. The application of tax is phased in over the period 1 December 2011 to 1 July 2015.	LPG is not subject to fuel tax.
LNG	
LNG for transport use is subject to fuel tax at a rate of 26.13 cents per kilogram. The application of tax is phased in over the period 1 December 2011 to 1 July 2015.	LNG is not subject to fuel tax.
CNG	
CNG for transport use (other than home manufacture for transport use and manufacture for forklift use) is subject to fuel tax at a rate of 26.13 cents per kilogram. The application of tax is phased in over the period 1 December 2011 to 1 July 2015.	CNG is not subject to fuel tax.
Biodiesel	
The *Energy Grants (Cleaner Fuels) Scheme Act 2004* is extended to continue the grant arrangements for biodiesel. Excise or excise-equivalent customs duty for biodiesel continues to be imposed at the point of manufacture or importation.	Fuel tax on biodiesel is imposed at the rate of 38.143 cpl, which also applies to petrol and diesel. Biodiesel producers and importers are eligible for a grant of 38.143 cpl paid under the *Energy Grants (Cleaner Fuels) Scheme Act 2004* where the biodiesel meets the relevant fuel quality standard under the *Fuel Quality Standards Act 2000*.
Renewable diesel	
The *Energy Grants (Cleaner Fuels) Scheme Act 2004* is extended to continue the grant arrangements for renewable diesel. Excise or excise-equivalent customs duty for renewable diesel continues to be imposed at the point of manufacture or importation.	Fuel tax on renewable diesel is imposed at the full rate of 38.143 cpl, which also applies to petrol and diesel. Renewable diesel producers and importers are eligible for a grant of 38.143 cpl paid under the *Energy Grants (Cleaner Fuels) Scheme Act 2004* where the renewable diesel meets the relevant fuel quality standard for diesel under the *Fuel Quality Standards Act 2000*.
Ethanol	
Domestically manufactured ethanol will continue to be subject to excise	Fuel tax on ethanol is imposed at the full rate of 38.143 cpl, which also

New law	*Current law*
duty of 38.143 cpl. The existing contract based Ethanol Production Grants Program will be extended and the rate of the grant maintained. Excise-equivalent customs duty on ethanol will remain at 38.143 cpl. The legislated changes from 1 July 2011 to the *Energy Grants (Cleaner Fuels) Scheme Act 2004* will not apply to ethanol.	applies to petrol and diesel. Before 1 July 2011, qualifying ethanol producers are entitled to a grant of 38.143 cpl under the Ethanol Production Grants Program. From 1 July 2011 qualifying ethanol producers are eligible for a grant paid under the *Energy Grants (Cleaner Fuels) Scheme Act 2004* where the ethanol meets the relevant fuel quality standard under the *Fuel Quality Standards Act 2000*.
Fuel tax credits — end users	
An entitlement to fuel tax credits will apply to LPG, LNG and CNG used in carrying on an enterprise for off-road use. No net fuel tax credits will be payable where the fuel is used on-road in heavy vehicles as the road-user charge will exceed the rate of duty payable.	There is no entitlement to fuel tax credits for LPG, LNG or CNG as no fuel tax is payable.
Fuel tax credits — LPG unlicensed distributors	
Unlicensed distributors of LPG that acquire LPG that is subject to excise will be entitled to fuel tax credits to allow the sale of LPG to be effectively excise-free if: • supplied to businesses in tanks of 210 kilograms or less capacity for non-transport use; or • supplied to residential premises for non-transport use.	No entitlement to fuel tax credits currently exists for distributors.

Source *Explanatory Memorandum, pp. 9-11.*

LPG

1.17 LPG is the generic name for mixtures of light hydrocarbon gas, consisting of mainly propane or propane and butane that have been liquefied through compression. While it is used as a transport fuel, LPG containing propane only is used for a range of domestic and commercial purposes including cooking, drying, heating and water heating.

1.18 Currently, LPG is not subject to excise or excise-equivalent customs duty. Under the new arrangements, fuel excise and excise-equivalent customs duty is imposed on LPG at the point of manufacture or importation.

