



## Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006

Richard Webb  
Economics, Commerce and Industrial Relations Section

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## Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006

**Date introduced:** 11 May 2006

**House:** House of Representatives

**Portfolio:** Treasury

**Commencement:** As per the table in clause 2. In most instances, the commencement date is 1 July 2006.

### Purpose

To amend or repeal several Acts to effect the Government's proposals with respect to excise contained in the energy white paper, and to simplify and update legislative requirements relating to excise especially those in the *Excise Act 1901*.

### Background

Excise is a tax levied on certain goods produced in Australia. The main goods from which excise duty revenue derives are petroleum and other fuel products, crude oil, alcoholic beverages, and tobacco. Excise is levied for three (not mutually-exclusive) reasons. The main reason is to raise revenue. The second is to influence consumer behaviour; this consideration underlies excise on tobacco and alcohol where excise is levied partly to limit consumption. Cost recovery is the third reason; the excise on aviation fuels is an example.

Section 90 of the Constitution gives the Commonwealth exclusive power to impose excise. The producer of the good is legally liable to pay excise. Excise is levied under the *Excise Tariff Act 1921* (the Excise Tariff Act) and the *Excise Act 1901* (the Excise Act). The goods subject to excise and the rates are listed in the Excise Tariff, which is Schedule 1 to the Excise Tariff Act. The Australian Taxation Office (ATO) administers excise.

On 15 June 2004, the Government released the energy white paper titled [Securing Australia's Energy Future](#). The white paper proposed, among other things, a fuel tax credits scheme to replace the Energy Grants Credits Scheme and other concessions from 1 July 2006, and changes to excise rates. Background to the fuel tax credits scheme can be found in the Bills Digest for the [Fuel Tax Bill 2006](#).

As part of the reforms proposed in the energy white paper, the Government decided to remove the excise on burner fuels (fuels used other than in an internal combustion engine such as kerosene used to heat houses). The Australian Taxation Office (ATO) has noted:

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The decision to remove the effective excise on burner fuels as part of the fuel excise reforms presented the Australian Government with an opportunity to review the entire schedule to the *Excise Tariff Act 1921*.

The review, announced in June 2005, was aimed at reducing compliance costs for excise manufacturers and other excise stakeholders, importers and administering authorities.

Overall, the changes resulting from the review are designed to:

- streamline the schedule and make it more user friendly
- make excise law clearer and less complex, and
- improve the integrity of the excise system.<sup>1</sup>

The review was contained in the Treasury paper titled [\*Review of the Schedule to the Excise Tariff Act. Industry Discussion Paper\*](#). The review—which was the most comprehensive for many years—proposed wide-ranging changes to the Excise Tariff Act, principally to the Excise Tariff. The Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Bill 2006 implements the outcome of the review (see the Bills Digest for this Bill for additional background).

The bulk of the Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006 (the Bill) is directed towards amending the Excise Act. The Bill also repeals redundant legislation. The amendments reflect two main factors. The first is the need to implement the fuel tax credits scheme. As the Minister noted in his second reading speech:

This bill makes changes to the *Excise Act 1901* so that the mechanism for fuel tax relief for eligible users is through the fuel tax credit system, legislated through the Fuel Tax Bill 2006, and not through concessions within the excise system.

The Government's reforms also render several Acts redundant. In particular, the *Excise Act 1901* contains provisions that are redundant or need updating.

The Explanatory Memorandum contains the following summary of the current law and proposed new law.

