



Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2010

Richard Webb
Economics Section

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Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2010

Date introduced: 2 February 2010

House: House of Representatives

Portfolio: Treasury

Commencement: The main operative sections (Schedule 1) commence on 1 July 2011 provided that section 3 of the Carbon Pollution Reduction Scheme Act 2010¹ commences before 1 July 2011. All other sections commence on the day of Royal Assent.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The purpose of the Bill is to provide temporary assistance to fuel users, by way of automatic reductions in the excise on fuels, to help them adjust to price rises resulting from the implementation of the Carbon Pollution Reduction Scheme (CPRS).

Background

Reintroduction of the Carbon Pollution Reduction Scheme Bills and this Digest

This is the third time this form of Bill, as part of the eleven-Bill Carbon Pollution Reduction Scheme (CPRS) legislative package, has been introduced into Parliament.

The Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009 (the original Bill), along with nine other CPRS Bills, was first introduced into Parliament on 14 May 2009. On 28 May 2009, an eleventh Bill was introduced which completed the package. All the CPRS Bills were passed by the House of Representatives on 4 June 2009—with government amendments made to some of the Bills. On 13 August 2009, the Senate voted down all of the Bills at second reading.

1. This Act will come into force upon the passage of the Carbon Pollution Reduction Scheme Bill 2010.

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Following this, the Excise Tariff Amendment (Carbon Pollution Reduction Scheme) [No. 2], along with the other Bills in the CPRS package, was re-introduced into Parliament on 22 October 2009.² They were passed unamended by the House of Representatives on 17 November 2009, thus satisfying the three month 'waiting period' required under the double dissolution provisions of the Constitution.³ The package of Bills was introduced into the Senate on 17 November 2009. Following much negotiation, on 24 November 2009, the government released amendments to a number of the Bills, and these were subsequently adopted by the Senate Committee of the Whole. However, following the Liberal party leadership spill on 1 December 2009, the new leader of the Coalition, the Hon. Tony Abbott, stated that he would seek to have Senate consideration of CPRS Bills delayed until Parliament reconvened in 2010 or, in the absence of a delay, vote against the Bills at that time. With no delay forthcoming, on 2 December 2009, the Senate voted down the CPRS Bills for a second time. This provided the government with a trigger to call for a double dissolution election.

The CPRS Bills, including the Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2010, were again reintroduced into Parliament on 2 February 2010 and passed the House of Representatives on 11 February 2010. The content of the Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2010 (the current Bill) differs slightly from the original Bill and from Bill [No. 2]. **The Digest for the current Bill highlights these changes.**

Fuel and the CPRS

Excise is one of two taxes imposed on fuels (the other is the goods and services tax). The rate of excise on most fuels is 38.143 cents per litre (shown as \$0.38143 in the [Excise Tariff Act 1921](#)). The CPRS is likely to result in higher absolute prices, and perhaps higher relative prices of fuels compared with other goods and services. The Bill seeks to provide temporary adjustment assistance to fuel users to ease the transition to higher prices by amending the *Excise Tariff Act 1921* (the Excise Tariff Act).

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2. These 'No.2' Bills contained the amendments made to the original Bills by the House of Representatives and passed by that House of 4 June 2009. As noted above, not all of the original Bills were amended. The Excise Tariff Amendment (Carbon Pollution Reduction Scheme) was amongst those that were unamended. As such, the Digest for Bill [No. 2] was unchanged from the [Digest](#) produced in June for the original Bill.
 3. Section 57 of the Australian Constitution.

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Basis of policy commitment

The Rudd Government made the commitment to provide temporary adjustment assistance with respect to fuel prices in its CPRS White Paper as follows:⁴

The Government will cut fuel taxes on a ‘cent-for-cent’ basis to offset the initial price impact on fuel of introducing the Carbon Pollution Reduction Scheme. For three years, the Government will assess periodically the adequacy of this measure and adjust the offset accordingly. At the end of the three years, the Government will review this adjustment mechanism.

The fuel tax reduction will apply from 1 July 2010 to all liquid fuels currently subject to the general 38.143 cents/litre rate.