1.19 Under the legislation, LPG is ‘defined in the legislation to include liquid propane, liquid mixtures of propane and butane; liquid mixtures that are either predominantly propane and butane mixtures or predominantly butane with other light hydrocarbons.'[4] The Explanatory Memorandum notes that 'accordingly, an excisable product does not come into existence until such time as the relevant gases are changed into a liquid form.'[5]

1.20 LPG has a lower energy content relative to petrol or diesel and, therefore, excise and excise-equivalent customs duty is imposed on LPG at a lower rate. The amendments impose excise and excise-equivalent customs on LPG at a final rate of 12.5 cpl, reflecting the 50 per cent discount for the alternative fuels. This final rate of excise will apply from 1 July 2015. Table 1.3 shows the rate of excise applying during the phase in period.

Table 1.3 Rate of excise and excise-equivalent customs duty for LPG during the transitional period (cpl)

1 Dec 2011 to 30 June 2012	*2012-13*	*2013-14*	*2014-15*	*From 1 July 2015 Final rate*
2.5	5.0	7.5	10.0	12.5

Source *Explanatory Memorandum, p. 19.*

1.21 The Explanatory Memorandum notes that distributors of LPG on which excise duty has been paid will be entitled to claim a fuel tax credit in relation to the LPG they supply in the following circumstances:

- the LPG has been acquired to make a supply;
- the LPG is supplied to a tank at residential premises or a tank that supplies two or more residential premises and may include business premises; and
- the tank is not for use in supplying LPG for transport use.[6]

LNG

1.22 LNG is produced from natural gas that is cooled to the point that it condenses to a liquid (approximately -161°C). It is typically exported but is also used as a transport fuel, generally in heavy-duty long range road transport.

4 *Explanatory Memorandum*, p. 14.

5 *Explanatory Memorandum*, p. 14.

6 *Explanatory Memorandum*, p. 16.

1.23 LNG is not currently subject to excise or excise equivalent customs duty. Under the legislative amendments fuel excise and excise-equivalent customs duty is imposed on LNG at the point of manufacture or importation.[7] The Explanatory Memorandum notes that 'excise and excise-equivalent customs duty is imposed on LNG that is used in an internal combustion engine for transport use.'[8] The appropriate unit of measurement for LNG and CNG is cents per kilogram, rather than cpl as with the other alternative fuels. The final rate of 26.13 cents per kilogram that applies from 1 July 2015 reflects the energy content of LNG, with a discount of 50 per cent because it is an alternative fuel. Table 1.4 shows how the phase of excise will occur up to the final rate in 2015.

Table 1.4 Rate of excise and excise-equivalent customs duty for LNG during the transitional period (cents per kilogram)

1 Dec 2011 to 30 June 2012	*2012-13*	*2013-14*	*2014-15*	*From 1 July 2015 Final rate*
5.22	10.45	15.67	20.9	26.13

Source Explanatory Memorandum, p. 21.

CNG

1.24 CNG is produced from natural gas, which is compressed. It is used in some bus fleets, street sweepers and garbage collection vehicles. There is no significant use of CNG in cars in Australia at this stage.

1.25 As with LPG and LNG, CNG is not currently subject to excise or excise-equivalent customs duty. The Explanatory Memorandum notes that 'under these amendments fuel excise is imposed on CNG at the point of manufacture, which is when the natural gas is compressed for use in a vehicle, or when it is imported for use in a vehicle.'[9] Excise and excise-equivalent customs duty is imposed on the manufacture or importation of CNG where it is manufactured or imported for use in vehicles. However, excise does not apply:

- where CNG is used or intended for use for something other than as a fuel for a vehicle;

7 *Explanatory Memorandum*, p. 20.

8 *Explanatory Memorandum*, p. 20.

9 *Explanatory Memorandum*, p. 21.

- to the extent the process of manufacture is not part of the activities of the enterprise, for example, excise is not imposed where natural gas is compressed in home refuelling systems for non-business purposes; or
- where CNG is used in a forklift off-road or other vehicles prescribed by regulation.[10]

1.26 Excise will be imposed on CNG at a final rate of 26.13 cpg as from 1 July 2015. Table 1.5 shows the phase in period for excise applying to CNG.

Table 1.5 Rate of excise and excise-equivalent customs duty for CNG during the transitional period (cents per kilogram)

1 Dec 2011 to 30 June 2012	*2012-13*	*2013-14*	*2014-15*	*From 1 July 2015 Final rate*
5.22	10.45	15.67	20.9	26.13

Source *Explanatory Memorandum, p. 23.*

Biodiesel

1.27 Biodiesel is a fuel manufactured by chemically altering vegetable oils or animal fats or oils (or recycled oils from these sources). It can also be produced from various non-food crops such as pongamia, jatropha curcas and algae.