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<i>New law</i>	<i>Current law</i>
The requirement to prescribe circumstances where excisable and imported inputs may be used in excise manufacture will be removed. The ability to prescribe if necessary will be retained.	Excisable and imported inputs to excise manufacture may be used only in prescribed circumstances and subject to prescribed conditions.
Fuel blending is considered blending unless the resulting blend is carved out.  A new section of the Excise Act will specify fuel blends that are not captured by the excise tariff. If blending results in a product that can not be used as a fuel, it will be carved out, either directly or via a determination under the Fuel Tax Bill 2006.	Fuel blending is considered excise manufacture except in circumstances listed as exempt in the regulations.
Regulations can be made to limit movement permissions granted by the Commissioner of Taxation (CEO) where duty has not been paid (on fuel).	The CEO can give permission for excisable goods on which duty has not been paid to be moved from one place to another place.
All excise licences expire. When first issued the expiry date is 31 March, two years after the initial issue with continuation permitted pending a decision to renew. Renewal is for three years. Additional guidance is provided to the CEO when considering applications for licences.	There are inconsistent validity periods for different classes of excise licences. For example, manufacturer licences expire each year, while others such as tobacco growers' licences have no expiry date.
A streamlined provision will enable rules to be determined for measuring the volume, weight or alcoholic strength of an excisable good.	Complex provisions govern the measurement of volume and strength of beer and alcoholic beverages only.
To protect the revenue, all persons who have had possession, custody or control of tobacco leaf can be asked to satisfactorily account for it and pay an amount equal to the excise duty that would have been paid had the deficient leaf been manufactured into excisable tobacco.	Producers and dealers can be asked to account for tobacco leaf and pay excise duty on any deficiencies.
To protect the revenue, bottling of duty-paid bulk beer is excise manufacture to prevent lower excise liability applying.	Bulk beer can be entered for home consumption and then repackaged to pay a lower rate of duty.
The concessional spirits scheme is streamlined to reduce the administrative burden on users of concessional spirits and protect the revenue where concessional spirits are unable to be satisfactorily accounted for.	Complex provisions govern concessional spirits (including provisions governing uses, permissions, obligations of users and formulations).
In addition to remissions, rebates and refunds being allowed in prescribed circumstances, regulations may be made for and in relation to the CEO granting approvals for such circumstances.	Remissions, rebates and refunds are allowed in circumstances prescribed by regulations.
The recovery of debts under section 60 of the Excise Act is covered by the Taxation Administration Act 1953.	There are recovery provisions specific to debts under section 60 of the Excise Act.

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<i>New law</i>	<i>Current law</i>
All licence holders can be directed to keep, retain and produce records by the CEO.	Licensed producers and dealers are required to keep prescribed accounts and make prescribed returns. Other licence holders can be directed by the CEO to keep, retain and produce records.
A definition of renewable diesel in the Energy Grants (Cleaner Fuels) Scheme Act 2004 to mean liquid fuel manufactured from vegetable oil or animal fats by a process of hydrogenation is inserted.	Not covered by current law.
Provisions and certain Acts which are redundant or inconsistent with best practice regulation are repealed.	Provisions and Acts which are inconsistent with best practice regulation, such as provisions which are not enforced, are overly prescriptive or apply to lapsed time periods, are present.

Source: Explanatory Memorandum, paragraph 2.10, pp. 39-41.

Several specific features of the Bill are noteworthy. One is proposed changes to the excise on biodiesel. The ATO has summarised the proposed changes with respect to biodiesel as follows:

The key changes relating to biodiesel are:

all biodiesel will be subject to excise duty of \$0.38143 per litre, regardless of end use. Currently, excise is only payable on biodiesel for use in an internal combustion engine

a streamlined excise tariff schedule which includes new tariff items for biodiesel and blends of biodiesel, and

all blending of biodiesel with other fuels will be excise manufacture and a manufacturer licence will be required even where duty has already been paid on the constituent fuels in the blend.

These changes are expected to apply from 1 July 2006.<sup>2</sup>

Biodiesel is classified as a 'cleaner fuel' and is thus eligible for a grant under the Cleaner Fuels Grants Scheme. The ATO describes this Scheme as follows:

The cleaner fuels grants scheme provides for the payment of a grant in relation to the manufacture and importation of eligible cleaner fuels. The scheme is designed to encourage the manufacture and importation of fuels that have a reduced impact on the environment. Currently, biodiesel and premium unleaded petrol which has 50 mg/kg of sulphur or less (PULP) are eligible cleaner fuels.<sup>3</sup>

Another proposal in the Bill is to give the same tax treatment to a biofuel made by hydrogenation<sup>4</sup> as that given to biodiesel. The Bill therefore proposes to amend the *Energy*

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*Grants (Cleaner Fuels) Scheme Act 2004* by adding a definition of ‘renewable diesel’ to cover the hydrogenation of animal fats and vegetable oils to make renewable diesel.

The proposal to establish a common validity period for excise licences and other measures has particular relevance for cigarette producers. The illegal sale of tobacco—commonly called ‘chop chop’—has been a source of excise evasion. The ATO has sought to crack down on this abuse, and the Auditor General has twice reviewed the ATO’s efforts, once in [Administration of Tobacco Excise](#) and again in [Administration of Petroleum and Tobacco Excise Collections: Follow-up Audit](#).<sup>5</sup> In particular, the provisions whereby anybody who has had possession, custody or control of tobacco leaf can be asked to satisfactorily account for it, should help to reduce illegal trade.

The application of excise since the mid 1990s is covered in a Parliamentary Library paper titled [Excise taxation: developments since the mid-1990s](#).

