

# Chapter 3

## Provisions of the bills

3.1 The proposed legislation comprises four bills. In this chapter, the committee considers the provisions of each bill.

### **Excise Tariff Amendment (Fuel Indexation) Bill 2014 and Customs Tariff Amendment (Fuel Indexation) Bill 2014**

3.2 The Excise Tariff Amendment (Fuel Indexation) Bill 2014 and Customs Tariff Amendment (Fuel Indexation) Bill 2014 would index the rate of excise and excise-equivalent customs duty applying to fuels, including gaseous fuels, in line with changes in the CPI. The amendments would apply indexation to duty on domestically manufactured and imported fuel with effect from 1 August 2014 and thereafter on 1 February and 1 August of each subsequent year.<sup>1</sup> The duty payable on petroleum products is generally calculated by applying the duty at a set rate of cents per litre or kilogram of the product.<sup>2</sup>

3.3 This indexation would be consistent with the way in which indexation of the rates of excise and excise-equivalent customs duty applies to alcohol—that is, indexation occurs bi-annually based on changes in the CPI as published by the Australian Statistician.<sup>3</sup> The intention of the proposed legislation is to maintain the real value of excise and excise-equivalent customs duty collections and to ensure that this additional revenue is dedicated to funding investment in road infrastructure.<sup>4</sup>

3.4 According to the Explanatory Memorandum, indexation would apply to the following fuels:

- petroleum condensate and stabilised crude petroleum oil used as a fuel;
- topped crude petroleum oil;
- refined or semi-refined liquid products derived from petroleum;
- liquid hydrocarbon products;
- liquefied petroleum gas;
- liquefied and compressed natural gas;
- denatured ethanol for use in an internal combustion engine;
- biodiesel; and

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1 Explanatory Memorandum, General outline and financial impact, p. 3 and paragraph 1.6.

2 Explanatory Memorandum, paragraph 1.13.

3 Explanatory Memorandum, paragraph 1.10.

4 See for example, Explanatory Memorandum, paragraph 1.9.

- blends of the above products.<sup>5</sup>

The measure was estimated to result in a gain to revenue over the forward estimates of \$2,197.5 million comprising:

2014–15	2015–16	2016–17	2017–18 <sup>6</sup>
\$157.5m	\$375m	\$675m	\$990m

3.5 The Regulation impact statement suggested that:

By the end of the forward estimates period in July 2018 the biannual indexation of fuel excise and excise-equivalent customs duty is estimated to result in a total increase in petrol and diesel prices of 4.1 cents per litre, which includes a 0.4 cent per litre increase in GST which is levied on the duty-inclusive price.<sup>7</sup>

3.6 The ATO is to calculate the indexed rates of fuel tax every indexation period. According to the ATO, it has a range of online calculators and an established process for early notification and announcement of what the CPI rate is. The ATO would follow a process similar to what it has done prior to indexation for other excise issues.<sup>8</sup>

### ***Blended fuels***

3.7 Blended fuels would also be subject to indexation. The rate of excise for fuel blends is to be worked out using a five-step process. The bill sets out the method for determining the duty payable on blended fuels at the time the duty on the blended goods is payable. It refers to subsection 6G(1) but with a note that the rate appearing on the face of step 3 would be indexed under section 6A—the indexation of CPI indexed rates.

Step 1. Add up the amount of duty that would be payable on each constituent of the blended goods, that is classified to item 10 of the Schedule, if the constituent had not been included in the blended goods.

Step 2. Work out the volume, in litres, of the blended goods that is not attributable to those constituents or to water added to manufacture the blended goods.

Step 3. Multiply the result of step 2 by (as indexed under section 6A)

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5 Explanatory Memorandum, paragraph 1.11.

6 Explanatory Memorandum, p. 3.

7 Regulation impact statement, paragraph 2.11.

8 See Mr James O'Halloran, *Proof Committee Hansard*, 2 July 2014, p. 26.

Step 4. Total the results of steps 1 and 3.