The tax cut will be based on the expected rise in fuel prices flowing from the Scheme. As different fuels emit different amounts of carbon when they burn, their prices will increase according to the volume of their emissions.

To minimise compliance costs, an across-the-board fuel tax cut will be made, based on the impact of the Scheme on diesel prices. This will provide ‘cent-for-cent’ assistance for diesel users.

Because diesel emits more carbon than petrol, the fuel tax cut will provide more than ‘cent-for-cent’ assistance for petrol users, which make up the majority of motorists. However, diesel use is becoming more common as fuel and vehicle standards improve. Basing the fuel tax cut on diesel will ensure that the Government’s ‘cent-for-cent’ commitment is delivered for both fuels.

The fuel tax cut on 1 July 2010 will be based on the carbon pollution permit price established in the first half of 2010 through auctions and market transactions.

Policy position 17.1

The Government will initially reduce excise and excise-equivalent customs duty (fuel tax) on 1 July 2010 for all fuels currently subject to the general rate of 38.143 cents per litre. The tax cut will be based on the effect of pricing diesel emissions.

The Government detailed its proposed periodic adjustment mechanism as follows:

The Government will periodically assess the adequacy of the initial fuel tax cut and adjust fuel taxes accordingly. At the end of the three years, the Government will review this adjustment mechanism.

4. Department of Climate Change, *Carbon Pollution Reduction Scheme: Australia’s Low Pollution Future*, December 2008, pp. 17–16 and 17–17, viewed 28 October 2009, <http://www.climatechange.gov.au/en/publications/cprs/white-paper/cprs-whitepaper.aspx>

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The Government will automatically assess the fuel tax rate every six months. Assessment will be based on the average permit price for the previous six months. If the average price exceeds the price used for the previous cut, there will be a further fuel tax cut. Any reductions will take effect on 1 February and 1 August each year.

Six-monthly assessment strikes a balance between ensuring that the 'cent-for-cent' fuel tax cut reflects permit price movements and minimising compliance costs for industry.

A one-month lag will occur between the date the new fuel tax rate is calculated and the date the new rate takes effect. This will give the Australian Taxation Office time to communicate the rate change to businesses and allow time for businesses to adjust their systems.

Reductions in fuel tax made during this transition period will become permanent after three years.

The fuel tax rate will not increase if the emissions price falls. The Government will only cut the fuel tax rate (not increase it), to ensure that this assistance benefits motorists.

After 1 July 2013, the Government will make a final assessment and, if needed, a final fuel tax cut will take effect from 1 August 2013.

The assessment mechanism will be legislated to make its operation transparent. The Government will review the mechanism after July 2013.⁵

Policy position 17.2

The Government will legislate to automatically reduce fuel tax on a six-monthly basis if the average carbon pollution permit price in the six-month period exceeds the previous reduction, including the initial one, in the period to 30 June 2013.

The dates in this commitment have changed. In particular, the first excise reduction will take place on 1 July 2011, and there will be fixed a \$10 emission unit price which will cease on 30 June 2012.

This Bills Digest should be read in conjunction with the related Bills Digest for the Customs Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2010.

Details of the proposed Carbon Pollution Reduction Scheme are set out in the Bills Digest for the Carbon Pollution Reduction Scheme Bill 2010.

5. Ibid.

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Committee consideration

The original Bill, along with the others in the CPRS package, was referred to the Senate Standing Committee on Economics for inquiry and report by 15 June 2009. Details of the inquiry are at

http://www.aph.gov.au/senate/committee/economics_ctte/cprs_2_09/index.htm

Financial implications

The Explanatory Memorandum does not identify separately the financial consequences of the Bill. Rather, it shows the estimated combined consequences of the Bill and related Bills as shown below.

	2009-10	2010-11	2011-12	2012-13	2013-14
Revenue (\$m)					
Australian Customs and Border Protection Service	–	–	–\$30m	–\$60m	–\$60m
ATO	–	–	–\$1 150m	–\$3 110m	–\$3 500m
Total	–	–	–\$1 180m	–\$3 170m	–\$3 560m
Expense (\$m)					
ATO	–	–	–\$160m	–\$940m	–\$1 000m
Total	–	–	–\$160m	–\$940m	–\$1 000m

Source: Explanatory Memorandum, p. 8.