1.28 Biodiesel is generally used as a transport fuel and sold as B5 or B20 (comprising diesel together with up to 5 per cent biodiesel or more than 5 per cent and up to 20 per cent biodiesel respectively). The AIP notes that 'biodiesel has a slightly lower energy content than conventional diesel although this is not significant when operating vehicles on biodiesel blends.'[11]

1.29 The use of biodiesel requires additional engine maintenance. While there are some engine manufacturers with engines capable of using fuels above B5 there are only a 'limited number of such engines in use in Australia.'[12]

10 *Explanatory Memorandum*, p. 22.

11 Australian Institute of Petroleum, *Biofuels factsheet*, p. 5.

12 Australian Institute of Petroleum, *Biofuels factsheet*, p. 5.

1.30 While biodiesel attracts an excise and excise-equivalent customs duty of 38.143 cents per litre, it also attracts a grant payable of 38.143 cents per litre under the Energy Grants (Cleaner Fuels) Scheme for both imported and domestically produced biodiesel, provided the fuel meets standards set by the *Fuel Quality Standards Act 2000*.

Renewable diesel

1.31 Renewable diesel is 'a product derived from tallow that is co-produced with petroleum-derived diesel and is chemically indistinguishable from petroleum-derived diesel.'[13]

1.32 Excise and excise-equivalent customs duty is imposed on renewable diesel at the point of manufacture or importation at a rate of 38.143 cpl. Similar to biodiesel, the *Energy Grants (Cleaner Fuels) Scheme Act 2004* is extended to provide an ongoing grant to eligible manufacturers or importers.

Ethanol

1.33 Ethanol is a liquid alcohol usually produced through fermentation and distillation from crops rich in sugar or starch. Ethanol contains 68 per cent of the energy content of petrol and can be mixed with petrol to produce an ethanol blend motor fuel. [14] In Australia, the most common ethanol blend is E10. The Australian Institute of Petroleum (AIP) notes that 'ethanol up to a 10 per cent blend with petrol can be used satisfactorily in most new and many older vehicles.'[15]

1.34 In relation to greenhouse benefits, the AIP notes that 'most ethanol currently produced in Australia will be able to demonstrate moderate levels of greenhouse gas abatement.'[16]

1.35 Domestically produced ethanol attracts an excise of 38.143 cents per litre plus a grant under the Ethanol Production Grant Program. Imported ethanol attracts an excise-equivalent customs duty of 38.143 cents per litre (and ad valorem duties of customs up to 5 per cent depending on origin) but no grant. The goods and services tax (GST) applies to the excise-inclusive price of petrol and diesel at a single uniform rate of 10 per cent. GST also applies to biofuels and gaseous fuels.

13 Australian Institute of Petroleum, *Biofuels factsheet*, p. 1.
14 Australian Institute of Petroleum, *Biofuels factsheet*, p. 2.
15 Australian Institute of Petroleum, *Biofuels factsheet*, p. 2.
16 Australian Institute of Petroleum, *Biofuels factsheet*, p. 3.

1.36 The existing Ethanol Production Grants Program operates on an administrative basis and is entered into contractually by producers. The program was to expire on 30 June 2011, and the *Energy Grants (Cleaner Fuels) Scheme Act 2004* was legislated to apply to the manufacture of ethanol from 1 July 2011. The Ethanol Production Grants Program will be extended and the rate of grant will continue to be 38.143 cpl.[17]

1.37 The 2010-11 Budget made targeted assistance available to domestic ethanol producers, and phased down over the transition period. In addition, imported ethanol would also experience a more gradual reduction in excise-equivalent customs duty over the transition period than previously announced. Subsequently, the Government announced on 7 September 2010 that there will be a more gradual phase down of the transitional arrangements for domestically produced ethanol over a 10 year period.

1.38 Domestic producers of ethanol produced entirely in Australia from biomass feedstock which is to be used in, or as, transport fuel in Australia will be eligible for the targeted assistance.

Committee objectives and scope

1.39 Last year, the Government held public consultations on a discussion paper on taxing alternative fuels and released draft legislation in January this year, which has also been subject to comment. Therefore, the committee is examining a package of bills that have already been refined to take into account many of the views of industry.

1.40 At the same time, the committee notes that the Bills fulfil policy objectives first proposed by the then Howard Government in the 2003-04 Budget. The objective of the inquiry has therefore been to test the technical adequacy of the proposed legislation and ensure that there are no unintended consequences.