### Basis of policy commitment

The Government made four announcements regarding the reform of fuel excise rates and fuel tax credits:

- in the 2003–04 Budget, the Government outlined the reforms
- on 16 December 2003, the Prime Minister elaborated on the Budget announcement
- in March 2004, the Government extended the transition path for fuels becoming subject to excise (see below), and
- on 15 June 2004, the Government released the energy white paper.

On 31 March 2006, the Prime Minister [announced](#) that the Government would give the same tax treatment to a biofuel made by hydrogenation as that given to biodiesel as part of its biofuels investments program. Following on from this, in the 2006-07 Budget, the Government stated:

The Government will provide \$100.1 million over four years to allow renewable diesel made from tallow (or animal fats) using new technology to receive the same tax treatment as biodiesel. Biodiesel is subject to excise but is effectively tax free until 1 July 2011 because it is eligible for grants made under the *Energy Grants (Cleaner Fuels) Scheme Act 2004*. From 2011 to 2015, grant rates payable with respect to biodiesel, and therefore renewable diesel, will be reduced to zero in five equal steps.<sup>6</sup>

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### Position of significant interest groups

See the corresponding section in the Bills Digest for the Fuel Tax Bill 2006.

### ALP/Australian Democrat/Greens/Family First policy position/commitments

See the corresponding section in the Bills Digest for the Fuel Tax Bill 2006.

### Any consequences of failure to pass

The main effect would be that the Government would not be able to implement the fuel tax credits scheme.

## Financial implications

The Explanatory Memorandum on page three contains the following estimates.

<i>Revenue (\$m)</i>	<i>2006-07</i>	<i>2007-08</i>	<i>2008-09</i>	<i>2009-10</i>
Australian Customs Service				
Excise equivalent customs duty	250	260	270	280
Australian Taxation Office				
Excise duty	240	250	260	270
<i>Expenses(\$m)</i>	<i>2006-07</i>	<i>2007-08</i>	<i>2008-09</i>	<i>2009-10</i>
Australian Taxation Office				
Fuel tax credits	500	510	530	550
<i>Impact on fiscal balance (\$m)</i>	-10	-10	-10	-10

## Main provisions

In general, the provisions are adequately described in the Explanatory Memorandum. The following are selected provisions.

### Schedule 1—Amendments

#### Energy Grants (Cleaner Fuels) Scheme Act 2004

**Item 6** repeals the definition of biodiesel and substitutes a new definition [**subsection 4(1)**]. Biodiesel is a fuel that:

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(a) is manufactured by chemically altering vegetable oils or animal fats (including recycled oils from these sources) to form mono-alkyl esters; and

(b) complies with the applicable fuel standard for such fuel.

**Item 12** adds a **new subsection 4A**, which contains a definition of renewable fuel, which is a liquid fuel that:

(a) is manufactured by chemically altering vegetable oils or animal fats (including recycled oils from these sources) through a process of hydrogenation (whether or not that process was part of some other process); and

(b) complies with the applicable fuel standard for diesel.

As noted, the intention is that all excise licences will expire. **Item 37** repeals existing section 39E and substitutes a **new section 39E**. This provides that when a licence is first issued, its expiry date is 31 March, two years after the licence was issued. **Item 40** provides that the renewal period is three years.

**Item 65** adds a **new subsection 77AA**, which provides that if a person has had possession, custody or control of tobacco leaf, that person may be asked to account for the leaf. If the person cannot do so, the person must pay an amount equal to the excise that would have been paid if the tobacco had been manufactured into excisable tobacco.

## Concluding comments

The amendments to the Excise Act should simplify the administration and imposition of excise and help protect the revenue. By imposing excise on fuel blends that are not currently captured by the excise tariff, revenue will increase.

## Endnotes

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1. Australian Taxation Office website at <http://www.ato.gov.au/businesses/content.asp?doc=/content/74398.htm>. Accessed 17 May 2006.
  2. *ibid.*
  3. Australian Taxation Office website at <http://www.ato.gov.au/businesses/content.asp?doc=/content/38324.htm>. Accessed 17 May 2006.

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4. For a definition of hydrogenation, see <http://en.wikipedia.org/wiki/Hydrogenation>. Accessed 17 May 2006.
5. Australian National Audit Office, *Administration of Tobacco Excise*, audit report no. 55, 2001–02, at <http://www.anao.gov.au/WebSite.nsf/Publications/4A256AE90015F69BCA256BCF00808510> and *Administration of Petroleum and Tobacco Excise Collections: Follow-up Audit*, audit report no. 33, 2005–06 at <http://www.anao.gov.au/WebSite.nsf/Publications/C66F7C7A5D9DAE07CA2571230080D6F3>. Accessed 22 May 2006.
6. Budget Paper No. 2 2006–07, p. 329.

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