For possible implications for state government revenue, see the conclusions.

Main provisions

Schedule 1 of the Bill amends the *Excise Tariff Act 1921*.

The first excise rate reduction will be on 1 July 2011 when the rate will be reduced by 2.455 cents per litre from 38.143 cents per litre to 35.688 cents per litre. The 2.455 cents per litre is an estimate of the initial increase in diesel prices resulting from the implementation of the CPRS, and is based on an assumed emission unit price of \$10.⁶

Item 5 substitutes the reduced rate of 35.688 cents per litre (shown as \$0.35688 in the

6. G Combet (Minister Assisting the Minister for Climate Change), ‘Second reading speech: Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009 [No. 2]’, House of Representatives, *Debates*, 22 October 2009, p. 8.

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Bill) for the existing rate of 38.143 cents per litre wherever it currently occurs in item 10 of the schedule of the Excise Tariff Act.

The government expects that after the first year of the CPRS, diesel prices will continue to rise.⁷ The government therefore intends to reduce the excise rate below 35.688 cents per litre to offset the expected price rises. **Item 1** inserts proposed **section 6AA**. Reductions in the excise rate from 1 July 2012 will be based not on actual diesel prices but on changes in the charges (prices) of auctioned permits. Further, the auction prices will be based on a six-month average. **Proposed subsection 6AA(1)** defines the ‘*6-month average Australian emission unit auction charge*’ as the amount published under section 271 of the *Carbon Pollution Reduction Scheme Act 2010*.

Proposed subsection 6AA(2) lists the five ‘*rate-reducing days*’. The first of the five reductions will be on 1 July 2012 and the last on 1 July 2014. However, excise can be reduced only if auction prices have risen since the last excise rate reduction. The five days will become ‘*rate-reducing days*’ only if the ‘6-month average Australian emissions unit auction charge’ published during the month preceding the relevant rate reducing day’ is greater than the ‘*designated Australian emissions unit charge*’.⁸ To make this comparison, several steps are necessary.

The first step is to identify the ‘6-month average Australian emissions unit auction charge published during the month preceding *that day*’ (author’s italics). The Australian Climate Change Regulatory Authority will publish this information.⁹

The second step is to calculate the ‘*designated Australian emissions unit charge*’ (the designated charge) in accordance with the procedure in **proposed paragraphs 6AA(2)(a) and 6AA(2)(b)**.

To calculate the designated charge, one needs to know ‘the 6-month average Australian emissions unit auction published during the month preceding *the most recent rate-reducing day*’ (author’s italics): **proposed subparagraph 6AA(2)(a)(i)**. That is, what the auction price was the month before the previous rate-reducing day. Again, this information will be published.

Next, it is necessary to compare the price on the most recent rate-reducing day with \$10: **proposed subparagraph 6AA(2)(a)(ii)**. If the result of the comparison is more than \$10, the result becomes the designated charge. If, on the other hand, the result is less than \$10, the designated charge is the ‘default’ figure of \$10: **proposed paragraph 6AA(2)(b)**.

7. Explanatory Memorandum, Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009 [No. 2], p. 9, paragraph 1.6.

8. The information in the former will be more recent than the latter.

9. Explanatory Memorandum, p. 12, paragraph 1.20.

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Finally, the designated charge is deducted from the ‘6-month average Australian emissions unit auction charge published during the month preceding that day’. A positive figure from this comparison means that the excise rate needs to fall because emission prices have risen since the last excise rate reduction. If the comparison results in a negative figure, no change will be made to the excise rate.