Conduct of the Inquiry

1.41 Information about the inquiry was advertised in *The Australian* on 15 December 2010. Details of the inquiry and the Bill were placed on the

17 *Explanatory Memorandum*, p. 12.

committee's website. A media release announcing the inquiry and seeking submissions was issued on 10 December 2010.

1.42 Submissions received as part of this inquiry are listed at Appendix A. Those persons and organisations appearing at public hearings are listed at Appendix B. Exhibits are listed at Appendix C.

1.43 Public hearing was held in Canberra on 23 May 2011 and in Sydney on 27 May 2011. The submissions and transcript of evidence are available from the committee's website at http://www.aph.gov.au/house/committee/economics/index.htm.

Analysis of the bills

Electric vehicles

1.44 During the inquiry, the Energy Networks Association, the Australian Automotive Association and the NRMA noted that electric vehicles had been excluded from the bills.[18] Although the number of electric vehicles is very small now, this is an important observation for the future, given that one of the key motivators behind the legislation is to reduce distortions in the fuels sector.

1.45 The committee does not have significant comment to make on an excise-equivalent tax on the electricity used by electric vehicles, except to note the observation of the Australian Automotive Association that, 'It is very much an emerging one that is going to emerge a lot quicker than everybody thinks'.[19] Because this matter has the potential to quickly become a major issue, the committee would prefer that Treasury commence consultations on policy now, so that it can be developed in a timely way and give industry adequate time to adjust.

18 Mr Dale Weber, *Committee Hansard*, Canberra, 23 May 2011, p. 22, Mr James Cameron, *Committee Hansard*, Canberra, 23 May 2011, p. 16, Mr Alan Evans, *Committee Hansard*, Sydney, 27 May 2011, p. 12.

19 Mr Greg Goodman, *Committee Hansard*, Canberra, 23 May 2011, p. 20.

Recommendation 1

1.46 **Treasury and other relevant agencies commence consultations with industry with a view to developing an excise-equivalent tax for the electricity used by electric vehicles in the medium term.**

Food for fuel

1.47 The Australian Lot Feeders' Association raised the question of whether increased demand for grain, such as wheat and sorghum, by ethanol producers might push up grain prices to the detriment of other parts of the economy.

1.48 The Association was presenting this argument as the peak body representing the $2.7 billion industry that produces beef through feedlots, including beef that is finished in feedlots. In all, the feedlot industry contributes 40 per cent of Australia's total beef supply.[20] The Association's membership could be adversely affected if increased demand for ethanol through the grants system in the bills increased grain prices.

1.49 Currently, 52 per cent of Australia's ethanol capacity depends on grain.[21] The Association argued in evidence that, if the New South Wales mandate that 10% of passenger vehicle fuels be ethanol is applied during a drought year, then the fuel industry would consume 22 per cent of the State's grain production. The Association also noted that, while cattle can eat the byproduct of grain ethanol production, it is an inferior product to grain due to its high water content and short shelf life.[22]

1.50 The ethanol industry rejected these claims. For example, Dalby Biorefinery stated that grain prices are largely determined by world prices and that only 3 per cent to 5 per cent of world grain production is used to produce ethanol. Dalby Biorefinery noted that its local grain prices had increased by up to $10 a tonne, which is not substantial when prices exceed $200 a tonne. Finally, it stated that it sells all its byproduct as feed to reputable, large scale producers.[23]

20 *Submission 2a*, p. 3.
21 *Submission 2a*, p. 4.
22 Mr Dale Gordon, *Committee Hansard*, Sydney, 27 May 2011, p. 20.
23 Mr Kevin Endres, *Committee Hansard*, Sydney, 27 May 2011, p. 29.

1.51 The Biofuels Association of Australia also commented. Its argument was that a number of recent reports have been published that find that the effect of biofuels on food prices is much less than originally thought. The organisations behind these reports include the World Bank, which was one of the first organisations to originally raise this matter.[24]

1.52 The food for fuel debate within Australia is difficult to resolve at this point. Both sides to the debate have plausible arguments, which revolve around the question of whether the ethanol industry will get to sufficient size to affect grain prices, taking into account the quality of their byproduct as feed. It is a matter of time as to who might be proved correct. The committee is of the view that it is important to monitor the relationship between grain and fuel prices within Australia into the future.