Step 5. Subtract from the total any duty paid on a constituent of the blended goods that is classified to item 10 or 15 of the Schedule.<sup>9</sup>

### ***Rounding of duty payable***

3.8 Under the proposed legislation the indexed rates of excise and excise-equivalent customs duty for fuels, excluding aviation fuel, are to be rounded to one decimal point of a cent. The Explanatory Memorandum noted that:

This simplifies the fuel tax credit claim calculation for claimants of fuels such as petrol and diesel that currently have a rate of duty calculated to three decimal places of a cent.<sup>10</sup>

3.9 The current rounding rules still apply for 'the purposes of calculating the CPI index rate of duty for each indexation period'. Thus, while the calculation of CPI indexed rates uses rates expressed to three decimal places of a cent for fuels such as petrol and diesel, the result of the calculation would be rounded to one decimal place of a cent. The Explanatory Memorandum provides the following example:

On 1 August 2014 CPI indexation applies. Assume that the indexation factor for 1 August 2014 is 1.035. Accordingly the CPI indexed duty rate for diesel on 1 August 2014 is 39.5 cents per litre (or \$0.395 per litre). This is calculated by multiplying the indexation factor by the pre 1 August 2014 duty rate (38.143 cents per litre x 1.035 = 39.478 cents per litre rounded up to one decimal place of a cent being 39.5 cents per litre).

On 1 February 2015 CPI indexation applies. Assume that the indexation factor for 1 February 2015 is 1.022. Accordingly the CPI indexed duty rate for diesel on 1 February 2015 is 40.3 cents per litre (or \$0.403 per litre). This is calculated by multiplying the indexation factor by the 1 August 2014 rate before rounding (39.478 cents per litre x 1.022 = 40.347 cents per litre). The result of this calculation is then rounded down to one decimal place of a cent being 40.3 cents per litre.<sup>11</sup>

3.10 The government had not previously announced the rounding of duty rates and the road user charge to one decimal place of a cent.<sup>12</sup>

### **Fuel Indexation (Road Funding) Bill (FIRF)**

3.11 Registered entities that use fuel in their business activities for certain activities may claim fuel tax credits. The Regulation impact statement notes that:

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9 Section 6G and Excise Tariff Amendment (Fuel Indexation) Bill 2014, items 9 and 10. Also refer the examples given in Explanatory Memorandum pp. 9–10.

10 Explanatory Memorandum, paragraph 1.17.

11 Explanatory Memorandum, p. 11.

12 Explanatory Memorandum, p. 3.

Fuel used in heavy (that is more than 4.5 tonnes gross vehicle mass) on-road vehicles and business off-road will not bear the burden of any fuel excise increases because of their entitlements to fuel tax credits. For off-road activities, this is the full reimbursement of fuel tax for heavy on-road vehicles this is equivalent to the fuel tax rate minus the road user charge.<sup>13</sup>

3.12 The *Fuel Tax Act 2006* provides a single system of fuel tax credits. Fuel tax credits are paid to reduce the incidence of fuel tax levied on taxable fuels, ensuring that, generally, fuel tax is only applied effectively to:

- fuel used in private vehicles and for certain other private purposes; and
- fuel used on-road in light vehicles for business purposes.<sup>14</sup>

3.13 The Act explains that to achieve this purpose, a fuel tax credit is provided to reduce the incidence of fuel tax applied to:

- fuel used in 'carrying on your' enterprise (other than fuel used on-road in light vehicles); and
- fuel used for domestic heating and domestic electricity generation; and
- fuel packaged for use other than in an internal combustion engine; and
- fuel supplied into certain kinds of tanks.<sup>15</sup>

3.14 The bill amends the section of the Act concerned with the calculation of fuel tax credits.

3.15 The calculation of the fuel tax credit for an amount of fuel depends on the rate of excise or excise-equivalent customs duty that applies to fuel. The rates of the fuel tax credits are calculated by subtracting any rebate or grant that applies from the applicable exercise and excise-equivalent customs duty.<sup>16</sup> The FIRF 2014 amends the *Fuel Tax Act 2006* to ensure that taxpayers generally use the same indexed rate of duty payable on the fuel for determining the amount of their fuel tax credits.<sup>17</sup> Indeed, the Regulation impact statement states that:

To ensure that the fuel tax credit system works effectively, modifications will also be made to the Fuel Tax Act 2006. These modifications seek to ensure that the same indexed rate is used for determining the amount of excise or excise-equivalent customs duty payable on the fuel and the amount of the fuel tax credit for the same fuel.<sup>18</sup>

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13 Regulation impact statement, paragraph 2.31.