Having ascertained that a rate reduction is warranted, **proposed subsection 6AA(3)** contains the formula for calculating the ‘*rate reduction*’ in the excise rate. The Explanatory Memorandum explains two components of the formula, namely the use of the two multipliers, 10/11 and 0.0027 as follows:

The amount of the fuel tax reduction will equal the difference between the average unit charges (if positive) multiplied by 10/11 (to remove the GST component of the price) and then multiplied by 0.0027. The 0.0027 multiplier is the carbon dioxide equivalent (CO₂-e) emissions per litre of diesel fuel in transport uses (emissions factor).¹⁰

The effect of **proposed subsection 6AA(4)** is to substitute the newly calculated excise rate for the former rate, by reducing the former rate by the rate reduction calculated in **proposed subsection 6AA(3)**.

Proposed subsection 6AA(6) provides that if, under **proposed subsection 6AA(4)**, this Act were to have effect as if another rate of duty were substituted for a relevant rate on a rate-reducing day, the Commissioner of Taxation must publish in the *Gazette* the substituted rate and the goods to which it applies.

The current Bill introduces a new **proposed subsection 6AA(6A)**. This provides that the Commissioner of Taxation must ensure that a copy of a notice under subsection 6AA(6) is available on the website of the Australian Taxation Office.

As their name suggests, blended fuels contain mixed components. Fuel ethanol, for example contains petrol and ethanol. Blended fuels are generally taxed at 38.143 cents per litre. Existing subsection 6G(1) of the Excise Tariff Act contains the formula for calculating the amount of duty payable on blended fuels. This is the volume of the fuel multiplied by the current rate of duty (38.143 cents per litre). From this calculated amount, duty already paid is deducted leaving the amount payable.

Item 2 repeals subsection 6G(1) and substitutes a new formula for calculating the amount of duty payable on blended fuels. Under the proposed formula the duty payable is equal to the volume of the fuel multiplied by the ‘*notional rate amount*’ from which duty already paid is deducted to obtain the amount payable. **Item 3** sets the ‘*notional rate amount*’ at 35.688 cents per litre. The combined effect of **items 2** and **3** is to establish the excise rate

10. Explanatory Memorandum, p. 12, paragraph 1.22.

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from 1 July 2011 at 35.688 cents per litre. **Proposed subsection 6AA(5)** ensures that any further excise reductions applying to fuels also apply to blended fuels.

Concluding comments

One can ask why fuel users should be shielded—albeit temporarily—from the price consequences of the CPRS. It could be argued that adjustment assistance merely delays inevitable adjustment. Once assistance has been provided, it may be difficult to remove it.

As it is, fuel users have been shielded from price rises by the non-indexation of excise. The excise on petrol and diesel has remained at 38.143 cents per litre since 1 March 2001 when the Howard Government announced the cessation of all future indexation of the excise on petroleum fuels to the consumer price index. The real value of excise, that is, after taking account of inflation, has therefore fallen. Had indexation continued, the excise rate would now be more than 48 cents per litre.¹¹ Arguably, the fall in the real value of excise has contributed to the use of less fuel efficient vehicles, and increased Australia's reliance on imported crude oil and refined petroleum products and emissions of carbon dioxide. The Bill does not propose to reintroduce indexation after the rate reductions. Consequently, the real value of excise will continue to fall. This could be seen as inconsistent with the goal of increasing the relative prices of fuels.

The Bill seeks to ensure that a reduction in excise applying to, say, petrol also applies to petrol blends, for example, fuel ethanol. The Federal Government now pays a production subsidy of 38.143 cent per litre to ethanol producers, which is exactly the same as the excise on the ethanol in fuel ethanol. However, there seems to be no provision in the CPRS or elsewhere to reduce the ethanol production subsidy when the excise on ethanol falls. This could result in a windfall for ethanol producers.

Excise reductions will also reduce the GST on fuel. GST on excise is currently 10 per cent of 38.143 cents per litre, that is, 3.8143 cents per litre. Lower excise rates will reduce the GST on excise below 3.8143 cents per litre. For example, the GST on 35.688 cents per litre is 3.5688 cents per litre. The Bill, by dealing only with excise, does not take account of the effect of reduced GST on fuel prices.

All GST revenue goes to the states. The states may seek compensation for the reduced GST revenue consequent to reductions in excise rates.

11. Statistics Section, Research Branch, Parliamentary Library, 2009.

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