Recommendation 2

1.53 **The Treasury and other relevant Commonwealth agencies monitor the relationship between fuel and grain prices. Where subsidised domestic ethanol production is beginning to have a significant adverse effect on competitors for grain, these agencies are to conduct consultations with the industries to minimise market distortions.**

Increased consistency and reductions in distortions

1.54 In the view of Smorgon Fuels, the bills will increase the degree of consistency in the taxation of fuels for transport purposes. In their submission, Smorgon Fuels noted the changes between earlier versions of the legislation and the latest ones, stating that:

> In the Early Exposure Draft of the legislative package, a marked difference in treatment between ethanol and biodiesel was proposed. This would have introduced an unnecessary and unhelpful distortion. The biofuels industry worked hard to explain that the two fuels do not compete with one another and

24 Ms Heather Brodie, *Committee Hansard*, Sydney, 27 May 2011, p. 38. For example, see Donald Mitchell, 'A Note on Rising Food Prices,' World Bank, Policy Research Working Paper 4682, <http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2008/07/28/000020439_20080728103002/Rendered/PDF/WP4682.pdf> and John Baffes and Tassos Haniotis, 'Placing the 2006/08 Commodity Price Boom into Perspective,' World Bank, Policy Research Working Paper 5371, < http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2010/07/21/000158349_20100721110120/Rendered/PDF/WPS5371.pdf>, both viewed 30 May 2011.

> are in fact complimentary and therefore warrant equal support....We are pleased this message was heard and the legislation now before the House proposes to retain the...grant which fully offsets excise for both ethanol and biodiesel until 30 June 2021.[25]

1.55 Treasury also made this argument, noting that the bills will lead to improved economic efficiency:

> One of the principal objectives of the arrangements proposed for alternative fuels is essentially to introduce greater certainty in the taxation of fuels used for transport purposes to ensure that competition between transport fuels that are currently untaxed and transport fuels that are currently taxed does not harm economic efficiency and create distortions. That is essentially the objective of bringing alternative fuels into the fuel tax net.[26]

1.56 The committee notes the importance of the efficiency argument. A similar point was made by the previous Treasurer, Mr Peter Costello MP, when he announced a similar policy in 2003.[27]

Certainty for industry

1.57 The proposed bills were highly valued because of the important role that they would play in assisting investors make decisions. In their submission, Smorgon Fuels noted that the biofuels industry urgently requires strong investments signals in order 'to underpin investment decision making and to realise commercial success with second and third generation feedstocks and technologies.'[28]

1.58 A number of witnesses from the biodiesel industry emphasised the fact the industry was essentially an infant industry, one in the very early stages of development. For this reason, many suggested that the certainty that the bills provided would be invaluable for the further development and eventual maturation of the industry.

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25 Smorgon Fuels Pty Ltd, *Submission 1*, p. 4.

26 Mrs Brenda Berkeley, General Manager, Indirect Tax Division, Revenue Group, Department of the Treasury, *Committee Hansard*, Canberra, 23 May, 2011, p. 7.

27 The Hon Peter Costello, MP, Treasurer, 'Fuel Tax Reform for the Future,' *Media Release*, 13 May 2003.

28 Smorgon Fuels Pty Ltd, *Submission 1*, p. 5.

1.59 In evidence, Biodiesel Industries Australia stated that it had only spent funds on repairs and maintenance for the past two years due to policy uncertainty.[29]

1.60 Similar points were made by other witnesses before the committee. The Department of the Treasury, for example, were explicit in their acknowledgement of this issue, advising the committee as follows:

> It provides certainty to industry. At the moment there is no final legislation in place. The policy was announced in the 2003-04 budget. So there has been a period of seven or eight years of uncertainty about what the final legislative product will be. The passage of the bills will finally provide that certainty for industry, so they will know exactly how the law applies rather than having a policy statement with no enacted law. A number of times in consultation we did hear from industry that they would prefer to have the final certainty rather than simply having the government announce policy that is not implemented.[30]

1.61 The improved certainty for industry is a key positive about the bills. Many of these technologies are undergoing sustained research and development.[31] The bills will assist in creating a positive investment climate, which will assist in generating a more efficient industry in the long run.