14 Section 40–5.

15 Section 40–5.

16 Explanatory Memorandum, paragraph 1.5.

17 Explanatory Memorandum, paragraph 1.8.

18 Regulation impact statement, paragraph 2.50.

3.16 The Explanatory Memorandum notes that the current provisions use the duty rate on the first day of the tax period to calculate the amount of the fuel tax credits after 30 June 2015 for most registered claimants. It explained that this arrangement:

...may have understated the fuel tax credits for claimants who report quarterly or annually. These claimants may have paid the higher indexed rate of duty, or acquire fuel that has borne the higher rate on or after 1 February or 1 August, but could only claim fuel tax credits based on the lower duty rate applying on the first day of a tax period starting on 1 January or 1 July.<sup>19</sup>

3.17 To resolve these difficulties, the bill repeals subsection 43–5(2A) and substitutes it with the following table that stipulates the date for working out the rate of fuel tax, grant or subsidy:<sup>20</sup>

If	The day is:
1. You acquired or imported the fuel	The day you acquired or imported the fuel
2. You: <ul style="list-style-type: none"> <li>(a) manufactured the fuel; and</li> <li>(b) entered the fuel for home consumption (within the meaning of the <i>Excise Act 1901</i>)</li> </ul>	The day you entered the fuel for home consumption (within the meaning of the <i>Excise Act 1901</i> )

3.18 Subsection 43–10(6) would be repealed and a new subsection inserted that provides for the amount by which a fuel tax credit for taxable fuel is to be reduced is worked out by reference to the rate of fuel tax or road user charge in force on the day worked out using the table in subsection 43-5(2A).<sup>21</sup>

### **Fuel Indexation (Road Funding) Special Account Bill 2014 (FISA)**

3.19 This bill establishes the Fuel Indexation (Road Funding) Special Account. A special account is an 'appropriation mechanism that provides a limited special appropriation of up to the balance of the Special Account at any given time'. The appropriation is provided under sections 20 or 21 of the *Financial Management Accountability Act 1997*.<sup>22</sup>

19 Explanatory Memorandum, paragraph 1.51.

20 Fuel Indexation (Road Funding) Bill 2014, Schedule, item 1.

21 Fuel Indexation (Road Funding) Bill 2014, Schedule 4, item 2.

22 See Department of Finance, <http://www.finance.gov.au/financial-framework/financial-management-policy-guidance/special-accounts.html> (accessed 20 June 2014)

3.20 The purpose of the Special Account is stipulated unambiguously in the preliminary part of the proposed legislation. The bill states that the purpose of the Special Account is to ensure that amounts equal to the net revenue from indexation on customs and excise duties on fuel are transferred to the Commonwealth of Australian Governments' Reform Fund. It is to be used to provide funding to the states and territories for expenditure in relation to Australian road infrastructure investment.<sup>23</sup>

3.21 The bill would provide for the Treasurer, by writing, to determine that a specified amount is to be credited to the Special Account on a specified day. In making such a determination, the Treasurer must have regard to the purpose of the Special Account.<sup>24</sup> The Explanatory Memorandum also makes clear that the balance of the Special Account can only be used for road infrastructure funding.<sup>25</sup> This determination is a legislative instrument but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the determination.<sup>26</sup> This provision means that a House of the Parliament cannot disallow the Treasurer's determination. Under the proposed legislation, for each financial year starting on or after 1 July 2014, the Treasurer must:

- make one, and only one, determination; and
- make that determination as soon as practicable after the end of the financial year.<sup>27</sup>

3.22 The proposed legislation intends to ensure that amounts in the Special Account are 'transferred to the COAG Reform Fund as soon as practicable in order to make grants of financial assistance to the states and territories for expenditure in relation to Australian road infrastructure investment'.<sup>28</sup> The bill provides for the Infrastructure Minister by writing to direct that a specified amount is to be:

- debited from the Special Account; and
- credited to the COAG Reform Fund;

on a specified day.<sup>29</sup>

3.23 The provisions, which establish the Special Account for the next additional revenue from the reintroduction of fuel indexation, apply from 1 July 2015.<sup>30</sup>

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23 Fuel Indexation (Road Funding) Special Account Bill 2014, item 3.

24 Fuel Indexation (Road Funding) Special Account Bill 2014, item 8.

25 Explanatory Memorandum, paragraph 1.7.

26 Fuel Indexation (Road Funding) Special Account Bill 2014, item 8.

27 Fuel Indexation (Road Funding) Special Account Bill 2014, item 8.

28 Fuel Indexation (Road Funding) Special Account Bill 2014, item 10.

29 Fuel Indexation (Road Funding) Special Account Bill 2014, item 10.

30 Explanatory Memorandum, p. 3.

3.24 In the following chapter, the committee examines the arguments put forward in submissions and during the public hearing that support the proposed legislation or parts of it and those that oppose the package of bills.