Industry assistance

1.62 A common argument in industry policy is whether the general public would be better off if firms did not receive assistance and had to make profits on their own. The Australian Lot Feeders' Association made such an argument during the inquiry:

> The bills will also continue the misallocation of resources towards inefficient and unviable ethanol production and away from the commercialisation of superior advanced and second generation ethanol technologies. ... Governments should not provide such assistance for industries that are unable to be commercially viable without it. The answer for Government is not to increase industry

29 Mr Andrew Hill, *Committee Hansard*, Sydney, 27 May 2011, p. 39.

30 Mr Phil Bignell, Senior Adviser, Indirect Tax Division, Revenue Group, Department of the Treasury, *Committee Transcript*, Canberra 23 May, 2011, p. 9.

31 Smorgon Fuels, *Submission 1*, pp. 3 and 5.

> assistance as proposed but to remove it so that market forces can prevail and companies are forced to be competitive and efficient.[32]

1.63 The Association was not alone in expressing anxieties or concerns with government assistance. The Australian Institute of Petroleum recommended that all such assistance should:

- be transparent;
- be regularly reviewed to ensure that the objectives of the assistance are still relevant; and
- should allow for a clear transition period prior to an appropriate expiry date.[33]

1.64 The arrangements on these bills apply to a ten year limit to assistance to be followed by a review. In evidence, the industry has argued that it has not had consistent government policy,[34] even though the first ethanol assistance was provided 20 years ago.[35] The biofuels industry also stated that the ten year period in the legislation would provide it with sufficient certainty into the future.[36] Given this extended period, it would be possible to incorporate some of the ideas of the Institute into the bills, such as phasing in a level of excise over five years at the conclusion of the ten year exemption period. This might provide a more suitable background to the proposed review in 10 years time.

Conclusions about the bills

1.65 A number of witnesses who appeared before the committee at its public hearings to support the bills emphasised the urgency of passing the bills. Smorgon Fuels, for example, a biodiesel producers with a 100-million-litre capacity plant at Laverton North in Victoria, were concerned that any failure to pass the bills would have a negative effect on the very viability of the biodiesel industry itself. Asked by the committee what would happen if the bills were not passed by 1 July 2011, Smorgon Fuels advised: 'That is pretty simple; we would stop.'[37]

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32 Australian Lot Feeders' Association, *Submission 2a*, p. 2.

33 Australian Institute of Petroleum, *Submission 3*, p. 3.

34 Mr Kevin Endres, Dalby Biorefinery, *Committee Hansard*, Sydney, 27 May 2011, p. 28, Mr Matthew Ingersoll, Manildra Group, *Committee Hansard*, Sydney, 27 May 2011, p. 39.

35 Mr Alan Evans, NRMA, *Committee Hansard*, Sydney, 27 May 2011, p. 14.

36 Mr Matthew Ingersoll, Manildra Group, *Committee Hansard*, Sydney, 27 May 2011, p. 39.

37 Mr Peter Edwards, Managing Director, Smorgon Fuels, Pty Ltd, *Committee Hansard*, Canberra, 23 May, 2011, p. 2.

1.66 This urgency was broadly supported by expert testimony from outside the industry. For example, Treasury stated in evidence:

> As I mentioned earlier, the reality is that longstanding legislation does impact on the availability of production grants from 1 July. So there would be a significant impact from 1 July in the absence of alternative legislation of this sort to rectify the situation from 1 July for both biodiesel and the ethanol industry.[38]

1.67 The bills are an important reform to fuel excise in Australia. They will help remove distortions in the pricing of fuels leading to improved economic efficiency. They will also provide certainty to industry and create a positive climate for investment. Indeed, the *Australian Financial Review* has referred to these bills as 'rational fuel taxation'.[39]

1.68 The committee also notes that the then Treasurer, the Hon Peter Costello MP, originally announced similar measures in 2003. Mr Costello stated:

> The reforms will establish a fairer and more transparent fuel excise system with improved competitive neutrality between fuels. They will provide the opportunity for currently untaxed fuels to establish their commercial credentials in the market place.[40]

1.69 Therefore, the committee recommends that the bills be passed as a matter of urgency in order to meet the 1 July deadline for extending the grants program supporting biofuels.

Recommendation 3

1.70 **The House of Representatives pass the bills as a matter of urgency.**

Mr Craig Thomson MP
Chair
31 May 2011

38 Mrs Brenda Berkeley, General Manager, Indirect Tax Division, Revenue Group, Department of the Treasury, *Committee Hansard*, Canberra 23 May, 2011, p. 10.

39 'Liberals need policy focus,'*Australian Financial Review*, 30 May 2011, p. 54.

40 The Hon Peter Costello, MP, Treasurer, 'Fuel Tax Reform for the Future,' *Media Release*, 13 May 2003.